

137 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Central New York Oil and Gas Company, LLC

Docket No. CP10-480-000

ORDER ISSUING CERTIFICATE

(Issued November 14, 2011)

1. On August 9, 2010, Central New York Oil and Gas Company, LLC (CNYOG) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for a certificate of public convenience and necessity authorizing CNYOG to construct and operate certain facilities in Bradford, Sullivan, and Lycoming Counties, Pennsylvania, to provide open-access firm and interruptible transportation service. The project facilities are referred to as the MARC I Hub Line Project (MARC I Project).

2. As discussed below, the Commission grants CNYOG's request for certificate authorizations, subject to the conditions described herein.

I. Background

3. CNYOG is a New York limited liability company³ and operates the existing Stagecoach Storage Facility (Stagecoach), a multi-cycle natural gas storage facility at the Stagecoach Gas Field in Tioga County, New York and Bradford County, Pennsylvania,

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157, Subpart A (2011).

³ CNYOG is an indirect, wholly-owned subsidiary of Inergy, L.P.

located about 150 miles west of New York City. CNYOG is subject to the Commission's jurisdiction as a "natural gas company" within the meaning of NGA section 2(6).⁴

4. The Commission authorized the initial Stagecoach Storage Facility in February 2001⁵ and expansions of the project facilities in September 2006⁶ and January 2011.⁷ The facility currently is authorized to provide approximately 26.25 Bcf of working storage capacity in six depleted gas reservoirs, with maximum injection and withdrawal rates of 250,000 Mcf/day and 500,000 Mcf/day, respectively. The facility includes two header pipelines: (1) a 23.7-mile, 30-inch diameter pipeline that connects the storage facility with Tennessee Pipeline Company's (Tennessee) Line 300 in Bradford County, Pennsylvania (South Lateral⁸); and (2) a 9.3-mile, 20-inch diameter pipeline that connects the storage facility with Millennium Pipeline Company, LLC's (Millennium) pipeline in Tioga County, New York (North Lateral). CNYOG is currently authorized to provide firm and interruptible storage service and interruptible wheeling service at market-based rates, and firm wheeling service at cost-based rates.⁹

II. Proposal

5. CNYOG requests authority to construct and operate additional pipeline, compression and appurtenant facilities, including metering, and measurement equipment, to provide 550,000 Dth/day of open-access firm and interruptible transportation service at cost-based rates.¹⁰ This service is in addition to the firm and interruptible storage, and

⁴ 15 U.S.C. § 717a(6) (2006).

⁵ *Central New York Gas and Oil Co., LLC*, 94 FERC ¶ 61,194 (2001).

⁶ *Central New York Gas and Oil Co., LLC*, 116 FERC ¶ 61,277 (2006).

⁷ *Central New York Gas and Oil Co., LLC*, 134 FERC ¶ 61,035 (2011) (January 2011 Order).

⁸ *See Tennessee Gas Pipeline Co.*, 117 FERC ¶ 62,261 (2006).

⁹ *See* January 2011 Order, 134 FERC ¶ 61,035.

¹⁰ On October 12, 2010, November 24, 2010, and January 20, 2011, CNYOG filed supplements to its application to reflect minor route modifications or variations to its originally proposed pipeline alignment. During project development, and as a consequence of ongoing field surveys, CNYOG made these minor changes both prior to and after filing its application. These changes were made to avoid, among other things, wetlands, ponds, and culturally sensitive structures. Several changes were made in

(continued...)

firm and interruptible wheeling services which CNYOG is currently authorized to provide on its Stagecoach System. The estimated cost of the MARC I Project is \$257,245,000.

6. CNYOG proposes to charge negotiated rates, subject to a cost-based recourse rate alternative, for the proposed firm and interruptible transportation service on the MARC I facilities. CNYOG requests approval of the proposed cost-of-service-based recourse rate methodology, subject to a post-construction compliance filing to reflect actual costs.¹¹

A. Proposed Facilities

7. CNYOG proposes to construct and operate an approximately 39-mile long, 30-inch diameter pipeline connecting the South Lateral of its Stagecoach facility in Bradford County, Pennsylvania, and the interstate pipeline facilities of Transcontinental Gas Pipe Line Company (Transco) in Lycoming County, Pennsylvania. CNYOG also proposes to construct and operate a new compression facility with 16,360 horsepower (hp) of gas-fired compression in Sullivan County, Pennsylvania (M1-S); an additional 15,300 hp electric compressor unit at its existing NS2 compressor site in Bradford County, Pennsylvania (M1-N); and related metering, flow control and appurtenant facilities.¹²

response to various landowner requests, including: moving the pipeline right-of-way from the front of an occupied cabin to the rear; avoiding a septic system; and minimizing hillside excavation to avoid the need for additional noise mitigation.

¹¹ CNYOG requests confirmation that the Part 284 blanket certificate issued to CNYOG in Docket No. CP00-61-000 authorizing CNYOG to provide open-access transportation (storage) service also authorizes CNYOG to provide the proposed transportation service on the MARC I facilities. We confirm CNYOG's request.

¹² CNYOG states that it considered the potential for recovery of waste heat energy from the proposed M1-S gas-fired compressor station as discussed in the Interstate Natural Gas Association of America White Paper entitled "Waste Energy Opportunities for Interstate Natural Gas Pipelines" (February 2008) (INGAA White Paper) and has concluded that the recovery of waste energy for potential industrial or cogeneration uses is not economically practical at this time. The area in which M1-S located is largely forested or agricultural land, lacking industrial or manufacturing facilities to which waste energy could be transported as steam. CNYOG also concludes that generation of electricity from waste energy from M1-S is not economically justified.

B. Open Season

8. CYNOC conducted a non-binding open season for firm transportation service on the MARC I Project from July 24, 2009 to June 18, 2010. After a subsequent binding open season, CYNOC executed precedent agreements with three shippers for 10-year terms for a total of 550,000 Dth/day of firm transportation service at negotiated rates.¹³ CYNOC states that the MARC I Project would provide access to interstate markets for natural gas produced from the Marcellus Shale in northeast Pennsylvania, and expanded transportation and storage options to shippers utilizing Tennessee, Transco, Stagecoach and Millennium. CYNOC adds that significant demand for the MARC I Project capacity is demonstrated by the execution of precedent agreements for 100 percent of the design capacity of the project for 10-year terms.

III. Notice, Interventions, Protests and Comments

9. Public notice of CYNOC's application was published in the *Federal Register* on August 26, 2010 (75 Fed. Reg. 52,526 (2010)). The Commission established a September 9, 2010 deadline for filing comments and motions to intervene.

10. Fourteen parties filed timely, unopposed motions to intervene: Charles W. Amer; Lake Mokoma Conservancy; Lake Mokoma Association; New Jersey Natural Gas Company; NJR Energy Services Company; National Fuel Gas Distribution Corporation; National Grid Gas Delivery Companies, et al.; Judith O'Dell; Robert E. and Shirley Swartz; Consolidated Edison Company of New York, Inc.; Mary K. Kennedy; Joseph E. Heim; Chesapeake Energy Marketing, Inc. (Chesapeake); and Statoil Natural Gas, LLC (Statoil).¹⁴ William O. Reutelhuber, Albert W. Preston, Thomas Taylor, and Ralph Kisberg filed timely comments.

11. Dominion Transmission, Inc., and Dominion Cove Point LNG, LP (Dominion) (jointly) and Earthjustice, on behalf of Coalition for Responsible Growth and Resource Conservation, Damascus Citizens for Sustainability, and Sierra Club, filed late motions to intervene. These entities have demonstrated that they have an interest in this proceeding. Granting their motions to intervene will not cause delay, disruption, or otherwise unfairly

¹³ CYNOC requests privileged treatment for the three filed precedent agreements.

¹⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2011). Statoil and Chesapeake also filed comments in support of the MARC I Project.

prejudice any parties to this proceeding. Thus, we will grant the untimely motions to intervene under Rule 214(d) of the Commission's regulations.¹⁵

IV. Discussion

12. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁶

A. Application of the Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.¹⁷ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

¹⁵ 18 C.F.R. § 385.214(d) (2011).

¹⁶ 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

¹⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

15. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. All of CNYOG's existing services are provided on the existing facilities of its Stagecoach system, which are located upstream of the facilities and services proposed here. In this proceeding, CNYOG proposes to establish recourse rates for the proposed MARC I transportation service based on the cost of the Facilities being constructed to support the MARC I service. Because CNYOG will be charging an incremental rate which, as discussed below, we find to be appropriate, there will be no subsidization of the proposed project by CNYOG's existing customers.

16. CNYOG's Project will have no negative impact on other pipelines in the market or on their captive customers. CNYOG's proposed MARC I Project will enhance the market-access options available to pipelines and their customers in the region. In conjunction with CNYOG's previously-approved Firm Wheeling Service (FWS) on the North and South Laterals of the Stagecoach system,¹⁸ the proposed MARC I Project will facilitate the transportation of natural gas between Millennium, Tennessee and Transco. The MARC I Project will also provide shippers on Transco access to storage capacity on the Stagecoach system and existing Stagecoach storage customers access to Transco for both receipts and deliveries.

17. We also find there will be limited impact to landowners and communities along the route of the project. The proposed pipeline and compression facilities will be located in sparsely populated, rural areas of Lycoming, Sullivan, and Bradford Counties in Pennsylvania. The project will primarily impact forest and agricultural lands. Few residential properties will be impacted by project construction and operation. The localized nature of the construction activity (about 8.16 acres of residential land will be impacted during construction, and 1.43 acres will be required for permanent new pipeline right-of-way), and the mitigation measures imposed in this order, will minimize impacts to landowners. As noted earlier, several route modifications were made in response to landowner concerns. CNYOG states that it has acquired, or is acquiring, the rights to the land to be used for the MARC I facilities through negotiated agreements with landowners, thus minimizing the need for the exercise of eminent domain. CNYOG adds that it has a contract to purchase the NS2 compressor site and an agreement in principle to acquire the M1-S site from the current landowner.

¹⁸ See January 2011 Order.

18. Based on these findings and our environmental analysis and conditions discussed below, we find certification of the project under section 7 of the NGA is required by the public convenience and necessity.

B. Rates and Tariffs Issues

19. The MARC I Project will enable CNYOG to provide up to 550,000 Dth/d of firm transportation service through a 39-mile, 30-inch pipeline connecting the South Lateral to Transco in Lycoming County, Pennsylvania. CNYOG proposes to offer firm and interruptible MARC I Project service under two new cost-based rate schedules, MARC FTS and MARC ITS.

20. CNYOG proposes an initial firm reservation rate under Rate Schedule MARC-FTS of \$7.8255 per Dth, with a commodity charge of \$0.0029 per Dth. CNYOG proposes an interruptible rate under Rate Schedule MARC-ITS of \$0.2602 per Dth, based on 100 percent load factor of the firm transportation rate. The proposed transportation rates are derived using a straight fixed-variable rate design and a first year cost of service of \$52,170,256,¹⁹ reflecting a cost of facilities of \$257,245,000,²⁰ an overall rate of return of 11.03 percent,²¹ and a straight line depreciation rate of 4 percent.²² CNYOG designed its initial recourse reservation rates using billing determinants based on peak day design

¹⁹ The cost of service is composed of: (1) fixed Operation and Maintenance expenses of \$3,701,000; (2) Administrative and General Expense of \$2,118,000; (3) Depreciation and Amortization \$10,262,000; (4) Income Taxes of \$9,135,000; (5) Taxes other than Income Taxes of \$1,950,000; and (6) Return on equity of \$18,688,000 less (7) a cost-of-service credit for interruptible transportation service of \$2,746,000. Of the total net cost of service of \$52,170,000, CNYOG allocated \$51,649,000 to the demand component and \$522,000 to the commodity component. *See* Exhibit N, Summary of Cost of Service, of the MARC I Project application.

²⁰ The estimated cost of facilities reflects: (1) \$253,913,000 for 30-inch 39 mile pipeline and two compressors proposed here and (2) \$3,332,000 for the header facilities approved in the January 2011 Order. *See* Exhibit K of the MARC I Project application.

²¹ The return allowance is based an estimated capital structure of 55 percent equity and 45 percent debt with an equity cost of 13.5 percent and a debt cost of 8.0 percent, resulting in an overall rate of return of 11.03 percent. The return allowance is consistent with the January 2011 Order at P 26-27 and n.23.

²² A 25-year straight line depreciation rate is consistent with the depreciation rate approved in the January 2011 Order at P 25-26.

capacity of 550,000 Dth per day. CNYOG also proposes to charge a fuel retention percentage of 0.32 percent and 0.10 percent for lost and unaccounted-for fuel, as well as a \$0.0260 per Dth electric power cost charge to recover the electricity costs associated with the proposed new electric compressor unit. The Commission will approve CNYOG's proposed rates as initial recourse rates for its MARC I Project transportation services, subject to the modifications discussed below.

21. However, we note that the \$257,245,000 cost of facilities used by CNYOG in designing its recourse rates includes an allocation of \$3,332,000 related to the construction of facilities authorized by the Commission in its January 2011 Order approving CNYOG's cost-based firm wheeling service.²³ Since the \$3,332,000 was used to derive the rates approved in the January 2011 Order, including the same costs in the derivation of rates for the MARC I services would raise the possibility of double recovery. In its December 6, 2010 response to a staff data request and set forth at Exhibit Z-1 in the MARC I application, CNYOG indicated that if the MARC I Project were authorized, it would file to remove the \$3,332,000 of costs from its firm wheeling service rates. Therefore, consistent with CNYOG's application and response to a staff data request, CNYOG is directed to file to adjust its firm wheeling service rate to remove all costs related to the \$3,332,000 of facilities (e.g., return, income taxes, ad valorem, operation and maintenance expenses, etc.) within 60 days of the date of this order.

1. AFUDC

22. In Exhibit K to the application, CNYOG estimates its cost of facilities to include the capital cost of the MARC I Project and a portion of the capital costs associated with Facilities authorized in the January 2011 Order which CNYOG now seeks to allocate to the MARC I Project.²⁴ CNYOG's cost of facilities includes a total allowance for funds used during construction (AFUDC) of \$18,119,679. CNYOG proposes to commence the accrual of AFUDC beginning in August 2010 and continuing through June 2012. CNYOG states that the proposed AFUDC accruals satisfy the two conditions of the

²³ CNYOG describes the \$3,332,000 cost of the firm cost-based wheeling facilities as including land, ground improvements, electric transmission access, and suction/discharge lines. *See* Exhibits K and Z-1 of the MARC I Project application.

