

152 FERC ¶ 61,131  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Columbia Gas Transmission, LLC

Docket No. CP14-99-001

ORDER DENYING REHEARING AND STAY

(Issued August 18, 2015)

1. On August 22, 2014, the Commission issued an order (August 22 Order) to Columbia Gas Transmission, LLC (Columbia) authorizing the construction, operation and abandonment of facilities under Columbia's blanket certificate.<sup>1</sup> The August 22 Order also denied a protest by Allegheny Defense Project (Allegheny) alleging that prior to authorizing additional projects, the Commission must prepare a regional programmatic environmental impact statement (EIS) analyzing the existing and potential impacts of additional infrastructure for the production and use of shale gas in the northeastern United States. On September 22, 2014, Allegheny filed a request for rehearing and motion for stay of the August 22 Order. For the reasons discussed below, we will deny Allegheny's requests for rehearing and stay.

**I. Background**

2. Columbia is a natural gas company as defined in section 2(6) of the Natural Gas Act (NGA),<sup>2</sup> subject to the jurisdiction of the Commission. Columbia is a limited liability company formed under the laws of the State of Delaware. Its facilities cross the states of Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

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<sup>1</sup> *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138 (2014) (August 22 Order).

<sup>2</sup> 15 U.S.C. § 717a(6) (2012).

3. On March 6, 2014, Columbia filed a prior notice request pursuant to section 7 of the NGA,<sup>3</sup> sections 157.205, 157.208, and 157.216(b) of the Commission's blanket certificate regulations,<sup>4</sup> and its Part 157 blanket certificate authority,<sup>5</sup> proposing to replace 3.4 miles of existing 8-inch diameter bare steel pipeline on Line 1655 in Adams County, Pennsylvania, with parallel 12-inch diameter coated steel pipeline, and abandon the 8-inch diameter portion of the line in place. In addition, Columbia requested authority to construct and operate appurtenant facilities in Cumberland County, Pennsylvania (Line 1655 North Project). Columbia stated that the purpose of the project is to improve the reliability and safety of Line 1655 and to expand its capacity to provide 15,700 dekatherms per day of firm transportation service to UGI Utilities, Inc. (UGI).

4. Columbia has developed a Modernization Program to address its aging infrastructure, enhance pipeline safety and increase customer service reliability across its 12,000-mile pipeline system.<sup>6</sup> In a 2013 Settlement Order (Settlement Order), the Commission approved a capital cost recovery mechanism (CCRM) agreement between Columbia and its customers, allowing Columbia to recover the costs of eligible pipeline safety and reliability upgrades on its system without undertaking an NGA section 4 general rate case.<sup>7</sup> The Line 1655 North Project was identified as an Eligible Facility according to the provisions of the settlement.<sup>8</sup> The 2013 Settlement Order did not authorize the Modernization Program, nor did it authorize any specific projects identified as part of the Modernization Program.

5. On May 16, 2014, Allegheny filed a protest to and comments on Columbia's prior notice request, alleging that prior to authorizing additional projects, the Commission must prepare a regional programmatic EIS analyzing the existing and potential impacts of additional infrastructure for the production and use of shale gas in the northeastern

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<sup>3</sup> 15 U.S.C. § 717f (2012).

<sup>4</sup> 18 C.F.R. §§ 157.205, 157.208, and 157.216(b) (2014).

<sup>5</sup> See *Columbia Gas Transmission Corp.*, 22 FERC ¶ 62,029 (1983) (issuing a blanket certificate of public convenience and necessity to Columbia).

<sup>6</sup> Columbia's March 6, 2014 Request to Abandon and Construct Facilities Under Blanket Authorization at 2-3.

<sup>7</sup> *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 (2013) (Settlement Order).

<sup>8</sup> *Id.*, Appendix E.

United States. Allegheny further asserted that the environmental report submitted by Columbia did not adequately consider cumulative impacts.

6. On June 18, 2014, Commission staff issued an Environmental Assessment (EA) which determined that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment. On July 3, 2014, Allegheny submitted comments on the EA, asserting that it impermissibly segmented the Line 1655 North Project from other potential projects under Columbia's Modernization Program and failed to consider the project's cumulative impacts.

7. On August 22, 2014, the Commission issued an order denying Allegheny's protest and authorizing Columbia to proceed with the Line 1655 North Project under its blanket certificate authority. The Commission found that Columbia's Modernization Program was not a single project, but instead represented Columbia's internal planning process used to identify and respond to safety and reliability concerns, and was made up of distinct projects that are not connected, cumulative, or similar as contemplated by the Council on Environmental Quality's (CEQ) regulations.<sup>9</sup> In addition, the Commission rejected Allegheny's argument that the EA for the Line 1655 North Project should take into account regional shale gas drilling, finding that the Commission is not required to analyze the environmental impacts of potential future shale gas drilling projects and that a programmatic EIS considering all drilling in the Marcellus and Utica shale formations is inappropriate for a project of such limited scope and minor environmental impacts.

