

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

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

Constitution Pipeline Company, LLC

Docket No. CP13-499-000

Iroquois Gas Transmission System, L.P.

Docket No. CP13-502-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT

(Issued December 2, 2014)

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

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Pt. 157 (2014).

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

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

I. Background

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

³ 15 U.S.C. § 717f(b) (2012).

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

⁵ 15 U.S.C. § 717a(6) (2012).

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

II. Proposals

A. Constitution Pipeline Project

1. Facilities and Services

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

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

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

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

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

8. Constitution states that it held an open season for service on the Constitution Pipeline Project from February 21 through March 12, 2012. As a result of the open season, Constitution states that it has executed binding precedent agreements with Cabot Oil & Gas Corporation (Cabot) for 500,000 dekatherms (Dth) per day of firm transportation service and with Southwestern Energy Services Company (Southwestern) for 150,000 Dth per day of firm transportation service, together equal to the full design capacity of the project. Both shippers elected to pay a negotiated rate.

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

2. Blanket Certificates

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

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

B. Wright Interconnect Project

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

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

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

C. Lease Agreement

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

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

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

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

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

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

III. Procedural Issues

A. Notice, Interventions, Protests, and Comments

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

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

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

¹⁰ 18 C.F.R. § 385.214 (2014).

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

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

B. Requests for Evidentiary Hearing

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

IV. Discussion

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

A. Application of Certificate Policy Statement

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

¹¹ 18 C.F.R. § 385.214(d) (2014).

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

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

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

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

1. Constitution Pipeline Project

24. Constitution is a new pipeline entrant with no existing customers. Thus, there is no potential for subsidization on Constitution's system or degradation of service to existing customers.

25. We also find that the Constitution Pipeline Project will have no adverse impact on existing pipelines or their captive customers. The Constitution Pipeline Project is designed to transport domestically sourced gas from Northern Pennsylvania to markets in New England and New York. No transportation service provider or captive customers in the same market have protested this project.

26. Regarding impacts on landowners and communities along the route of the project, Constitution has proposed to locate the pipeline within or parallel to existing rights-of-way where feasible. In addition, Constitution participated in the Commission's pre-filing process and has been working to address landowners concerns and questions. Constitution has made changes to over 50 percent of the proposed pipeline route in order to address concerns from landowners and to negotiate mutually acceptable easement agreements. In comments filed on September 23, 2014, Stop the Pipeline states that Constitution has not signed easement agreements with many landowners and therefore the benefits of the project do not outweigh harm to these landowners. We disagree.

While we are mindful that Constitution has been unable to reach easement agreements with many landowners, for purposes of our consideration under the Certificate Policy Statement, we find that Constitution has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities.

27. The Constitution Pipeline Project will increase transportation capacity from supply sources in Pennsylvania to interconnections with Iroquois and Tennessee. All of the proposed capacity has been subscribed under long-term precedent agreements. In comments filed on September 23, 2014, Stop the Pipeline questions the need for the project. Stop the Pipeline claims that the contracts are speculative because the largest shipper, Cabot, is affiliated with Constitution.

28. We disagree. There is no evidence of self-dealing to support the need for the project. Cabot is an existing exploration and production company with operations in producing regions, including Pennsylvania. Moreover, we are requiring Constitution to execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements, prior to commencing construction. We are also requiring Constitution to calculate its recourse rates based on the designed capacity of the pipeline, thereby placing Constitution at risk for any unsubscribed capacity. Under these circumstances, we find that the precedent agreements demonstrate a need for the project.

29. We find that the benefits that the Constitution Pipeline Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity requires approval of Constitution's proposal, as conditioned in this order.

2. Wright Interconnect Project

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

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

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

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

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

3. Lease Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Blanket Certificates

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

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

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

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

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

C. Rates

1. Initial Rates for Constitution

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

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

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

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

a. Interruptible Services

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

b. Allowance for Funds Used During Construction

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

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

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

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

2. Three-Year Filing Requirement

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

D. Constitution's Proposed Pro Forma Tariff

1. North American Energy Standards Board (NAESB)

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

2. GT&C Section 11 – Waivers

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

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

3. GT&C Section 36 – Reservation Charge Credits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Negotiated Transportation Agreements

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

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

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

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

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

E. Environmental Analysis

1. Pre-filing Review

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

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

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

⁴⁵ 77 Fed. Reg. 56,835 (2012).

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

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

⁴⁸ 77 Fed. Reg. 63,309.

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

2. Application Review

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

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

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

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

⁵⁰ 79 Fed. Reg. 9735.

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

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

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

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

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

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

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

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

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

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

3. Major Environmental Issues Addressed in the EIS

a. Karst Geology

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

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

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

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

b. Waterbodies and Wetlands

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

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

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

c. **Interior Forests and Migratory Birds**

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

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

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

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

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

d. Invasive Plant Species

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

e. Compliance Enforcement

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

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

f. Rare Bat Species

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

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

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

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

⁵⁷ 16 U.S.C. § 1536 (2012).

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

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

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

g. Homeowners' Insurance and Property Values

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

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

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

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

h. Safety

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

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

i. Indirect Impacts

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

⁵⁹ Final EIS at 4-152 to 4-156.

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

⁶¹ 40 C.F.R. § 1508.8(b) (2014).

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

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

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

⁶² *Id.*

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

⁶⁴ *See* final EIS at 4-235.

⁶⁵ *See* final EIS at 4-232.

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

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

j. Cumulative Impacts

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

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

⁶⁶ See final EIS at 5-15.

⁶⁷ 40 C.F.R. § 1508.7 (2014).

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

⁶⁹ *Id.* at 8.

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

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

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

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

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

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

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

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

k. Alternatives

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

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

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

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

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

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

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

4. Late Comments Not Addressed in the Final EIS

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

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

a. Stop the Pipeline

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

115. We reject Stop the Pipeline's further assertion that the two projects are interconnected and should be evaluated in a single environmental document. In support, it asserts that because the Tennessee and Iroquois pipelines are capacity constrained, the Northeast Energy Direct Project is needed to move gas from Wright, New York, the terminus of the Constitution Pipeline Project, to markets in New York City and Boston. We disagree. Natural gas can be transported from the terminus of the Constitution Pipeline Project to downstream markets by any shipper holding capacity on Iroquois and/or Tennessee. Significantly, the Constitution Pipeline is proposed to be placed in service in 2015, three years earlier than the 2018, in-service date planned for Tennessee's project.

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

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

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

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

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

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

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

c. United States Army Corps of Engineers

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

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

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

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

d. Earthjustice

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

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

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

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

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

a. James S. Buzon, Town of Middleburgh

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

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

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

⁷⁸ See 18 C.F.R. § 380.15(e) (2014).

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

b. Constitution Pipeline Company, LLC

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

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

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

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

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

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

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

c. Catapano Family

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

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

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

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

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

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

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

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

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

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

⁸² Draft EIS at 5-20.

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

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

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

d. BMB Land, LLC

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

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

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

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

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

e. George Meszaros

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

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

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

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

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

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

6. Conclusion

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

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

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

The Commission orders:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Environmental Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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