²⁴ CNYOG explains that if the MARC I Project is approved, the Joint Facilities (as described above) at the NS2 Compressor Station constructed under authorization granted in the January 2011 Order will also serve to provide firm transportation service on the MARC I Project.

Commission's revised AFUDC policy.²⁵ Specifically, CNYOG asserts that as of July 1, 2010, it has spent approximately \$1.1 million on the project and that it has undertaken activities including route selection, legal and outside services, environmental work, and preliminary engineering.

23. CNYOG states that the AFUDC included in its cost of facilities includes \$87,720 of AFUDC related to the Joint Facilities which will be accrued from the time the Joint Facilities enter commercial operation on November 1, 2011, through the in-service date of the MARC I Project. CNYOG justifies this accrual of AFUDC by contending that even though the Joint Facilities will be constructed under Docket No. CP10-194-000 and will be commercially operable effective November 1, 2011, not all of the costs will be included in rate base for the recourse rate that is effective as of November 1, 2011.²⁶ Therefore, CNYOG contends that from a recourse rate perspective, it would not otherwise be earning a return on its investment for the portion of the Joint Facilities allocated to the MARC I Project during the period between when the Joint Facilities are in service and when the MARC I Project is to enter commercial operation.

24. The Commission revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*,²⁷ to allow natural gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. Based on CNYOG's representations, its accrual of AFUDC for the construction of its MARC I Project new Facilities appear to be consistent with the revised policy conditions. However, CNYOG's proposal to accrue AFUDC on the Joint Facilities from October 1, 2011, through the MARC I Project's in-service date is not consistent with the Commission's rules. CNYOG placed the Joint Facilities into service on November 1, 2011. CNYOG proposes to allocate a portion of the Joint Facilities to the MARC I Project and commence AFUDC on these Joint Facilities through the end of construction

²⁵ See Exhibit Z-1, Explanatory Statement of Rate Making Methodology.

²⁶ CNYOG states that if the MARC I Project is approved in the instant filing, it proposes to make a filing with the Commission in Docket No. CP10-194-000 to remove the properly allocated costs of the Joint Facilities from the recourse rates for firm wheeling service approved in that docket, thereby avoiding a double recovery of the cost of the Joint Facilities allocated to the MARC I Project.

²⁷ *Florida Gas Transmission Co. LLC*, 130 FERC ¶ 61,194 (2010), and *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010).

of the MARC I Project. This results in CNYOG accruing an additional \$87,720 of AFUDC on the Joint Facilities after they have been placed in service.

25. Accounting Release No. 5 requires AFUDC to cease when the facilities have been tested and are placed in or ready for service. This would include those portions of construction projects completed and put into service although the project is not fully completed.²⁸ The timing of the completion of the MARC I Project in total and its inclusion in rate base does not alter the fact that the Joint Facilities were placed into service on November 1, 2011. Therefore, under Accounting Release No. 5, once construction has been completed on the Joint Facilities portion of the project, the Joint Facilities lose their eligibility for further AFUDC accruals. Accordingly, CNYOG must remove the proposed AFUDC accrual of \$87,720 calculated on the Joint Facilities after their in-service date on November 1, 2011. CNYOG must revise all cost-of-service items dependant on Gas Plant in Service, such as income taxes, depreciation expense, return, and interest expense. CNYOG must then file its revised rates and working papers within 60 days of the date of this order.

2. Negotiated Rate Authority

26. As indicated above, CNYOG has entered into precedent agreements with three shippers to provide MARC I service at negotiated rates. We will approve negotiated rate authority for CNYOG. In certificate proceedings, we establish initial recourse rates, but do not make determinations regarding specific negotiated rates for proposed services.²⁹ In order to comply with the Alternative Rate Policy Statement,³⁰ and our decision in *NorAm Gas Transmission Co.*,³¹ we direct CNYOG to file any negotiated rate contracts

²⁸ See *Accounting Release No. 5 (Revised), Capitalization of Interest During Construction*, FERC Stats. and Regs. ¶ 40,005 (1968).

²⁹ *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 97 (2008); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360 at n.19 (2002).

³⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

³¹ 77 FERC ¶ 61,011 (1996).

not less than 30 days, or more than 60 days, prior to the commencement of service stating for each shipper the negotiated rate, the applicable gas volume to be transported, and an affirmation that the affected service agreements do not deviate in any material respect from the form of service agreement in CNYOG's *pro forma* tariff. CNYOG must also disclose all consideration received that is associated with the agreement. In addition, CNYOG must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

3. Rate Changes and Three-Year Filing Requirement

27. The January 2011 Order³² required CNYOG to file a cost and revenue study at the end of its first three years of actual operation to justify its existing approved cost-based recourse rates. The service authorized by that order commenced on November 1, 2011. In this application, CNYOG proposed an in-service date for the MARC I Project of July 2, 2012. Since it is anticipated that there will be a relatively short period of time between the in-service dates of CNYOG's first two cost-based projects, the Commission will require that CNYOG submit cost and revenue studies for both projects three years after the MARC I Project is placed into service. CNYOG's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, CNYOG is advised to include as part of the eFiling description, a reference to Docket Nos. CP10-194-000 and CP10-480-000 and the cost and revenue study.³³ As was required by the January 2011 Order for the firm wheeling service project, the projected units of service for the MARC I Project should be no lower than those upon which CNYOG's approved initial rates are based. The filing must include cost and revenue studies in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.³⁴

28. Further, since CNYOG will be providing three distinct types of services: (1) market-based rate storage and interruptible wheeling services; (2) cost-based firm wheeling service; and (3) cost-based transportation service, CNYOG is required to maintain separate books and records for each of the three services, to ensure that customers for one type of service do not subsidize another service. After reviewing the cost and revenue study, the Commission will determine whether to exercise our authority

³² 134 FERC ¶ 61,035 at P 31.

³³ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

³⁴ *See* 18 C.F.R. § 154.313 (2011).

under NGA section 5³⁵ to establish just and reasonable rates. In the alternative, in lieu of this filing, CNYOG may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date of the MARC I Project facilities.

29. The Commission has authorized CNYOG to provide market-based rate storage service, granting waiver of Part 201 and section 260.2 of the Commission's regulations (pertaining to accounting and reporting requirements, which presume that cost-of-service rates are charged).³⁶ Further, the Commission waived the requirement in section 260.2 of the regulations to file an annual report (Form Nos. 2 and 2A), except for the information necessary for the Commission's assessment of annual charges.³⁷ Such waiver is not applicable to cost-based rate services provided by the MARC I Project, or the firm and interruptible wheeling services. Therefore, CNYOG is required to comply with the reporting requirement of Part 201 and section 260.2 of the Commission's regulations and submit its annual report (Form Nos. 2 and 2A) applicable to its cost-based rates.

4. *Pro Forma Tariff*

30. CNYOG in Exhibit P submitted *pro forma* tariff revisions to implement the proposed firm and interruptible transportation service under Rate Schedules MARC I FTS and MARC I ITS. We find that CNYOG's *pro forma* tariff generally complies with Part 284 of the Commission's regulations and current Commission policy subject to the clarification and revision described below. The Commission will require CNYOG to file actual tariff records consistent with the directives in this order at least thirty days and no more than sixty days prior to the commencement of service.

31. CNYOG proposed revisions to its creditworthiness provision at section 11.5 (e) of the GT&C, that state:

Seller may negotiate with Customers mutually acceptable creditworthiness requirements in connection with subscription to firm capacity in support of construction projects to add new facilities or increase existing capacity.

³⁵ 16 U.S.C. § 717d (2006).

³⁶ *Central New York Oil & Gas Co., LLC*, 116 FERC ¶ 61,277, at P 37-40 (2006) and 94 FERC ¶ 61,194, at 61,707 (2001).

³⁷ *Id.*

32. CNYOG contends that since it negotiated different creditworthiness requirements for new construction and expansion services, it is proposing tariff language that provides for different creditworthiness standards on a not unduly discriminatory basis.

33. The Commission has recognized that pipelines building new or expanded facilities may require higher collateral requirements in order to satisfy lending arrangements. The Commission, however, has found that collateral requirements between the pipeline and its expansion shippers must be contained in precedent or other agreements between the pipeline and the expansion shippers, and not in the tariff.³⁸ The collateral in the precedent or other agreements can continue after the pipeline project is in service.³⁹

34. As the Commission explained in the Policy Statement on Creditworthiness, the collateral requirements that may be necessary for expansion shippers are not necessarily just and reasonable when applied to shippers signing up for service after the project is in service.⁴⁰ For example, the financing requirements applicable to expansion shippers are not applicable to shippers on which the pipeline did not rely for financing. For shippers using existing facilities, the Commission's policy is to permit up to three months of collateral, which reasonably balances the shipper's right to continued service and the pipeline's risk.⁴¹ Because the collateral applicable to expansion shippers is not appropriate for later shippers on already-constructed facilities, the Commission has found that the collateral requirements in the tariff should reflect only the collateral applicable to those shippers that commence service at a date after the facilities are placed in service. Thus, the Commission will require CNYOG to remove the tariff provision at section 11.5 (e) which permits Customers to negotiate for mutually acceptable creditworthiness requirements, and include this information in its precedent or other agreements.

5. Precedent Agreements

35. The precedent agreements filed by CNYOG contain the particular agreements between CNYOG and the three shippers supporting the project. According to CNYOG, the agreements specify the negotiated rates the prospective MARC I shippers will pay

³⁸ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking, FERC Statutes and Regulations* ¶ 31,191, at P 18 (2005) (Policy Statement on Creditworthiness).

³⁹ *Id.* P 19.

⁴⁰ *Id.* P 19.

⁴¹ *Id.* P 14.

along with defining the future rights and obligations of the shippers and CNYOG. Provisions in the precedent agreement were tailored to the needs of the prospective MARC I shippers and CNYOG's need for financial commitments. CNYOG asserts that without the financial commitments and certain concessions it made to address the needs of the shippers' Marcellus Shale development plan, the prospective shippers would not have committed to support the project.

36. CNYOG asserts that no aspect of the precedent agreements results in a material deviation from the *pro forma* MARC I FTS Service Agreement or constitutes any negotiated terms and conditions of service. However, if the Commission determines that a deviation exists, CNYOG believes the deviation should be deemed not material and therefore acceptable. CNYOG requests a determination that even if some of the contractual provisions are construed as material deviations, that none of the provisions be determined to be unduly discriminatory. CNYOG indicates that the precedent agreements contain the following provisions:

a. Most Favored Nation

37. CNYOG contends that the reasonable expectation of the shippers initially subscribing capacity on the MARC I Project is that they will not be competitively disadvantaged should the facilities be increased in the future by adding compression or looping.

b. Pressure

38. The precedent agreements include identical pressure guarantees keyed to the needs of the prospective shippers delivering natural gas produced from the Marcellus Shale into the MARC I facilities for delivery to Transco, Tennessee Gas, or CNYOG's Stagecoach South Lateral. To efficiently utilize their capacity, the prospective shippers may also deliver gas from one of the three interconnecting interstate pipelines for transportation across the MARC I facilities and redelivery to another of these interstate pipelines. CNYOG proposes a revision in its tariff to provide that shippers can negotiate minimum and maximum pressure assurances.

c. Rollover

39. The precedent agreements contain negotiated rollover rights and termination procedures for the prospective MARC I FTS Shippers while the tariff authorizes CNYOG to negotiate non-discriminatory rollover rights. CNYOG contends that the precedent agreements are consistent with its tariff and do not pose any risk of undue discrimination, will not affect the operational conditions of providing service and will not result in any shipper receiving a different quality of service.

d. Liquidated Damages

40. The precedent agreements provide for liquidated damages in the event certain in-service deadlines are not met. CNYOG states that it included this provision because the facilities have not yet been constructed and it believes that it is reasonable to share the risk with the prospective shippers of any delays in completion, subject to certain limitations set forth in the agreements. CNYOG contends that the liquidated damages provision has no application once the MARC I Facilities go into service, will not affect the operational conditions of providing services, will not result in any shipper receiving a different quality of service, and poses no risk of undue discrimination.

e. Creditworthiness

41. CNYOG proposed different creditworthiness standards for the MARC I Project which it claims are not unduly discriminatory, taking into account the credit risk and the unique situations of each prospective MARC I Shipper. As noted above, the Commission has found that collateral requirements between the pipeline and its expansion shippers must be contained in precedent or other agreements between the pipeline and the expansion shippers, and not in the tariff.⁴²

f. Future Capacity

42. The precedent agreements contain provisions dealing with future expansions providing that within five years of the in-service date of the MARC I Facilities, when CNYOG holds an open season for expanded capacity it will: (1) be subject to CNYOG's tariff; (2) not provide any shipper on such Expansion (Expansion Shipper) with any rights that would prevent a MARC I Shipper from obtaining capacity on the same terms as the Expansion Shipper; and (3) offer shippers the same rights as any other Anchor Shipper or Expansion Shipper.

g. Commission Finding

43. The Commission finds that the incorporation of non-conforming provisions in the shippers' service agreements constitutes material deviations from CNYOG's *pro forma* service agreement.⁴³ However, in other proceedings the Commission has found that non-conforming provisions may be necessary to reflect the unique circumstances involved with the construction of new infrastructure and to provide the needed security to ensure

⁴² Policy Statement on Creditworthiness, FERC Stats. and Regs. ¶ 31,191 at P 18.

⁴³ See MARC I Project application at section XI, pages 26-32.

the viability of a project.⁴⁴ We find the non-conforming provisions identified by Tennessee are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.⁴⁵ As discussed further below, when Tennessee files its non-conforming service agreements, we require Tennessee to identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

44. CNYOG must file not less than 30 days or more than 60 days before the in-service date of the proposed facilities, an executed copy of each non-conforming agreement reflecting in redline/strikeout all non-conforming language and a tariff record identifying these agreements as non-conforming agreements, consistent with section 154.112 of the Commission's regulations.⁴⁶ In addition, the Commission emphasizes that the above determinations relate only to those items as described by CNYOG in section XI of its application and not to the entirety of the precedent agreements or the language contained in the precedent agreements.

45. If CNYOG desires to make any rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c). In that filing, CNYOG will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are constructed and placed in service, CNYOG must make an NGA section 4⁴⁷ filing to change its rates to reflect any revised construction and operating costs.

C. Environmental Review

46. On September 22, 2010, the Commission issued a Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) for the MARC I Project. The NOI was mailed to interested parties including federal, state and local officials; agency

⁴⁴ See, e.g., *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008) and *Rockies Express Pipeline, LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

⁴⁵ See, e.g., *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006) and *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at 62,345 (2002).