8. On September 19, 2014, Allegheny filed a request for rehearing and a motion for stay of the August 22 Order. In its request, Allegheny alleges that the Commission erred in dismissing its protest and authorizing the project under a blanket certificate. In addition, Allegheny repeats complaints from their earlier protest and comments on the EA, asserting that the Commission failed to consider the cumulative impacts of the project and impermissibly segmented it from other projects identified in the Modernization Program.

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<sup>9</sup> August 22 Order, 148 FERC ¶ 61,138 at PP 24, 25.

## II. Discussion

### A. Rehearing Request

#### 1. NEPA Issues

##### a. Segmentation

9. Allegheny contends that the Commission effectively approved Columbia's Modernization Program when it approved the CCRM in the 2013 Settlement Order, and therefore violated the National Environmental Policy Act (NEPA)<sup>10</sup> by failing to commence environmental review of the Modernization Program at "the earliest possible time."<sup>11</sup> Allegheny argues that the Commission's actions violated NEPA by allowing Columbia to submit individual projects under the Modernization Program for approval, thereby improperly segmenting the review of those projects.<sup>12</sup> Specifically, Allegheny states that the Commission should have prepared a single EIS to consider the Line 1655 North Project and other projects contemplated by Columbia in its Modernization Program.

10. NEPA and its implementing regulations require that the scope of an environmental review under NEPA include actions that are "connected," "cumulative," and "similar."<sup>13</sup> An agency may not impermissibly "segment" its NEPA review by dividing such actions into separate projects and thereby failing "to address the true scope and impact of the activities that should be under consideration."<sup>14</sup> The courts have held that improper segmentation is usually concerned with projects that have reached the proposal stage.<sup>15</sup>

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<sup>10</sup> 42 U.S.C. § 4321 *et seq.* (2012).

<sup>11</sup> 40 C.F.R. § 1501.2 (2014). To the extent Allegheny is seeking to call into question the Commission's action in issuing the 2013 Settlement Order, that constitutes an impermissible collateral attack on a closed proceeding, in which no requests for rehearing were filed.

<sup>12</sup> Columbia's September 19, 2014 Request for Rehearing at 9, 11 (Rehearing request).

<sup>13</sup> *Am. Bird Conservancy v. FCC*, 516 F.3d 1027, 1032 (D.C. Cir. 2008) (citing 40 C.F.R. § 1508.25 (2013)).

<sup>14</sup> *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

<sup>15</sup> *Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 236-237 (5th Cir. 2007).

As the Commission explained in its August 22 Order, and as discussed below, the Line 1655 North Project and other potential projects in Columbia's Modernization Program are not connected, cumulative, or similar as contemplated by CEQ's regulations, and, therefore, do not warrant consideration as a single action.

11. Allegheny mischaracterizes the Modernization Program, the CCRM, and the relationship between the two. Allegheny mistakenly characterizes the Modernization Program as a comprehensive development program which has been or will be approved by the Commission, rather than a set of potential projects Columbia may determine to implement over a period of 10 to 15 years. As stated in the August 22 Order, the Modernization Program is an "internal planning process for recognizing and responding to safety and reliability concerns."<sup>16</sup> Importantly, no construction is authorized by either the Modernization Program or the CCRM. Columbia will need to obtain authorization for each potential project individually.

12. As the name suggests, the CCRM is a mechanism for recovery of costs, developed by Columbia in anticipation of its incurring a potentially significant level of costs to modernize and improve the integrity of its system. As agreed to by its customers and approved by the Commission, Columbia will be able to recover certain of such costs without undertaking, in each instance, a general rate case under NGA section 4.<sup>17</sup> The CCRM established an administratively efficient process for dealing with cost recovery issues. However, in approving the settlement establishing the CCRM, the Commission did not, as Allegheny claims, approve the Modernization Program as well. As discussed in the August 22 Order, the Commission's action on the Settlement did not authorize the Modernization Program or any specific pipeline projects identified as part of it. Columbia must still receive certificate authorization for any upgrade it ultimately determines should be made to its system.

13. Allegheny also overlooks the fact that the CCRM only enables Columbia to recover the costs of making upgrades to "Eligible Facilities," as defined in the 2013 Settlement. This is a smaller subset of all the facilities considered for upgrade under the Modernization Program.<sup>18</sup> Projects included in the Modernization Program which are not "Eligible Facilities" for cost recovery under the CCRM include "storage projects,

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<sup>16</sup> See August 22 Order, 148 FERC ¶ 61,138 at P 25.

<sup>17</sup> *Id.* P 4.