⁴⁶ 18 C.F.R. § 154.112 (2011).

⁴⁷ 16 U.S.C. § 717c (2006).

representatives; environmental and public interest groups; Native American tribes; local newspapers; and affected property owners. The Commission received 518 written comments in response to the NOI.

47. Staff conducted a scoping meeting on October 13, 2010, to provide an opportunity for the public to learn more about the MARC I Project and to provide comments on environmental issues to be addressed in the EA. Staff also conducted a site visit, open to the public, of the proposed pipeline route on October 13 and 14, 2010. A total of 23 people commented at the scoping meeting.

48. The primary issue raised during scoping was development of natural gas from the Marcellus Shale in Pennsylvania, and the need to consider the cumulative impacts of such development.⁴⁸ For example, Earthjustice asserted that the EA must consider the cumulative impacts of the MARC I Project on the existing and reasonably foreseeable Marcellus Shale development, including but not limited to the hundreds of miles of gathering and transportation pipelines that have been and will need to be constructed to move the gas to interstate markets from the thousands of wells that have been and will be drilled.⁴⁹

49. To that end, commenters, including Earthjustice, Audubon, Trout Unlimited, and Lower Susquehanna Riverkeepers, assert that the EA must address the cumulative effects of Marcellus Shale development on, among other things, the destruction and fragmentation of forests, air quality, water quality, noise, and greenhouse gas emissions (GHGs). Trout Unlimited contends that the EA should consider the anticipated development of Marcellus Shale gas wells “that is encouraged by the MARC I Project,” including impacts on trout and trout waters that are related to the pipeline “and subsequent well pad development....”⁵⁰

50. Similarly, a significant number of scoping comments stated that the “cumulatively significant impacts” from the project, together with Marcellus Shale development, on numerous resources required the preparation of an Environmental Impact Statement (EIS)

⁴⁸ The unconventional development and production of natural gas resources in shale formations has increased in the United States in recent years. In Pennsylvania, this development is occurring in the Marcellus Shale, which extends primarily from New York through Pennsylvania and into West Virginia and Ohio. *See* May 27, 2011, Environmental Assessment at 21.

⁴⁹ October 25, 2010 Comments at 5.

⁵⁰ May 6, 2011 Trout Unlimited Comments at 3.

instead of an EA.⁵¹ Several commenters also argued that an EIS was required based on the controversial nature of the MARC I Project, and other unique facets, such as its proposed location in a “pristine” area, which includes at least two Pennsylvania Heritage Areas.

51. A number of landowners raised concerns over the temporary use of 32 access roads to provide access to the project during construction and the permanent use of three access roads during operation (two segments of AR-MI-9 in Sullivan County and AR-MI-30 in Lycoming County). Most of these roads are existing privately-owned roads such as driveways, private community roads, and farm roads; and some require modifications for construction equipment (i.e., widening, grading). Specifically, landowners cite traffic, safety, noise, and other environmental concerns. Other scoping comments covered a wide range of issues, including deforestation, erosion, project alternatives, land use, impacts on tourism, hunting, fishing and outdoor recreation, threatened and endangered species, and socioeconomic impacts.

52. Several comments were filed in support of the MARC I Project including comments that living near a compressor station has never been a problem; that the right-of-way can be restored, and the need for the energy. The Sullivan County Commissioners stated that the project could be constructed and operated safely and that it would benefit Sullivan County and northeastern Pennsylvania.

53. To satisfy the National Environmental Policy Act’s (NEPA) requirements staff prepared an EA for the MARC I Project. Staff incorporated into the EA information provided by a number of state and federal agencies, including: U.S. Army Corps of Engineers (USACE); U.S. Department of Agriculture (USDA), Farm Services Agency; USDA, Natural Resources Conservation Service; U.S. Fish and Wildlife Service (USFWS); Pennsylvania Department of Conservation and Natural Resources (DCNR) Bureau of Forestry; Pennsylvania Department of Environmental Protections (PADEP); Pennsylvania Fish and Boat Commission (PFBC); Pennsylvania Game Commission (PGC); Pennsylvania Natural Heritage Program (PNHP); Pennsylvania State Historic Preservation Office; Bradford County Conservation District (CCD); Lycoming CCD; Lycoming County Planning and Community Development Department; Sullivan CCD; and Sullivan County Planning and Economic Development Office.

⁵¹ See, e.g., May 2, 2011 and October 25, 2010 Earthjustice Comments; April 29, 2011 Audubon Pennsylvania Comments (urging EIS to consider cumulative impacts of Marcellus Shale development); May 6, 2011 Trout Unlimited Comments.

54. On May 27, 2011, the EA was placed in the public record and a 30-day comment period was provided.⁵² The EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. All substantive comments received during the scoping process and the environmental issues raised by the intervenors are addressed in the EA.

55. The EA addresses whether an EIS should have been prepared. It explains that the Commission's NEPA regulations require preparation of an EIS for "[m]ajor pipeline construction projects..."⁵³ The regulations do not define or explain what constitutes a "major" pipeline; however, the Commission's years of experience with NEPA implementation for pipeline projects indicate that a new 39-mile-long, 30-inch-diameter pipeline normally would not fall under the "major" category for which an EIS is automatically prepared.⁵⁴

56. The Council on Environmental Quality (CEQ) regulations implementing NEPA state that one of the purposes of an EA is to assist agencies in determining whether to prepare an EIS or a finding of no significant impact.⁵⁵ Here, staff prepared an EA to determine whether the MARC I Project would indeed have significant impacts, thus necessitating the preparation of an EIS. As explained below, the EA concludes, and we

⁵² The comment period was extended for an additional two weeks, resulting in a July 11, 2011 deadline. Although a number of commenters urged a 90-day comment period, we find that the 45-day comment period provided ample time.

⁵³ EA at 7, citing 18 C.F.R. § 380.6(a)(3) (2011).

⁵⁴ See, e.g., *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011) (EA issued for new Magnum Gas Storage Project which included gas storage field on 2,050-acre site in Millard County, Utah, and associated 61.6-mile, 36-inch-diameter pipeline traversing three counties in Utah); *Colorado Interstate Gas Company*, 131 FERC ¶ 61,086 (2010) (EA issued for Colorado Interstate Gas Company's Raton 2010 Expansion Project which included two new 16-inch-diameter pipeline laterals totaling 118 miles in length traversing four counties in southeastern Colorado); *Equitrans L.P.*, 117 FERC ¶ 61,184 (2006) (EA issued for Big Sandy Pipeline Project which included 68 miles of new 20-inch-diameter pipeline traversing four counties in eastern Kentucky).

⁵⁵ 40 C.F.R. § 1508.9(a)(1) (2011).

agree, that the MARC I Project would not have a significant impact on the quality of the human environment. Therefore, an EIS is not required.⁵⁶

57. The EA addresses the cumulative impacts of other natural gas pipelines, natural gas facilities that would be associated with construction of the project but that are not under the Commission's jurisdiction, and unrelated projects that are either in place, under construction in the proposed project vicinity, or proposed in the project area.⁵⁷ The potential cumulative impacts were grouped and assessed by resource areas, including groundwater/surface water, vegetation, wildlife, land use, air quality, and noise.

58. The EA observes that Marcellus Shale development is occurring in Bradford, Sullivan and Lycoming Counties, and in October 2010, active drilling was occurring in the proposed right-of-way near milepost 11.6.⁵⁸ The EA recognizes that impacts from Marcellus Shale development are associated with well pad development, improvement of existing dirt and paved roads, and construction of gathering systems and rights-of-way. To that end, the EA acknowledges generally the potential for cumulative impacts of the development of the Marcellus Shale gas reserves in Pennsylvania on resources. The EA, however, concludes that the pipeline project may have only minor and temporary impacts on groundwater resources. Further, the EA finds, such impacts can be minimized by the use of the construction techniques listed in the applicant's construction plans.⁵⁹

59. The EA also addresses general potential cumulative impacts from Marcellus Shale development on wetlands (in the event development is located within or in close

⁵⁶ The CEQ regulations state that, where an EA concludes in a finding of no significant impact, an agency may proceed without preparing an EIS. *See* 40 C.F.R. §§ 1501.4(e); 1508.13 (2011).

⁵⁷ *See* EA at 96-109.

⁵⁸ EA at 101.

⁵⁹ EA at 103. The EA adds that in response to these concerns, PADEP recently updated its regulation governing the drilling, casing, cementing, testing, monitoring and plugging of oil and gas wells, and the protection of water supplies. The most recent rulemaking includes updated material specifications and performance testing and amended design, construction, operational, monitoring, plugging, water supply replacement and gas migration reporting requirements. Oil and gas wells must also be sited at least 200 feet from a drinking water well and at least 150 feet from a spring. The EA notes that “[a]ccording to the PADEP, the additional requirements will provide an increased degree of protection for both public and private water supplies.” *Id.*

proximity to wetlands and waterbodies);⁶⁰ air quality and noise;⁶¹ vegetation and wildlife;⁶² long-term emissions of criteria pollutants, Hazardous Air Pollutants (HAPs) and GHGs from Marcellus Shale gas extraction activities within the region;⁶³ and land use, recreation, special interest areas, and visual resources.⁶⁴

60. However, the EA does not include a quantitative analysis of the cumulative impacts of Marcellus Shale development in northeastern Pennsylvania and beyond. It explains that the widespread nature and uncertain timing of gas well drilling relative to construction of the MARC I Project make it difficult to identify and quantify cumulative impacts: since the development of natural gas reserves in the formation is expected to take 20 to 40 years due to economics and other factors, the exact location, scale, and timing of future Marcellus Shale upstream facilities that could potentially contribute to cumulative impacts in the project area is unknown at this time.⁶⁵

61. The EA at Section C considers a number of alternatives to the proposed action, including: the no-action alternative; system alternatives (that is, alternatives that would use other existing or proposed facilities to meet the stated objectives of the proposal); pipeline route alternatives; pipeline route variations (which differ from alternatives in that they are identified to avoid or reduce construction impacts on specific, localized resources that may include cultural resource sites, residences, or site-specific terrain conditions); alternative access road sites; and alternative aboveground facility locations (that is, additions to existing compressor stations and new compressor stations and associated facilities).

⁶⁰ EA at 105. The EA notes that the USACE would oversee permitting of wetlands impacts, and that PADEP has developed Best Management Practices for the construction and operation of oil and gas production facilities, including erosion and sediment control practices; setback requirements from springs, wetlands, waterbodies, and drinking water sources; wetland and waterbody crossing procedures; and right-of-way restoration measures.

⁶¹ EA at 106.

⁶² EA at 105-106.

⁶³ EA at 107.

⁶⁴ EA at 106.

⁶⁵ EA at 102.

62. Construction of the proposed project facilities will affect about 591.0 acres; project operation will require about 248.7 acres for the permanent right-of-way, aboveground facilities, and permanent access roads, while the remaining 343.2 acres of temporary workspaces will be restored and returned to previous land use. Construction of the MARC I Project will require the temporary use of about 32 existing access roads to provide access to the project during construction, and the construction of three permanent access roads for project operation.

63. A number of landowners, including the Lake Mokoma community, expressed concerns over the proposed access roads, citing safety, congestion, impacts of possible road widening and the addition of road base material, and impacts on drainage and crossed septic and other lines. CNYOG met with a number of the landowners and agreed to file a Memorandum of Understanding with the Lake Mokoma Association (Lake Mokoma Association MOU) to set forth its approach to safety, speed limit, temporary access road construction, vehicular use during construction, and notification procedures for advising residents of the planned activity and methods for mitigating truck traffic risks.

64. The EA addresses Lake Mokoma's concerns and recommends that prior to construction, CNYOG file the Lake Mokoma Association MOU, and indicate how the MOU will be applied to the use of other private access roads in residential communities. The EA also recommends that CNYOG file, prior to construction, a plan for construction on or next to residential properties. We have included these recommendations as Environmental Conditions 18 and 19, respectively.

65. Impacts related to traffic were also addressed in the EA. Construction activities will be disruptive and there will be some short-term, temporary increase in traffic when materials and personnel are brought to construction areas. Workers will need to access construction work areas, and trucks will need to make deliveries of materials to wareyards and the construction right-of-way. CNYOG states that all construction and delivery vehicles will be monitored for weight and speed of travel to ensure the safety of all individuals traveling on roadways.

66. Because construction will move sequentially along the pipeline route, these activities will not be of long duration at any one location. When public roads are crossed by constructing the pipeline across a road, or when construction vehicles need to access the construction right-of-way from roadways, CNYOG will coordinate with local authorities to develop plans to minimize traffic problems. Most roads will be crossed by boring under them so that traffic will not be detoured. Appropriate signage will be used to warn drivers about construction activities near roads.

67. Mr. Fred Saxer owns and operates a small stone quarry requiring the use of dynamite. He expressed concern during scoping that he will be unable to continue to

mine blue stone from areas beyond the permanent right-of-way because of the proximity of the pipeline. CNYOG is working with Mr. Saxer in developing a blasting plan. In its discussion of Mr. Saxer's quarry, the EA recommends that CNYOG develop an access plan to ensure Mr. Saxer has access to his quarry during project construction and operation, for the review and written approval by the Director of the Office of Energy Projects (OEP). We will require this with environmental condition 12, which is included in the appendix.

68. The EA provides that the MARC I Project will be constructed pursuant to the measures and procedures in CNYOG's Erosion and Sedimentation Control Plan (ESCP). The ESCP incorporates the procedures and mitigation measures set forth in the Commission's 2003 *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and the 2003 *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures).⁶⁶ The EA concludes that the ESCP is consistent with both the Plan and the Procedures. Sections A.6 and Appendix 2 of the EA describe CNYOG's construction and restoration procedures. Additional information about construction and restoration procedures is included in sections B.1.d (Blasting), B.2 (Soils), and B.3 (Water Resources, Fisheries, and Wetlands).

69. The PADEP recommended that CNYOG incorporate the Best Management Practices (BMP) found in the PADEP Stormwater Manual into its construction procedures. As recommended in the EA, Environmental Condition 13 requires CNYOG to file its revised ESCP for the project that incorporates the BMPs from the PADEP Stormwater Manual and specific requirements of the Bradford County Conservation District's Erosion and Sediment Control General Permit.

70. The PADEP also expressed concerns over impacts on riparian areas along Exceptional Value (EV) and High Quality (HQ) waterbodies.⁶⁷ The EA describes CNYOG's intent to voluntarily develop a Riparian Forested Buffer Enhancement Plan that includes plans for maintaining a 25-foot-wide and 10-foot-wide buffer area, depending on the width of the crossed EV or HQ waterbody, as part of its PADEP Water Obstruction and Encroachment Permit application.

⁶⁶ EA at 10. The Plan and Procedures can be found on Commission's website at <http://www.ferc.gov/industries/gas/enviro/guidelines/asp>.

⁶⁷ The PADEP designates water quality of streams in accordance with the provisions of Chapter 93 of the Pennsylvania Code [*see* 25 Pa. Code § 93.9 (Pa Code, 2007)]. Waters in the Project area primarily designated Cold Water Fisheries (CWF), HQ waters, and EV waters. *See* EA at section B.3.c (Fisheries).

71. Section B.6 of the EA addresses scenic and recreational resources and associated economic impacts on tourism. The EA states that the project would be located within two Pennsylvania Heritage Areas designated by the Pennsylvania Department of Conservation and Natural Resources:⁶⁸ Bradford and Sullivan Counties are part of the Endless Mountain Heritage Region (EMHR), while Lycoming County is part of the Lumber Heritage Region (LHR).

72. The mission of the EMHR is “to maintain and enhance the unique rural character and culture of our Endless Mountains.”⁶⁹ The industrial theme of the EMHR is agriculture with rural landscapes shaped by centuries of farming and timbering. The EA notes that the project will impact the EMHR by creating a new utility corridor. Where forest land is cleared for construction, there will be a permanent conversion of forest land to open land along the 50-foot-wide permanent pipeline right-of-way because it will be maintained as open space. The temporary workspaces will be restored and vegetation will be allowed to grow back. But, where larger trees are cut for construction workspaces, the impact will be considered long-term because it may take 20 to 40 years for the trees to grow back to pre-construction size depending on the size of the cut trees.

73. The EA describes CNYOG’s construction plans, which include limiting the construction right-of-way width to 75 feet in non-agricultural areas, including forest land and open land, and where safety considerations do not indicate the need for more workspace. By limiting clearing as much as practicable, impacts on scenic resources will be minimized, although long-term to permanent impacts to resources such as forest land will be unavoidable.

74. The Pennsylvania Wilds is a community revitalization and nature tourism initiative in which the 12 counties involved, including Lycoming County, are regionally marketed under one brand or name: “the Pennsylvania Wilds.” Many individuals expressed concerns over the project’s impacts on the Pennsylvania Wilds. About 2.8 miles, or about 7.2 percent, of the 39-mile-long project, would be located in Lycoming County and, therefore, within the Pennsylvania Wilds area. The impact of construction and operation of the project will be similar to that described above for the EMHR because a new utility corridor will be constructed and maintained for the project.

⁶⁸ The Heritage Area Program relies on regional partnerships and public grassroots planning strategies to identify, protect, enhance, and promote historic, recreational, natural, and scenic resources.

⁶⁹ EA at 64 (citing <http://www.endlessmountainsheritage.org/about.php>).

75. In discussing impact on tourism, the EA describes how construction activities will move along the pipeline right-of-way. The amount of activity at any one location at any one time will vary from no activity to many activities. However, because construction would move sequentially along the pipeline route, no construction activities would be of long duration at any one location.

76. Some commenters expressed concern over visual impacts in resource areas and in the general project area, including impacts to Ricketts Glen State Park. As explained in the EA at 66-67, this park is located about nine miles east of the proposed project, so no visual impacts are anticipated. The proposed M1-N compressor unit and related facilities would be constructed within the existing NS2 compressor station, and the Northern Meter Station would be constructed within another CNYOG existing site. This consolidation of the locations of aboveground facilities would minimize any new visual impacts.

77. The new M1-S compressor station will be built in a remote area, although it will be built on a hill and may be visible from some residences. Tree screening and intervening topography may limit the visibility. CNYOG states that it will comply with the Sullivan County Subdivision and Land Development Ordinance for screening if the compressor station results in a visual impact on adjacent landowners. The Southern Meter Station will be located in an agricultural field and will not be near any residences. Its location was developed through consultation with the landowner. Accordingly, the EA concluded that the project will have minimal impact on visual resources.

78. One commenter expressed concern that no Emergency Response Plan (ERP) for accidents, explosions and fires was prepared. As stated in section B.10 of the EA (Reliability and Safety), U.S. Department of Transportation (USDOT) requires that each operator develop a written emergency plan establish and maintain liaison with appropriate fire, police, and public officials to learn the resources and responsibilities of each organization that may respond to a natural gas pipeline emergency, and to coordinate mutual assistance. The operator must also establish a continuing education program to enable customers, the public, government officials, and those engaged in excavation activities to recognize a gas pipeline emergency and report it to appropriate public officials. CNYOG will provide the appropriate training to local emergency service personnel before the pipeline is placed in service.

79. The EA concludes that approval of the MARC I Project will not constitute a major federal action significantly affecting the quality of the human environment. This finding is based on the analysis in the EA, CNYOG's filed application and supplements, implementation of the proposed mitigations, and the additional measures listed as recommended conditions for the Order.

80. A number of comments on the EA were received, including from: the U.S. Environmental Protection Agency (EPA); USFWS; Audubon Pennsylvania; Trout Unlimited; Delaware Riverkeeper; Lower Susquehanna Riverkeeper; a delegation from the House of Representatives of the Commonwealth of Pennsylvania; and Earthjustice.⁷⁰ A number of individuals filed comments, including Anne Harris Katz and Harvey M. Katz (2 comment letters that were also included in an Earthjustice filing); Carol Kafer (2 comment letters); Daniel Alters (2 comments letters); Lorraine Poore; Ronald and Deborah Adams; Robert Rutkowski; John Trallo; Steven Todd; Fernando Chen; Andrea Young; Pauline Abernathy; Phyllis Fung; Eliot Ingram; Bill Craig; Tracy Carluccio on behalf of Delaware Riverkeeper Network; Bogi Boscha and Martin Kelly; Christopher Lish; J. Capozzelli; Tom Tamplin; Cecily Kihn; and Noam Kugelmass. Central Hudson Gas & Electric Corp. filed late comments supporting the MARC I Project; New Jersey Natural Gas Company amended its initial motion to intervene by submitting comments in support of the project; and Consolidated Edison of New York, Inc., filed supplemental comments in support of the MARC I Project.

Marcellus Shale Development

81. The vast majority of commenters take issue with the EA's treatment of cumulative impacts. Earthjustice, Audubon Pennsylvania, Lower Susquehanna Riverkeeper, the EPA and others argue that the MARC I Project will induce or accommodate the development of Marcellus Shale natural gas and the facilities needed to produce it, including access roads, gathering lines, and other infrastructure. They note that, regardless of the Commission's lack of jurisdiction, such development and facilities are direct and indirect effects of the MARC I Project and must be considered in a cumulative impacts analysis. They argue that, since the MARC I Project is routed through an area where there is very little drilling activity at present, it is reasonably foreseeable that the project will increase proximal Marcellus gas drilling activity.⁷¹ More specifically,

⁷⁰ Earthjustice filed five comment letters: three letters were compilations of form comment letters that it filed for others; the set filed June 30, 2011, includes 21,755 form letters from individuals around the world; the set filed July 11, 2011 includes 338 form letters of a different type (a number of these letters were filed individually as comments on the EA and were also filed during the scoping process); and the set filed July 12, 2011, is a 60-item sampling of Earthjustice's June 30, 2011 Filing. In addition, nine individuals filed form letters similar to those attached to Earthjustice's filings. Earthjustice, Carol Kafer, and others also filed comments after the July 11, 2011 deadline. We address all late comments filed through the end of September.

⁷¹ Audubon Pennsylvania cites to a study it coauthored which, it asserts, demonstrates that "proximity to built pipelines was one of several statistically significant

(continued...)

commenters assert that the MARC I Project itself serves as a “catalyst” for Marcellus Shale development in the Bradford, Lycoming and Sullivan Counties crossed by the pipeline, and would “facilitate the development of Marcellus Shale.” Accordingly, commenters seek a more comprehensive assessment of the impacts on, for example, forest fragmentation, air and water resources, land use, visual resources, and recreation, from Marcellus Shale development.

82. The CEQ regulations require agency consideration of three types of impacts: direct, indirect, and cumulative.⁷² The regulations state that “direct effects” of a proposed action are caused by the action and occur at the same time and place.”⁷³ “Indirect effects” are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁷⁴ “Cumulative impact” is defined as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁷⁵

83. NEPA requires a “reasonably close causal relationship” between the environmental effect and the alleged cause.⁷⁶ In order to be sufficiently causally-connected, the environmental impact must be: 1) caused by the proposed action, and 2) reasonably foreseeable. In this case, commenters argue that the impacts from Marcellus Shale development activities in northeast Pennsylvania must be considered in the EA, because the MARC I Project induces or accommodates Marcellus Shale development activities. Commenters add that such development is reasonably foreseeable, as relevant data and information is available from the PADEP and others.

84. We disagree. As stated previously, the EA included readily available information about natural gas production and development in the project area as part of the cumulative impact analysis, including consideration of the impacts of Marcellus Shale drilling activities in Pennsylvania. However, Marcellus Shale development and its

predictors of the location of permitted drilling sites.” *See* Audubon Comments at 5.

⁷² 40 C.F.R. § 1508.25 (2011).

⁷³ 40 C.F.R. § 1508.8(a) (2011).

⁷⁴ 40 C.F.R. § 1508.8(b) (2011).

⁷⁵ 40 C.F.R. § 1508.7 (2011).

⁷⁶ *U.S. Dep’t of Transp. v. Public Citizen*, 541 U.S. 752 (2004).

associated potential environmental impacts are not sufficiently causally-related to the MARC I Project to warrant the more comprehensive analysis that commenters seek.

85. In *Wetlands Action Network v. U.S. Army Corps of Engineers*⁷⁷ (*Wetlands Action Network*), USACE issued a permit to a developer to fill 16.1 acres of wetlands for the first phase of a development project. The proposed private development had been the subject of much dispute, as the property to be developed was the largest remnant parcel of undeveloped land in a heavily urbanized area of Los Angeles County. The USACE issued an EA, which evaluated the cumulative impact that the project would have on the surrounding area. The EA did not consider the larger development because the USACE concluded that development could occur in those areas regardless of whether it issued the instant permit.

86. The court upheld the USACE's decision to limit the cumulative impact analysis, agreeing that the development project could proceed—and indeed was proceeding—without the permit. The court was also persuaded by the fact that the development was not financed by federal money, and state and local regulation (rather than federal) controlled the overall development design.⁷⁸

87. The *Wetlands Action Network* court also noted that in a previous decision, *Sylvester v. Army Corps of Engineers*⁷⁹ (*Sylvester*), it upheld the USACE's decision to limit its NEPA review to impacts of the construction of a golf course for which the USACE issued a permit, rather than the impacts of the larger resort complex. The *Sylvester* court observed that, although the golf course and the entire resort complex “would benefit from each other's presence,” they were not “sufficiently interrelated” to require the more comprehensive impact analysis.⁸⁰

88. As the *Sylvester* court noted, for an agency to consider as indirect effects of a federal action, the effects of a second action, the proposed action and the related secondary action must be “two links of a single chain.” The court created the following analogy to describe the scope of the effects of a proposed action:

⁷⁷ 222 F.3d 1105 (9th Cir. 2000).

⁷⁸ *Id.*

⁷⁹ 884 F.2d 394 (9th Cir. 1989).

⁸⁰ *Id.* at 398.

Environmental impacts are in some respects like ripples following the casting of a stone in a pool. The simile is beguiling but useless as a standard. So employed it suggests that the entire pool must be considered each time a substance heavier than a hair lands upon its surface. This is not a practical guide. A better image is that of scattered bits of a broken chain, some segments of which contain numerous links, while others have only one or two. Each segment stands alone, but each link within each segment does not.⁸¹

89. Here, commenters have failed to establish the requisite causal connection between the MARC I Project and Marcellus Shale development, as articulated by the 9th Circuit in *Sylvester* and *Wetlands*. The relevant question boils down to whether Marcellus Shale development, with the correlative potential impacts, is an “effect” of the MARC I Project. The answer is no.

90. As explained in the EA, as of October 10, 2010, 4,510 active permits had been issued for Marcellus Shale development in Pennsylvania. As in the *Wetlands* case, development activities are ongoing, and will continue regardless of whether the MARC I Project is constructed.

91. As CNYOG notes, neither past nor future Marcellus Shale drilling activity is an essential predicate for the MARC I Project, as it is not merely a gathering system for delivery of gas from Marcellus Shale wells to interstate pipelines. The MARC I Project is a bi-directional hub line, interconnecting Transco, Tennessee, the Stagecoach storage facility and Millennium, with bi-directional receipt/delivery points at each of those planned interconnects, to enable gas to flow between the three major interstate pipeline systems in response to market demands, and to provide access for all three pipelines to storage assets at Stagecoach.⁸² Further, as CYNOC asserts, not only will development of the Marcellus Shale continue in northeast Pennsylvania regardless of whether the MARC I Project is approved, in the event the project, a certificated interstate pipeline, is not authorized, producers or developers of unregulated “midstream” gathering assets will simply build longer gathering lines to connect wells in the three-county area to interstate pipelines, with no Commission regulation or NEPA oversight.⁸³

⁸¹ *Id.* at 400.

⁸² CNYOG Supplemental Comments at 3.

⁸³ *See* CNYOG July 19, 2011 Comments.

92. Moreover, the MARC I Project does not depend on the development of Marcellus Shale in northeastern Pennsylvania for its justification. The firm shippers, who have executed binding precedent agreements for capacity on the MARC I pipeline, have subscribed to bi-directional firm capacity rights *between* Transco on the south and Tennessee and Stagecoach on the north. These commitments will go forward upon completion of the project regardless of whether there is increased Marcellus Shale development in the counties (Bradford, Lycoming and Sullivan) in which the project would be built.⁸⁴

93. Finally, the Commonwealth of Pennsylvania regulates the siting, permitting, construction and operation of Marcellus Shale wells in Pennsylvania. The Commission plays no role, or retains any control over them. Accordingly, we are not required to consider the wells' correlative environmental impacts. As the Supreme Court noted,

[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect. Hence, under NEPA and the implementing CEQ regulations, the agency need not consider these effects in its EA when determining whether its action is a 'major Federal action.'⁸⁵

94. For these reasons, the Commission finds that the causal connection between the singular MARC I Project, and ongoing and future Marcellus Shale development activities in Pennsylvania, is too attenuated to consider in the EA the impacts of such development at the comprehensive level that commenters seek.

95. However, even if we had found a sufficient causal connection between the MARC I Project and Marcellus Shale development, the impacts from such development are not reasonably foreseeable as required by the CEQ regulations. An impact is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take into account in reaching a decision."⁸⁶

96. Commenters cite to available information, such as maps and independent experts, that, they assert, could "assist the Commission in developing accounts of reasonably

⁸⁴ *Id.* at 4.

⁸⁵ *See U.S. Dep't. of Transp. v. Public Citizen*, 541 U.S. 752, 770.

⁸⁶ *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

foreseeable gas development.”⁸⁷ However, while some of the maps may identify existing wells, future development is merely speculative.⁸⁸ As noted earlier, as of October 2010 PADEP issued thousands of well permits, and continues to do so today. However, it is unknown if, or when, any of these wells will be drilled, much less what the associated infrastructure and related facilities may be for those wells ultimately drilled. Accordingly, the factors necessary for a meaningful analysis of when, where and how Marcellus Shale development will ultimately occur are unknowable at this time.

97. In *Gulf Restoration Network v. Dep’t of Transportation*⁸⁹ (*Gulf Restoration Network*), the court upheld the Secretary of the Department of Transportation’s decision not to consider the cumulative impact of the proposed Gulf Landing deepwater port in the Gulf of Mexico, with three other proposed ports in the Gulf of Mexico for which applications were pending. The court recognized that the high demand for natural gas and the gulf ports, as well as other factors, increased “the *possibility* that the ports will be built.”⁹⁰ Nevertheless, the court agreed there was insufficient certainty about the three proposed ports’ future construction and environmental consequences to include in the cumulative impact analysis. The court noted that the Secretary was entitled to conclude that the occurrence of any one of a number of contingencies could cause the plans to build the ports to be cancelled or altered, such as an application being withdrawn before approval.⁹¹ Accordingly, the court found that the Secretary did not abuse his discretion or act arbitrarily or capriciously in concluding that the three ports were not “reasonably

⁸⁷ Earthjustice July 11, 2011 Comments at 4-5.

⁸⁸ For example, Earthjustice provides a statement from Dr. Terry Engelder, Professor of Geosciences at Pennsylvania State University, giving his professional opinion that “full gas development will result in the construction of approximately 316-500 drill pads and approximately 2,528 wells,” based on a standard calculation that is widely used for estimating the extent of Marcellus Shale gas development. Dr. Engelder predicts it will take 20-30 years for this development to occur. Earthjustice and Audubon provided other information that shows well locations. However, while this information provides a fuller picture of future development, it does not change our conclusion about a cumulative impact analysis; indeed, such information reinforces our finding that Marcellus Shale development is ongoing and will continue regardless of whether we certificate the MARC I Project.

⁸⁹ 452 F.3d 362 (5th Cir. 2006).

⁹⁰ *Id.*

⁹¹ *Id.*

foreseeable future actions,” or, as the court put it, actions that “a person of ordinary prudence would take...into account in reaching a decision.”⁹²

98. Here, the EA acknowledges that Marcellus Shale development is ongoing, and may have significant cumulative impacts in the future. However, even if future development was sufficiently causally-related to the MARC I Project, as in *Gulf Restoration Network*, the Commission faces too many uncertainties about specific future development and its environmental consequences to provide meaningful consideration in a cumulative impacts analysis.

99. EPA, which acknowledges that “prediction of where specific new Marcellus wells may be located could be problematic,” urges the Commission to *project* the number of wells, and related infrastructure and impacts, in the MARC I Project service area which *might* be drilled based on permit data from PADEP “or other sources, and industry information sources.”⁹³ (emphasis added).

100. While it may be possible for the Commission to make a prediction regarding the location of hypothetical wells, related infrastructure and associated impacts in the project service area, such an assessment would not result in practical information for the purpose of approving the MARC I Project. To require the Commission to guess whether or when permitted wells may be drilled, when additional wells may be permitted, and where additional infrastructure such as compressor and gas processing stations, gathering lines, etc. will be placed, would at best amount to speculation as to future events and would be of little use as input in deciding whether to approve the MARC I Project.⁹⁴

101. Moreover, because the PADEP has jurisdiction over permitting Marcellus Shale wells in Pennsylvania, the Commission would have no authority to impose reasonable mitigation measures to limit the development. We also believe it would be inappropriate for the Commission to exercise or condition its authority over the construction of the MARC I Project, or any jurisdictional pipeline facilities, in a manner that would have the result of substituting the Commission’s judgment for the Commonwealth of

⁹² *Id.* (citing *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453).

⁹³ EPA Comments at 6.

⁹⁴ *See also Wetlands Action Network*, 222 F.3d 1105 at 1119 (requiring an agency to thoroughly examine the cumulative impacts of projects whose “details and planning decisions...had not yet been completed” would “require the government to do the impractical”).

Pennsylvania's as to whether, and under what conditions, Marcellus Shale wells are to be permitted.

102. EPA asserts that, in addition to the scope of the cumulative impacts assessment, the EA is flawed because it provides only minimal quantitative estimates of those past, present, and reasonably foreseeable gas pipeline projects that are assessed.

103. We disagree. With respect to gas-related projects, the EA provides sufficient analysis to conclude that the cumulative effects of the MARC I Project and other existing and proposed gas pipeline projects are not significant. For example, the EA at 103-104 considers the cumulative effects on groundwater resources by noting that other projects, like the MARC I Project, involve shallow excavation to install the facilities, the use of appropriate erosion and sedimentation controls, the identification of public and private water supply sources, and the use of appropriate or required procedures near water wells or when crossing well-head protection areas to minimize or avoid impacts to these resources during project construction and operation. Given the limited construction footprint of the MARC I Project, we find the analysis sufficient.

104. EPA also asserts that the EA fails to consider impacts from non-gas related activities such as highway or road improvements, housing developments, industrial or commercial development, etc., and that the EA fails to identify what steps were taken to identify reasonably foreseeable non-gas related activities.⁹⁵

105. We disagree. As discussed in the EA, during scoping, no planned residential or commercial development was identified within the project area (nor did EPA identify any omissions). In addition to the scoping process, staff reviewed online information on Pennsylvania Department of Transportation's (PennDOT) website, and identified only minor road projects in the project area, such as maintenance activities, anticipated to occur during the construction period.⁹⁶

106. In our view, the overwhelming majority of comments regarding alleged deficiencies in the EA flow from erroneous conclusions that the EA must include a comprehensive analysis that considers the scope of Marcellus Shale development. Indeed, nearly every argument that commenters raise depends on their belief that such an

⁹⁵ EPA Comments at 2.

⁹⁶ The PennDOT website identifies the Central Susquehanna Valley Transportation Project (CSVV) within its District 3 which includes Bradford, Sullivan, and Lycoming Counties. However, the CSVV is located in Snyder, Union, and Northumberland Counties, south of the project area.

analysis is required. To that end, commenters seek, at a minimum, a regional review of Marcellus Shale development in northeastern Pennsylvania.

107. Given the nature of the MARC I Project-which involves construction of a pipeline in a fairly limited geographic area, with a limited period of impact from the construction activities, and minimal, if any, impacts after construction we find that the EA's cumulative impacts analysis is appropriate.⁹⁷ Moreover, we observe that, because natural gas production and gathering activities are exempt from the Commission's jurisdiction, concerns related to Marcellus Shale development in Pennsylvania might be more appropriately directed to those state and federal agencies that have regulatory authority over these activities.⁹⁸

EA vs. EIS

108. In response to the Commission's decision to issue an EA and finding of no significant impact, versus proceeding with an EIS, several commenters argue that the context and intensity of the MARC I Project indicate that it will have "significant" impacts, thus an EIS is required. Earthjustice asserts that the "context" of the project necessarily includes the "exploding development of the Marcellus Shale in northeastern Pennsylvania" and the "pristine and unspoiled landscape and natural resources of Sullivan County and the Endless Mountains region, through which the project will cut." With respect to "intensity," Earthjustice and Lower Susquehanna cite to several factors, including the project's proximity to a region which is home to the federally endangered Indiana bat and vulnerable species of migratory birds; the cumulative impacts of gas development induced by the pipeline, and the impacts to EV and HQ waters. Earthjustice, Lower Susquehanna Riverkeeper, EPA and others also cite the "highly controversial" nature of the MARC I Project.

⁹⁷ We note that CEQ advises that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments, and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action. *See Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2* (June 24, 2005).

⁹⁸ For example, PADEP, Bureau of Oil and Gas Management, is responsible for regulating oil and gas operators, as well as permitting, inspecting, and ensuring regulatory compliance of wells drilled by oil and gas companies. The agency is also responsible for regulating the disposal of "frac" water generated by Marcellus wells. If the disposal method is to be an injection well, two permits are needed: one from PADEP and another from EPA. *See EA at 22-23.*

109. The CEQ regulations state that determinations of whether a project will have significant impacts on the environment depend on consideration of both “context” and “intensity.”⁹⁹ Context means the “significance of an action must be analyzed in several contexts,” including “the affected region, the affected interest, and the locality.”¹⁰⁰ With respect to “intensity,” the CEQ regulations set forth 10 factors agencies should consider, including: the unique characteristics of the geographic area; the degree to which the effects are highly controversial or highly uncertain or unknown; the degree to which the action may establish a precedent for future actions; whether the action is related to other actions with insignificant but cumulatively significant impacts; and the degree to which the action may adversely affect threatened and endangered species.¹⁰¹

110. We disagree with commenters’ characterization of the context and intensity of the MARC I Project. The MARC I Project is only 39 miles in length, avoids sensitive areas, and does not adversely affect any endangered species’ critical habitat. The project will have an insignificant footprint in the Sullivan County region, as well as the Endless Mountains region. There are over 1.2 million acres of forest in the three-county project area; only about 326.1 acres of forestland will be impacted by construction, and about 156.88 acres of forest impact will be within temporary workspaces and would revert to preconstruction use and condition.¹⁰² Construction of the compression station will involve no deforestation.¹⁰³

111. In addition, no unique or sensitive vegetation communities or forested wetlands were identified within the project area. No portion of the project will cross or come within the vicinity of designated Wilderness Areas, Wildlife Management Areas, National Wildlife Refuges, or other wildlife preservation areas; National Forests, Federal or State Parks, or other notable landmarks; rivers identified in the National Wild and Scenic Rivers System; National or State Scenic Byways; Coastal Zone Management Areas; or lands with hazardous conditions (e.g., landfills or hazardous waste sites).

112. Bradford and Sullivan Counties are indeed part of the EMHR. However, as discussed above, the EA concludes that impacts on the EMHR will be minimal.

⁹⁹ 40 C.F.R. § 1508.27(a) (2011).

¹⁰⁰ *Id.*

¹⁰¹ 40 C.F.R. § 1508.27(b) (2011).

¹⁰² EA at 55.

¹⁰³ EA at Table B.6-1.

113. Commenters also cite the “highly controversial” nature of the MARC I Project, noting the “outpouring of public protest” that has been expressed in more than 20,000 comments, and comments from independent experts “trained in many of the fields relevant” to the project’s impacts which dispute the EA’s approach.

114. CNYOG takes issue with commenters’ characterization of controversy, noting that the “outpouring of public protest” involves over 20,000 “form” letters prepared and solicited by Earthjustice via the internet (including submissions from individuals in 25 foreign countries), while only 42 such letters were submitted from individuals living within the three-county area.

115. For an action to qualify as “highly controversial” for NEPA purposes, there must be a “dispute over the size, nature or effect of the action, rather than the existence of opposition to it.”¹⁰⁴ Accordingly, a “controversy” does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action, nor does a controversy exist simply because there are conflicting views among experts.¹⁰⁵

116. We find that the MARC I Project does not qualify as “highly controversial” for the purposes of determining significance. While the Commission recognizes that legitimate environmental concerns have been raised here, we note that commenters’ disputes are primarily, and directly, related to their desire for a comprehensive review of the impacts of Marcellus Shale development. However, for the reasons discussed above, the Commission finds that such a review is neither required nor appropriate here. Commenters may disagree with this determination, but this does not amount to a “controversy” requiring the preparation of an EIS.¹⁰⁶

117. In addition to comments on cumulative impacts, we received comments on a number of other portions of the EA. We respond to them below.

¹⁰⁴ *Fund for Animals v. Williams*, 246 F.Supp.2d 27, 45 (D.D.C. 2003).

¹⁰⁵ *Id.*

¹⁰⁶ Earthjustice asserts that “independent experts” dispute the EA’s approach on several matters, such as its analysis of forest fragmentation, and that such disagreement is further evidence of the controversial nature of the MARC I Project. As discussed below, we disagree with such experts’ concerns, and support staff’s recommendations. Moreover, we note that when specialists express conflicting views, an agency must have the discretion to rely on the reasonable opinions of its own qualified experts. *See Marsh v. Oregon National Res. Council*, 490 U.S. 360, 378 (1989).

Alternatives

1. No-Action and System Alternatives

118. EPA questions why the existing gas pipeline distribution system is not sufficient for providing access to interstate markets for Marcellus Shale gas, particularly in light of CNYOG's assertion that "other pipelines...are capable of transporting gas produced from Marcellus shale...directly from producer operated gathering lines rather than through the MARC I Line."¹⁰⁷

119. We believe CNYOG's statement is taken out of context. CNYOG made that statement with respect to its contention that, if the MARC I Project is not authorized, then multiple, smaller unregulated gathering lines will be built through the same region to deliver gas to other interstate pipelines which are "capable of transporting gas produced from Marcellus shale that is delivered to these pipelines directly from producer-operate gathering lines." However, the MARC I Project is also needed as a hub line interconnecting the west-east running interstate pipelines serving the region, Tennessee, Transco and Millennium, with the Stagecoach storage facility so as to provide additional transportation and storage options to shippers on all three interstate systems.¹⁰⁸

120. Moreover, as explained in section C.2 of the EA, the No-Action Alternative would likely result in one of two scenarios: 1) if natural gas transportation service were to be provided by another pipeline company (interstate or intrastate), construction of additional capacity on that system may be needed (system alternative) or 2) customers would have to use alternative fuels. Neither scenario is environmentally preferable, and with respect to alternative fuels, is not readily available for large-scale application.

121. Some commenters advocate for a system alternative that would allow local Marcellus Shale producers to directly connect to one of the three existing interstate pipelines (Millennium via CNYOG's system, Tennessee, and Transco). This alternative is not feasible because none of the three pipelines currently have firm transportation capacity available to the market area. Without firm capacity on the interconnecting interstate pipeline, wells would be required to stop production if no interruptible capacity is available on the interconnecting interstate pipeline. The project directly addresses this issue by offering greater transportation flexibility to the Marcellus Shale producers.

¹⁰⁷ EPA July 11, 2011 Comments at 1.

¹⁰⁸ CNYOG July 19, 2011 Comments at 6.

122. As CNYOG states in its application, and to clarify section C of the EA,¹⁰⁹ the primary purpose of the project is to provide enhanced market access to Marcellus Shale producers and expanded transportation and storage options to shippers on Tennessee, Transco, CNYOG, and Millennium. With connectivity to these three interstate pipelines, the Marcellus Shale producers may now avail themselves of interruptible capacity available on any of the pipelines, thus increasing the probability that Marcellus Shale gas will get to the market.

123. Further, in the event that all three pipelines have no interruptible capacity available, the shipper has the option of using CNYOG's Stagecoach storage facility to store gas production until pipeline capacity is available to move the gas to the market area. Therefore, in order to provide an alternative to meet the transportation flexibility of the project, the Marcellus Shale producers would have to build a gathering system that would interconnect with all three interstate pipelines and CNYOG's Stagecoach storage facility. This system would have to include compression facilities at each interconnect to allow the Marcellus Shale gas to enter into the higher pressure transmission pipelines.

124. Another possible pipeline alternative to the project that would allow all of the available production to reach the market area would be to increase the pipeline capacity to accommodate up to 550,000 Dth/d, as proposed by CNYOG, on any one of the three interstate pipelines (Millennium, Tennessee, and Transco). Because of the distance between the Marcellus Shale Producers and CNYOG's storage facility and eastern markets, which are about 150 miles away, substantially more miles of large diameter pipeline and additional compression facilities would be required than what CYNOC proposes. Moreover, none of the other interstate pipeline companies have proposed this type of project. Therefore, this system alternative was eliminated from further consideration. Further, the Commission finds no compelling reason to require another entity to undertake such a project when the market has freely chosen another path.

2. Alternative Pipeline Route Using an Industrial Corridor

125. Commenters challenge the EA because it does not address any alternative route that uses an existing "industrial corridor" for the project pipeline or that does not require "greenfield" construction. EPA states that there needs to be additional alternatives analysis because there are no alternatives that do not involve construction through undisturbed lands. Earthjustice suggests that there may be other north-south "industrial corridors" east of the project that might be followed, such as the Williams Energy

¹⁰⁹ The EA contains a typographical error; it incorrectly states that the MARC I Project would provide transportation service for Georgia Power.

Springville or PVR Midstream (PVR)¹¹⁰ gathering lines. The PVR gathering line is located about 38 miles to the west of CNYOG's proposed route, and the Williams Springville gathering line (which will connect to the Tennessee pipeline) is located about 15 miles east of CNYOG's proposed interconnection to Tennessee.

126. CNYOG responds that these suggested alternatives are unrealistic given the distances involved and the inability of either alternative to fulfill the commercial purpose of the proposed MARC I Project.¹¹¹ CNYOG adds that its project is designed to connect bi-directionally with Tennessee, Transco, CNYOG's Stagecoach storage system, and, through the Stagecoach laterals, with Millennium. Use of the PVR corridor would more than double the length of the 39-mile-long MARC I pipeline because it would need to parallel the Tennessee right-of-way for 38 miles or more to a point where the MARC I pipeline could interconnect with Stagecoach. The Williams Springville gathering line does not connect with Tennessee. Therefore, an alternative pipeline route that would follow its corridor would also require greenfield construction to connect with Tennessee. Again, more than 15 miles of additional pipeline construction paralleling Tennessee would be needed to interconnect with CNYOG's Stagecoach South Lateral.

127. We agree that the suggested alternatives are not reasonable because they do not meet the purpose and need for the proposed project, or are not environmentally preferable. Section A.1 of the EA states that CNYOG's purpose for the project is to provide access to interstate markets for natural gas produced from the Marcellus Shale in northeast Pennsylvania through interconnections with its existing interstate pipeline system (via its South Lateral) in Bradford County, Pennsylvania; and the existing interstate pipeline systems of Tennessee in Bradford County, Pennsylvania (via Tennessee's Line 300), and Transco in Lycoming County, Pennsylvania (via Transco's Leidy Line). CNYOG states its project will be capable of transporting natural gas on a bi-directional basis between Tennessee's Line 300, the South Lateral, and Transco's Leidy Line.

128. The MARC I Project proposes to connect CNYOG's existing interstate pipeline facilities that extend from New York into Pennsylvania to interconnections with Tennessee's interstate pipeline facilities via the latter's Line 300, and Transco via Transco's Leidy Line which lie to the south and extend roughly east-west across Pennsylvania. The northern terminus of any alternative to the project must begin at CNYOG's NS2 Compressor Station in Bradford County and extend roughly southward to

¹¹⁰ PVR is a division of Penn Virginia Resource Partners, L.P.

¹¹¹ July 19, 2011 CNYOG Comments.

intersect Line 300 and the Leidy Line. As the EA states, review of topographic and aerial photos of the project area show that there are no existing, generally north-south trending corridors that might be followed to meet the purpose of the project. Therefore, there are no reasonable alternative routes to assess that might follow an existing utility corridor.

3. Alternative Pipeline Route Using Modeling

129. Dr. Kafer suggests we develop a model to plot the likely distribution of well pads and fit a route for the MARC I pipeline that would limit the lengths of gathering lines. We disagree. Such a model would not take into consideration the resources such lines might cross; the shortest distance between two points is not necessarily a better route. Further, gathering pipeline systems are usually developed to transport gas from several wells into a larger gathering pipeline system; individual wells would not likely be connected directly to the MARC I pipeline. Accordingly, a model that looks at well pad locations relative to the proposed interstate pipeline would not result in the development of a reasonable alternative. In addition, the EA evaluates the impact of CNYOG's proposal so the Commission can consider the environmental effects in its decision process. The Commission is not required to design another project that may more effectively meet the long-term take away needs of the producers. Therefore, this alternative was not addressed.¹¹²

Mitigation/Reliance on Other Agency Regulatory Requirements

130. Several commenters assert that, rather than doing an "independent analysis," the EA inappropriately relies on other agencies' regulatory requirements in concluding there will be no significant impacts. For example, Lower Susquehanna Riverkeeper argues that, to the extent the EA addresses impacts related to erosion and sedimentation impacts, it does not independently assess the impacts, instead relying on "presumed compliance" with the PADEP's BMPs. Lower Susquehanna Riverkeeper cites as an example the EA's consideration of the potential impacts on EV and HQ waters.

131. We disagree. As discussed in the EA, the provisions in CNYOG's ESCP are sufficient to protect waterbodies and wetlands and the Commission has monitoring and enforcement capabilities to ensure compliance. The existence of other permits and requirements provides yet another layer of protection. The designation of EV and HQ waters is a state-agency construct, and as such, the Commonwealth of Pennsylvania has concluded such waters warrant greater protection. We find that it is appropriate for the

¹¹² EPA notes that the EA "does not discuss the implications on the distribution system of delaying completion" of the MARC I Project while a more comprehensive analysis is performed. Given our action in this order, we need not address this comment.

Commission to look to the requirements of those agencies with expertise in certain matters to determine whether compliance with those agencies' permitting and other requirements will adequately safeguard and protect resources which, in this case, are those attributes of the streams which were the basis for the state designation in the first instance.¹¹³

132. Similarly, Earthjustice asserts that the EA "repeatedly" points to state oil and gas well permitting standards as reason for concluding that the project will have no significant cumulative impacts when considered in the context of Marcellus Shale gas development, and that "deferral to the standards of other agencies, without further analysis, is an impermissible delegation of an agency's NEPA responsibilities."¹¹⁴

133. We disagree with Earthjustice's characterization. For the reasons discussed earlier, the EA does not include a comprehensive analysis for Marcellus Shale development, much less include a statement that the MARC I Project will have no significant cumulative impacts when considered in the context of such development. Rather, the EA acknowledges the potential for cumulative impacts, and provides a general analysis of those resources that could be impacted. The EA merely notes that future drilling activities would be subject to state and other federal agency regulatory requirements.

134. Earthjustice also asserts that the EA's discussion of mitigation measures is impermissibly perfunctory. Earthjustice cites as an example the section on wildlife, noting that the EA "admits" that "Potential impacts on wildlife resulting from project construction would include habitat disturbance, displacement, and mortality. Habitat disturbance includes the direct loss (temporary or permanent) of vegetation communities

¹¹³ We also note that, contrary to Lower Susquehanna's assertion, the EA independently assesses the impacts to HQ and EV waters. Appendix 3 sets forth each waterbody located within HQ and EV watersheds, and identifies the width, as well as the temporary, permanent and total disturbances expected due to the MARC I Project. The EA at 34 adds that because the project would be located within HQ and EV watersheds, CNYOG proposes to cross waterbodies by using dry-ditch methods (flume-pipe, dam and pump, or similar methods) for most crossings, which will allow the pipeline trench within the streambed to be isolated from the stream flow, which in turn would be expected to reduce sediment impacts during construction. Finally, we note that PADEP has a pending permit related to waterbody crossings for the MARC I Project.

¹¹⁴ Earthjustice July 11, 2011 Comments at 9.

as a result of project construction and/or operation.”¹¹⁵ Earthjustice contends that the EA “dismisses these potentially significant impacts in a cursory discussion of mitigation measures” by noting

Once construction ceases and the right-of-way is restored, wildlife would return. Impacts on wildlife would be minimized in part by conducting construction activities in accordance with guidance from regulatory agencies. Required restoration of wildlife habitat would be conducted in accordance with state agency rules and regulations.¹¹⁶

135. Earthjustice contends that the “assumption that wildlife will return when right-of-way is restored is completely unsubstantiated” and based on “unidentified rules and guidance provided by state agencies.”¹¹⁷

136. However, other language included in the wildlife section clarifies that other factors lead to the conclusion that there will be no significant impacts on wildlife. For example, the EA notes that the area of permanent disturbance “would be confined to areas of forest conversion within the proposed permanent right-of-way and for the aboveground facilities,” and that “No long-term wildlife impacts are expected, as plentiful, suitable wildlife habitat is adjacent to the proposed right-of-way and the permanent right-of-way would receive limited vegetation maintenance (once every three years).”¹¹⁸ Moreover, the reference to other agency requirements is an acknowledgement that state and local agencies often require mitigation that is over and above what the Commission requires and that those requirements are based on site-specific details and local knowledge.

Water Resources

1. Water Wells

137. Daniel Alters urges the Commission to require CNYOG to publicize well-owner complaints throughout the construction of the MARC I Project and to provide a contact person for CNYOG that would handle complaints. Environmental Condition 7 requires

¹¹⁵ Earthjustice July 11, 2011 Comments at 15, citing EA at 46-47.

¹¹⁶ Earthjustice July 11, 2011 Comments at 15, citing EA at 47.

¹¹⁷ *Id.*

¹¹⁸ EA at 47.

CNYOG to file weekly status reports with the Commission that include a list of problems encountered, as well as a description of any landowner/resident complaints during the reporting period.

138. In a similar vein, Environmental Condition 11 requires CNYOG to develop and implement an environmental complaint resolution procedure to provide landowners with directions for identifying and resolving their concerns, including providing a local CNYOG contact. In addition, Environmental Condition 14 requires CNYOG to provide a comprehensive report prior to placing the project facilities in service to document all complaints concerning water well yield or quality, and how each complaint was resolved.

2. Water Quality Degradation due to Construction Near Abandoned or Active Coal Mines and Other Contaminated Sites

139. Several commenters raised concerns about construction “very close to active and former coal mining areas,” but did not identify any particular mines or reclaimed areas of concern. The EA states that there are no known contaminated sites in the project area. A review of publicly available maps of coal mining areas in Bradford, Lycoming, and Sullivan Counties shows that the project does not cross reclamation areas.

140. Concerns were also raised that the EA included no discussion of the potential adverse environmental impacts the project could cause given the proximity of contaminated sites, and has issue with CNYOG’s “wait and see” approach, offering to notify the appropriate agencies if contaminated material is encountered during construction.

141. The EA states that if suspected contaminated sites are encountered during construction, CNYOG would manage them in accordance with its Spill Prevention, Containment and Control Plan, which is contained in the ESCP. If encountered, the soils will be tested and managed in accordance with state requirements. Any found contaminated soils will be disposed of at an approved disposal facility licensed by the state and any other required entities. We find that this strategy is sufficient given our experience over time with the industry because no known sites have been identified.

142. The commenters did not specifically identify any known contaminated sites of concern which will be crossed by the MARC I Project, other than Loyalsock Creek. The EA, in section B.3.b. (Surface Water), states that Loyalsock Creek is the only waterbody that the project crosses which PADEP has classified as being in non-attainment for water quality, and that it is listed as impaired due to abandoned mine drainage.¹¹⁹

¹¹⁹ According to the water quality assessment data, the remaining waterbodies that

143. Commenters raise a concern that the EA is inadequate with regard to its discussion of mitigation measures for crossing Loyalsock Creek. A site-specific plan for the Loyalsock Creek identifies the proposed construction method and includes the mitigation and restoration measures requested by the PADEP, and/or the USACE, as explained in the EA. CNYOG states it will comply with any additional protective measures required by the PADEP or the USACE to cross waterbodies, including any additional protective measures that may be required for crossing Loyalsock Creek. The EA concludes that, based on the characteristics of the identified waterbodies, the potential impacts on those waterbodies resulting from construction, the proposed crossing methods, the proposed mitigation measures for spoil and construction waste storage, and the implementation of CNYOG's ESCP, the impacts on surface water resources resulting from construction and operation of the project would not be significant.

3. Surface Water

144. Trout Unlimited, Dr. Harvey Katz, and Dr. Jonathan Niles question how CNYOG will document and protect all water upstream of locations where wild trout are found to prevent any degradation that would flow from the headwaters to where the trout have been found.

145. Trout Unlimited asserts that unique characteristics of the geographic area, such as proximity to ecologically critical areas, must be considered and that a six-mile buffer would provide a reasonable area of review. Trout Unlimited expressed concerns that any additional streams in the six-miles on either side of the MARC I Project found to have trout present would require stronger measures to protect these wild trout populations, and that such protections should be attached to the applicant's permit. CNYOG states that Trout Unlimited has shown no reason why the project might impact streams within the six-mile radius, especially when the geographic and topological characteristics of the project area show these streams on the other side of a ridge or uphill from the project.

146. We believe that the distance between the project area and the potential trout streams, the topography of the area, and the proposed mitigation discussed in the EA regarding limiting in-stream construction to agency-approved time windows will serve to protect any unidentified trout streams in the area. Further, if the appropriate state agency changes the stream classification of any stream, it may impose on CNYOG modified requirements in its Section 401 permit.

will be crossed by the MARC I Project have good water quality status, are not on the impaired waters list, and are in attainment and fully supporting of aquatic life.

147. We note that the stream classifications of “intermittent” and “ephemeral” that are used in the EA are standard terms used by USACE to designate flow characteristics of water ways. In addition, stream size and water quality classifications for fish species are included in Table 3 of the EA.

148. Earthjustice states that its review of CNYOG’s Water Obstruction and Encroachment permit applications filed with the PADEP on July 23, 2011, identifies more waterbody crossings than listed in the EA.¹²⁰ We note that it is not uncommon for applications filed at later dates to have updated information. Moreover, some landowners do not allow survey work to be completed on their properties until after a Commission order is issued approving a project. Accordingly, information related to these properties is not known until then.

149. However, waterbody construction methods are described in section A.6.b of the EA, and CNYOG’s ESCP, which provides further information about construction and restoration, is included in Appendix 2 of the EA. Therefore, it is known how CNYOG will construct across and restore these types of resources. Prior to construction, all waterbody crossings will be included on the construction alignment sheets filed for the review and written approval by the Director of OEP as required by Environmental Condition 4. In addition, because the PADEP has the particular expertise with regard to issues related to protection of water resources under its jurisdiction, we believe its requirements are adequate to protect this resource.

4. Recent Flooding in Project Area

150. Earthjustice and Carol Kafer filed late comments (both on September 20, 2011) with respect to flooding that resulted from Hurricane Irene and Tropical Storm Lee in the project area, and the subsequent federal declaration that it is a major disaster area. Earthjustice states that because the MARC I Project and Marcellus Shale development would result in land clearing, and because climate change is causing more frequent and severe storms in the region resulting in impacts such as the flooding related to Hurricane Irene and Tropical Storm Lee, an EIS is required. Earthjustice also suggests that project construction should not occur until after the flooding has subsided, damages have been repaired, power and phone service has been restored, and the area has been restored to pre-flood condition. Earthjustice adds that all stream crossings and construction on steep slopes should be re-examined because of the flooding.

151. Ms. Kafer raises concerns over Tropical Storm Lee’s impacts on the Loyalsock Watershed in Lycoming County, Pennsylvania. She states that a petroleum pipeline

¹²⁰ Earthjustice July 11, 2011 Comments.

between a road (Wallis Run Road) and a waterbody was exposed by the flooding which also damaged the road. She suggests that the extent of the flooding from this storm be surveyed along the pipeline route to determine the potential consequences of flooding on the project.

152. Given the nature of pipeline construction, it is highly unlikely that construction would proceed in a flooded area before the water recedes; this is simply not practical or safe for workers. CNYOG will install, maintain, and monitor appropriate erosion control measures during construction and until the construction right-of-way is restored in accordance with its ESCP. Further, construction techniques at waterbodies are dictated in part by the conditions that exist at the time of construction and take into account flooding conditions and scour depth.

153. CNYOG will also employ environmental inspectors whose responsibilities are described in the EA. Among other things, the inspectors will be responsible for inspecting and ensuring the maintenance of temporary erosion control measures at least: (a) on a daily basis in areas of active construction or equipment operation; (b) on a weekly basis in areas of no construction or equipment operation; and (c) within 24 hours of each 0.5 inch of rainfall. Further, they are responsible for ensuring the repair of all ineffective temporary erosion control measures within 24 hours of identification.

154. Earthjustice also states that PADEP should be given the time it needs to manage recovery and restoration efforts before it is expected to issue permits for the project and to conduct the regular inspections needed to ensure CNYOG's compliance with environmental requirements. We note that PADEP has not identified when it will issue any permit related to the MARC I Project, nor can we place requirements on the agency. We see no need to add a requirement to this Order for CNYOG to delay construction until "the area has been restored to pre-flood condition" as Earthjustice suggests.

Riparian and Upland Revegetation Plan

155. Ms. Katz and Earthjustice assert that CNYOG's riparian and upland revegetation plans are "inadequate" to ensure long-term healthy growth of new forest and stream bank stabilization.

156. CNYOG must meet all appropriate permit requirements, including requirements regarding riparian buffers that may be part of the Section 401 Permit issued by the PADEP for the project. CNYOG indicates that the project qualifies for a waiver of the riparian buffer requirements, but is voluntarily preparing a Riparian Forested Buffer Enhancement Plan to provide native vegetative species as streamside buffer plantings for EV and HQ waterbodies. The final development of appropriate plantings is ongoing with the appropriate agencies and interest groups. CNYOG filed meeting minutes indicating its commitment to work with Ms. Katz and "forest stewards" to continue to develop site-specific measures and species selections to maximize the effectiveness of CNYOG's

reforestation and stream stabilization programs. We find that these measures will minimize impacts on vegetation in the project area.

Wetlands

157. EPA and Audubon Pennsylvania question the EA's conclusion that the project would not affect forested wetlands because Table C.3-1 in Section C of the EA (Alternatives) indicates that the proposed route would cross a forested wetland.

158. We believe there is confusion regarding this issue. We clarify that no forested wetland will be crossed. Table B.3-3 of the EA was developed based on field wetland delineations of the project area. It identifies one forested wetland as being present near the project at MP 23.4, but reveals that there are no impacts on this wetland, based on CNYOG's routing of the project around this wetland. It is identified so that appropriate erosion control measures are used along the edge of disturbed workspaces to avoid impacts on this off-right-of-way area. Therefore, while Table C.3-1 accurately reflects the resources within the project area, the complete analysis of wetlands accurately reveals no acres of impacts on forested wetlands due to construction and operation of the project.

Vegetation and Wildlife

159. Several commenters claim the EA did not address forest fragmentation. Audubon states that the EA fails to recognize the important ecosystems for migratory forest-dwelling birds; underestimates impacts on the forested habitats from edge effects; and was issued prior to completion of the final Migratory Bird Impact Assessment and Habitat Restoration Plan.

160. EPA expresses concern over proposed mitigation to address forest fragmentation and recommends that a mitigation plan be developed and approved by the appropriate agencies prior to tree clearing. Earthjustice and Mr. Quigley also express concern over forest impacts from fragmentation and the edge effect. Earthjustice claims that the EA's assessment of impacts on migratory birds is premature because impacts and mitigation have not been ascertained.

161. Impacts due to forest fragmentation are addressed in EA sections B.4.2. (Wildlife) and B.4.3. (Migratory Birds). The EA states that the upland forests in the project area provide moderate to high quality habitat for a variety of animal species. The area of permanent disturbance would be confined to areas of forest conversion within the 50-foot-wide permanent right-of-way and for the aboveground facilities. The EA states that within the project area in Pennsylvania, the migratory bird habitat of greatest abundance and sensitivity is forest interior. Mature upland forest with open canopy and regenerating forest are the most common forest types in the project area.

162. We also find that the EA appropriately recognizes the important ecosystems for migratory forest-dwelling birds. As Audubon Pennsylvania notes, CNYOG routed its proposed project to avoid designated Important Bird Areas. However, as the EA indicates, the MARC I Project could affect some forest interior species or species that prefer large tracts of unbroken forest. In forested areas, the principal impact on wildlife of the new right-of-way clearing would be a change in species' use of the right-of-way from those favoring interior forest habitats to those using edge habitats. Many species adapt well to this habitat reversal. Nevertheless, the breeding success of some forest interior bird species (e.g., warblers and thrushes) has been shown to be limited by the size of available unbroken tracts.

163. With respect to Audubon's claim that the EA underestimates impacts on the forested habitats from edge effects, we note that the EA acknowledges that the loss of forest habitat and the creation of open early successional and induced edge habitats could decrease the quality of habitat for forest interior species for distances up to 300 feet from the right-of-way. This, in turn, may reduce the density and diversity of forest interior species in a corridor much wider than the actual cleared right-of-way. However, we find that it is not likely that a permanently-cleared 50-foot-wide right-of-way would impede the movement of most forest interior species, although it could reduce the breeding habitat of these species.

164. Review of the U.S. Forest Service's National Forest Inventory and Analysis database for Bradford, Sullivan, and Lycoming Counties shows that there are over 1.2 million acres of forest cover in the three counties crossed by the project. In comparison, the project will permanently convert less than 170 acres of forested land to vegetated open or scrub shrub land. While there would be adverse indirect impacts on forest interior bird species as a result of the loss of mature forest habitat, we conclude that the scale of the impact will not result in a significant impact on breeding bird populations.

165. The width of the permanent right-of-way will be limited to 50 feet, and adjacent forested land will remain available for wildlife habitat. Further, revegetation of the temporary construction workspaces along the permanent right-of-way will occur whereby small trees and shrubby vegetation will grow consistent with the relevant provision of CNYOG's ESCP. To minimize disturbance during operation, CNYOG will limit routine vegetation clearing of the right-of-way to once every three years, and will, therefore, avoid maintenance activity during sensitive breeding windows between April 15 and August 1 of any year. Moreover, CNYOG's compliance with its Riparian Forested Buffer Enhancement Plan, as part of the PADEP permit application process, will further minimize fragmentation and long-term impacts to this habitat, because it includes

procedures for planting trees within riparian areas.¹²¹ Because CNYOG is committed to these measures, we find that a forest fragmentation mitigation plan is not needed, as EPA had suggested.

Migratory Birds

166. The USFWS's Pennsylvania field office identified several measures that could be implemented to minimize impacts to Migratory Bird Treaty Act species. These activities include: (a) restrict clearing activities in natural or semi-natural habitats to between September 1 and March 31; (b) avoid permanent habitat alterations within areas of high bird populations; (c) avoid fragmentation of large contiguous tracts of wildlife habitat especially if habitat cannot be fully restored following construction; (d) collocate facilities and access roads within or adjacent to previously disturbed areas; (e) develop a habitat restoration plan; and (f) use only native plant species for restoration activities. The PGC and the USFWS both agreed that limiting tree clearing until after August 15 will represent avoidance of impacts.

167. Environmental Condition 17 requires CNYOG to file its final Migratory Bird Impact Assessment and Habitat Restoration Plan, in consultation with the appropriate agencies, prior to construction. This condition also requires CNYOG to provide conservation measures and best management practices for migratory birds that address impacts associated with tree removal, edge effects, and forest/habitat fragmentation, as requested by EPA. CNYOG filed an amendment to the plan on July 22, 2011, indicating that it now proposes to construct outside of the breeding season for most migratory birds.

168. If an acceptable Migratory Bird Impact Assessment and Habitat Restoration Plan is not provided by CNYOG, construction will not be authorized. We believe that the completion of the final Migratory Bird Impact Assessment and Habitat Restoration Plan, through consultation with the appropriate agencies, is consistent with the intent of both the MBTA and NEPA and serves to minimize impacts to migratory birds and their habitat.

Mussels

169. EPA, Earthjustice, and Mr. Alters raise concerns regarding potential impacts on sensitive mussel species residing in the Susquehanna River. Mr. Alters is concerned that CNYOG will not use horizontal directional drill ((HDD) crossing methods to mitigate impacts on the mussel. Mr. Alters asserts that the EA suggests CNYOG will conduct an

¹²¹ We note that CNYOG is required to file the modifications to its ESCP that would result from any PADEP permit requirements.

open-cut crossing, and as such the EA should be withdrawn until this open-cut method is fully discussed.

170. To be clear, in an October 25, 2010 letter, PFBC recommended (and CNYOG ultimately proposed), the use of HDD technology to cross the Susquehanna River and to avoid potential impacts on mussels species.¹²² CNYOG has not proposed crossing the Susquehanna River by any method other than HDD. As discussed in the EA, in the unlikely event of a complete failure of the HDD, CNYOG will be required to reinitiate consultation for all appropriate permits, as set forth in Environmental Condition 15. CNYOG will reinitiate consultation with the PFBC to develop the appropriate studies or surveys, including the development of mussel mitigation plans, timing restrictions, etc. Should an HDD failure occur, the time necessary to review and permit an open cut crossing would be at CNYOG's expense and CNYOG would need to receive appropriate authorization to proceed. Accordingly, we find that proper mechanisms remain in place to adequately protect the mussel species.

Invasive Species Plan

171. EPA, Earthjustice, and others raise concerns over the lack of an Invasive Species Management Plan. EPA suggests requiring measures to prevent the spread of aquatic invasive species, in addition to the terrestrial plant species discussed in the EA. We agree with EPA that the Invasive Species Management Plan is the proper venue to address aquatic invasive species. Accordingly, we have modified Environmental Condition 16 requiring CNYOG to consult with the Bradford, Sullivan, and Lycoming County Conservation Districts to develop an Invasive Species Management Plan. Through this consultation process, invasive species including aquatic invasive species shall be identified and appropriate precautions developed for inclusion in the Invasive Species Management Plan.

Threatened and Endangered Species

1. Indiana Bat

172. Earthjustice and Dr. Reeder (included in the Earthjustice filing) express concern that the consultation with the USFWS has not yet been completed regarding the Indiana bat and question the adequacy of the survey methods employed by CNYOG.

173. Environmental Condition 18 prevents construction or tree clearing until the Commission has concluded consultation with the USFWS regarding the Indiana bat.

Since the EA was issued, CNYOG completed its surveys for the southern half of the project (filed June 10, 2011). It reports that “no Indiana bats, or other bat species federally or state listed as endangered or threatened, were captured as a result of mist netting survey efforts.”

174. CNYOG conducted the bat surveys using the protocols recommended by the USFWS, the agency charged under the Endangered Species Act with providing its expert opinion on the adequacy of survey protocols. Therefore, we conclude that since CNYOG used these protocols established by the USFWS, they are adequate. CNYOG provided the USFWS with the report about its bat survey in June 2011. In response to the survey results, the USFWS filed a letter dated July 11, 2011, stating that, based on evaluation of the bat survey results from 2010 and 2011, Indiana bats are either not present in the project area, or are present in such low densities that they were not detected. The USFWS concluded that effects on the Indiana bat are unlikely to occur (i.e., effects are discountable) and indicated it would defer any further action until the Commission provides its determination of effects for the Indiana bat.

175. On July 13, 2011, Commission staff sent a letter to the USFWS indicating that, based on the information in CNYOG’s survey reports, subsequent filings received from CNYOG, its analysis of the potential effects of the proposed action, and staff’s informal consultation with the USFWS, “the Project is *not likely to adversely affect* the Indiana bat.”

2. State Species of Concern

176. EPA suggests that the Commission review the Commonwealth of Pennsylvania’s list of endangered, threatened and candidate species of fish and indicate whether these species occur within the project area. The EA states that the Pennsylvania Natural Diversity Inventory records indicate that no known occurrences of any endangered or threatened, fish, bird or mammal species of special concern under the PFBC occur in the vicinity of the project.

177. Earthjustice claims that rare plant surveys should be completed and approved before a determination of significance can be made. As discussed in the EA, the Pennsylvania Department of Conservation and Natural Resources (DCNR) agrees with the results of field surveys performed by CNYOG, and requested that surveys be performed on properties where landowners had previously denied access if the project is approved, which CNYOG has agreed to complete.

178. We reiterate the EA’s conclusion that, with the completion of the surveys and consultation with the DCNR, impacts on the state-listed plant species of concern will be avoided or mitigated. CNYOG continued to perform surveys, as required, and filed the results with the DCNR on July 13, 2011. On July 22, 2011, DCNR provided a letter indicating that CNYOG “has satisfactorily completed all survey requirements set forth by

DCNR and as a result, this project is unlikely to have any potential impacts on any Pennsylvania Plant Species of Special Concern known to exist in the vicinity of this project.” Therefore, CNYOG has completed DCNR’s requirements regarding surveys for rare plant species.

Air Quality

179. Earthjustice asserts that the EA does not analyze information about natural gas facilities in the project area, even though it filed a list of air permit applications that appeared in the Pennsylvania Bulletin.

180. Section B.11 of the EA states that it would not include in its cumulative impact analysis projects identified by commenters that are outside of the project area. Earthjustice identified several recently approved and permitted natural gas facilities that are located between 16 to 137 miles from the M1-S Compressor Station. The M1-N unit at the existing NS2 Compressor Station is an electric unit which will not have emissions associated with it. As stated in the EA, all the permits issued by the state contain limitations and requirements including monitoring, recordkeeping, and reporting conditions to ensure compliance with applicable federal and state air regulations.

181. Further, as described in Section B.9 of the EA, the MARC I Project is located within the Ozone Transport Region (OTR). The facilities identified by Earthjustice are also in the OTR, and thus regulated as moderate nonattainment for air permitting. While we do not dispute the fact that the gas facilities identified by Earthjustice may add to the magnitude of criteria pollutant emissions within the area, the Clean Air Act requires states within the OTR to submit a State Implementation Plan (SIP) to ensure that ozone precursors are controlled. The PADEP has permitted these natural gas facilities located within the OTR, and has required controls to mitigate ozone (and related) pollutants.

182. EPA and Earthjustice state that the increased emissions in GHGs and ozone from the project and other industrial facilities near the project will have a significant impact on public health. They assert that the EA does not analyze information about compressor stations or other emission sources in the project area, and that an air modeling analysis should be conducted to predict the emissions from other compressor stations near the project area. EPA also asserts that the emissions related to shale gas development are rapidly increasing and that it will increase long term emissions of criteria pollutants, HAPs, and GHGs within the region. EPA believes that an air modeling analysis of the project should be performed to assess the impacts of the Marcellus Shale gas extraction.

183. The EA (Cumulative Impacts) acknowledges that the ongoing development of the Marcellus Shale natural gas, the project, and other commercial and industrial projects in the area will involve the use of heavy equipment that will generate emissions of air criteria pollutants, GHGs emissions and fugitive dust during construction and operation. However, because the pipeline construction will move through an area quickly, the

cumulative air emissions associated with multiple pipeline projects in the area will be intermittent and short term. The majority of these impacts will be minimized further because the construction activities will occur over a large geographical area and, in many cases, construction schedules will not directly overlap. Moreover, because these projects will result in short-term construction air emissions, they are not likely to significantly affect long-term air quality in the region.

184. Marcellus Shale development activities may result in increased long-term emissions of criteria pollutants, HAPs, and GHGs within the region. However, as previously discussed, performing a cumulative air modeling analysis would require numerous assumptions and would be speculative.

185. Earthjustice also comments that although Bradford, Sullivan, and Lycoming Counties are currently designated as attainment areas with respect to the National Ambient Air Quality Standards (NAAQs) for ozone, the EA lacks the analysis necessary to show that the standards will continue to be met over time. As stated previously, the EA finds that direct emissions of the project will have no effect on the regional air quality.

186. The indirect emissions that are outside of the FERC's ability to control may have a future effect on air quality, but EPA and state agencies are the entities tasked by the Clean Air Act with determining the attainment status of each region. If those counties become non-attainment areas at some point in the future, then a different air emissions analysis will be required to be performed for any future project.

187. EPA recommends that the EA provide an estimate of the loss in oxygen generating capacity due to the large scale tree removal and the amount of carbon sequestration capacity foregone by virtue of the loss of forest lands. EPA also recommends developing a mitigation plan prior to any tree removal.

188. As stated in EA section B.9.a (Air Quality), currently there are no federal or state regulations regarding carbon sequestration, and while there would be a slight long-term effect of reduced carbon sequestration due to the removal of trees from the permanent right-of-way, the temporary right-of-way would be allowed to revert back to pre-existing conditions. All of the vegetation within the restored right-of-way would perform the carbon sequestration process because these areas would not be paved over and restoration involves establishing a vegetative cover. The young trees that would be allowed to re-establish within the restored temporary right-of-way would continue to perform the carbon sequestration process. While the total carbon sequestration ability of the vegetation within the restored permanent right-of-way may be reduced, we do not find that the project will have significant impacts on cumulative carbon sequestration.

Noise

189. Earthjustice states that the EA does not quantify low-frequency noise production, nor do the identified noise mitigation measures address low-frequency noise. Low-frequency noise from pipeline and compressor station operations is controlled through the Commission's limitation on overall noise and the restriction on vibrations from compressor stations.

190. The Commission's regulations require compressor stations and other above-ground facilities limit noise to 55 dBA L_{dn} . The measurement of the noise level includes frequencies from 20 hertz to approximately 20,000 hertz (typical human hearing range). The public is protected because if there is excessive low-frequency noise, the overall noise level will exceed 55 dBA L_{dn} . In addition, low-frequency noise may be perceived as vibration and our regulations require that no perceptible vibrations occur from the operation of compressor stations. Environmental Condition 21 requires CNYOG to conduct a noise survey after construction of the compressor station to confirm compliance with the Commission regulations.

191. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with CNYOG's application and supplements, and in compliance with the environmental conditions in the appendix to this order, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

192. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹²³

193. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

¹²³ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued to CNYOG under NGA section 7(c), authorizing the construction and operation of natural gas facilities as described in this order and in the application and supplements.

(B) The authorization in Ordering Paragraph (A) is conditioned on CNYOG:

(1) complying with the conditions set forth in the Appendix to this order and all regulations under the NGA, but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(2) constructing and making available for service the facilities described herein, within two years in accordance with section 157.20(b) of the Commission's regulations;

(3) executing firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction;

(4) CNYOG shall notify the Commission's environmental staff by telephone, e-mail and/or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies CNYOG. CNYOG shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(C) CNYOG must remove the proposed AFUDC accrual of \$87,720 calculated on the Joint Facilities after the November 1, 2011 in-service date. CNYOG must revise all cost-of-service items dependant on Gas Plant in Service, such as income taxes, depreciation expense, return, and interest expense. CNYOG must then file its revised rates and working papers for the facilities approved in the January 2011 Order within 60 days of the date of this order.

(D) CNYOG and its representations made with respect to AFUDC accruals are subject to audit to determine whether it is in compliance with the revised policy and related Commission rules and regulations.

(E) CNYOG must file actual revised tariff records incorporating the firm and interruptible transportation rates at least 30 days and not more than 60 days prior to commencement of service on the MARC I Project as discussed above.

(F) CNYOG is directed to file its negotiated rate agreements or a tariff record describing the essential elements of the agreements no less than 30 days and not more than 60 days, prior to the commencement of service.

(G) CNYOG is also directed to disclose all consideration linked to the agreements, and to maintain separate and identifiable accounts for volumes transported, billing determinates, rate components, surcharges, and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

(H) CNYOG's initial recourse rates for firm and interruptible transportation service on the MARC I Project are approved, as conditioned and modified in the body of this order.

(I) Within three years after the in-service date of the MARC I Project, CNYOG must file a cost and revenue study for cost-based firm wheeling and transportation service rates. In the alternative, in lieu of such filing, CNYOG may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(J) CNYOG shall comply with the environmental conditions listed in the Appendix to this order.

(K) The untimely motions to intervene are granted.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

As recommended in the Environmental Assessment, this authorization includes the following conditions:

1. Central New York Oil and Gas Company (CNYOG) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information requests), and as identified in the environmental assessment (EA), unless modified by this Order. CNYOG must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Commission's Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, CNYOG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and prior to the start of construction, CNYOG shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to route variations required herein, extra workspace allowed by CNYOG's Erosion and Sedimentation Control Plan (ESCP), or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or would affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction,** CNYOG shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. CNYOG must file revisions to its plan as schedules change. The plan shall identify:

- a. how CNYOG will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
 - b. how CNYOG will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread and how CNYOG will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location of the environmental compliance training CNYOG will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of CNYOG's organizations having responsibility for compliance;
 - g. the procedures (including use of contract penalties) CNYOG will follow if noncompliance occurs; and
 - h. for each discrete facility a Gantt or Program Evaluation and Review Technique chart (or similar project scheduling diagram) and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, CNYOG shall each file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete for each phase of the project**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on CNYOG's efforts to obtain the necessary federal authorizations;
 - b. the current construction status of each spread, work planned for the following reporting period, and any scheduling changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by CNYOG from other federal, state, or local permitting agencies concerning instances of noncompliance and CNYOG's responses.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, CNYOG shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. CNYOG must receive written authorization from the Director of OEP **before commencing service** from its project. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by its project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, CNYOG shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions CNYOG have complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. CNYOG shall each develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, CNYOG shall mail the complaint procedures to each landowner whose property will be crossed by the project.
- a. In its letter to affected landowners, CNYOG shall:

- (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that if they are not satisfied with the response, they should call CNYOG's Hotlines; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that if they are still not satisfied with the response from CNYOG's Hotlines, they should contact the Commission's Dispute Resolution Service Helpline at 877-337-2237 or at ferc.adr@ferc.gov.
- b. In addition, CNYOG shall include in its weekly status reports a copy of a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and the date of the call;
 - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - (3) a description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
12. **Prior to construction**, CNYOG shall develop a plan to allow access for quarry operation across the pipeline right-of-way during project construction and operation, and file the plan with the Secretary for the review and written approval of the Director of OEP.
13. **Prior to construction**, CNYOG shall file with the Secretary a revised ESCP for the Project that incorporates the best management practices from the Pennsylvania Department of Environmental Protection (PADEP) Stormwater Manual and the specific requirements of the Bradford County Conservation District's Erosion and Sediment Control General Permit.
14. **Prior to construction**, CNYOG shall file with the Secretary the locations of all private wells within 150 feet of access roads, wareyards, and the pipeline construction right-of-way. CNYOG should conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. Within 30 days of placing the facilities in service, CNYOG shall file a report with the Secretary discussing whether any complaints were received concerning water well yield or quality and how each complaint was resolved.
15. **Prior to initiating an open-cut crossing of the Susquehanna River**, CNYOG shall file with the Secretary for review and written approval of the Director of OEP, a site-specific plan for crossing the waterbody. It shall include scaled drawings identifying all areas that would be disturbed by construction. CNYOG

shall file this plan concurrent with the submission of its applications to the U.S. Army Corps of Engineers, PADEP, and U.S. Coast Guard for a permit to construct using this plan.

16. **Prior to construction**, CNYOG shall file with the Secretary for review and written approval of the Director of OEP, an Invasive Species Management Plan developed in consultation with the Bradford, Sullivan, and Lycoming County Conservation Districts to identify, prevent, and treat potential invasive and exotic terrestrial and aquatic plant species infestations.
17. **Prior to construction**, CNYOG shall file with the Secretary a final Migratory Bird Impact Assessment and Habitat Restoration Plan, developed in consultation with the U.S. Fish and Wildlife Service (USFWS) and the Pennsylvania Game Commission (PGC) to provide conservation measures and best management practices for migratory birds. CNYOG should include copies of all correspondence from the USFWS and PGC regarding the development of this plan.
18. **Prior to construction**, CNYOG shall provide a plan for construction on or next to residential properties. The plan shall include measures to:
 - a. limit the hours during which noisier construction activities (such as HDD drilling or boring) will occur;
 - b. notify landowners prior to construction on their properties;
 - c. maintain access to the properties;
 - d. secure open ditches when there are no active construction activities taking place;
 - e. wait until the pipe is ready for installation before excavating the trench where residences will be within 25 feet of the construction right-of-way;
 - f. install safety fencing along the edge of the construction right-of-way that will extend at least 100 feet on either side of the residence;
 - g. preserve mature trees and landscaping where possible where they will not interfere with safe operation of equipment; and
 - h. complete final grading and installation of permanent erosion controls and restore all lawn areas and landscaping within ten days of backfilling the trench.
19. **Prior to construction**, CNYOG shall file the Lake Mokoma Association Memorandum of Understanding with the Secretary and indicate how it will be applied to the use of other private access roads in residential communities.
20. CNYOG shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; and use of any

staging, storage, or temporary work areas and new or to-be-improved access roads) **until**:

- a. CNYOG files with the Secretary cultural resource survey reports, any necessary treatment plans, and State Historic Preservation Officer comments on the reports;
- b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
- c. The FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies CNYOG in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”**

21. CNYOG shall file noise surveys with the Secretary no later than **60 days** after placing the proposed two compressor units at M1-S Compressor Station in service and after placing the M1-N unit at NS2 Compressor Station in service. If the noise attributable to the operation of M1-S and NS2 Compressor Stations, after adding the new compressor units, at full load exceeds an L_{dn} of 55 dBA at any near by NSAs, CNYOG shall install additional noise controls to meet the level within **1 year** of the in service date. CNYOG shall confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than **60 days** after it installs the additional noise controls.