<sup>18</sup> Chad Zamarin Aff. at 22, attached to 2013 Settlement Application in Docket No. RP12-1021-000, Ex No. TCO-1 (Sept. 4, 2012).

gathering projects” and “capacity increases.”<sup>19</sup> In addition, the CCRM only enables cost recovery for Eligible Facilities after the Commission has authorized their construction.<sup>20</sup>

14. The Modernization Program and the CCRM are not, as Allegheny asserts, “two sides of the same coin.” The CCRM is simply an efficient mechanism to recover costs for certain projects listed under the Modernization Program to the extent they are ultimately proposed and authorized, whereas the Modernization Program itself is a set of contemplated projects that Columbia may or may not propose to implement over a period of more than a decade, across six states. As the Modernization Program is not a project which the Commission will consider for approval or which, itself, will result in any impacts, NEPA analysis for the Modernization Program is not required.

**i. Connected Actions**

15. Allegheny asserts that the Commission erred in its use of the “independent utility” test used by the courts in determining whether or not actions are “connected” for purposes of NEPA review. Allegheny maintains that under the guiding regulations, the Line 1655 North Project is but one of many “closely related and interdependent” projects that make up the Modernization Program.<sup>21</sup>

16. Allegheny further states that Columbia presented the Commission with detailed information regarding the location, timing and cost of projects in the first five years of the Modernization Program. Allegheny alleges that the Commission, with this information in hand, arbitrarily limited the scope of its review to include only the Line 1655 North Project and ignored other connected potential Modernization Program projects.

17. NEPA and its implementing regulations provide that 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.”<sup>22</sup> The purpose of the connected action requirement is

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<sup>19</sup> *Id.* at 22. *See also* Settlement Order at P 8 (“Storage and gathering projects are also specifically excluded from recovery as Eligible Facilities.”).

<sup>20</sup> *See, e.g., Columbia CCRM Settlement Application*, p.10 (stating that the CCRM only enables recovery for facilities already “placed in and remain in service.”).

<sup>21</sup> Rehearing request at 11-12.

<sup>22</sup> 40 C.F.R. § 1508.25(a)(1) (2014).

“to prevent agencies from engaging in segmentation ... by breaking up one project into smaller projects and not studying the overall impacts of the single overall project.”<sup>23</sup> In evaluating whether actions are “connected,” courts typically employ an “independent utility” test, which “asks whether each project would have taken place in the other’s absence. If so, they have independent utility and are not considered connected actions.”<sup>24</sup>

18. Contrary to Allegheny’s assertions, the August 22 Order correctly applied the pertinent CEQ regulations and court decisions. The Commission’s approval of the CCRM did not “automatically trigger” any subsequent actions, including the Line 1655 North Project. Moreover, as the Commission stated in its August 22 Order, the Line 1655 North Project has significant independent utility, and does not depend on any other action for its justification.<sup>25</sup> In addition, the Commission found that the various potential Modernization Program activities, if authorized, would “serve a significant purpose even if a second related project is not built.”<sup>26</sup>

19. The August 22 Order further found that the potential Modernization Program projects, which would span six states, are generally physically independent and would not directly interconnect or be located on the same mainlines.<sup>27</sup>

20. Allegheny has not shown that the Modernization Program projects, including the Line 1655 North Project, are connected by or dependent upon the CCRM. Rather, the CCRM merely alleviates the burden associated with recovering the costs related to the projects through general section 4 rate cases. Accordingly, the Line 1655 North Project and any other Modernization Program project are not dependent upon the CCRM or the Modernization Program itself.

## ii. Cumulative Actions

21. Allegheny asserts that the Commission mistakenly applied *Fritiofson v. Alexander* in support of its determination that other potential Modernization Program projects are

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<sup>23</sup> *Webster v. U.S. Dep’t of Agric.*, 685 F.3d 411, 426 (4th Cir. 2012).

<sup>24</sup> See e.g., *id.*; *Wilderness Workshop*, 531 F.3d 1220, 1229 (10th Cir. 2008); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006).

<sup>25</sup> See August 22 Order, 148 FERC ¶ 61,138 at P 26.

<sup>26</sup> *Id.* (citing *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987)).

<sup>27</sup> See August 22 Order, 148 FERC ¶ 61,138 at PP 26, 29.

not cumulative actions that should be considered with the Line 1655 North Project, because at this stage they are merely contemplated and have not yet been proposed.<sup>28</sup> Rather, Allegheny argues that *Fritiofson* stands for broad inclusion of cumulative effects, including impacts from actions that have not yet been proposed.<sup>29</sup> Allegheny claims that the projects under the Modernization Program are not merely contemplated, because Columbia identified “near term” projects for the time period 2013 through 2017 with more refined estimates in the CCRM settlement, compared with projects in the “long term.”<sup>30</sup>

22. Allegheny also states that the Commission erred in relying on *Del. Riverkeeper Network v. FERC* for the same distinction between contemplated and proposed actions in the context of segmentation, as that decision focused more on connected actions and less on cumulative actions. Finally, Allegheny argues that the projects under the Modernization Program are more than just contemplated, even though they do not yet have individual docketed applications with the Commission.

23. We disagree. Allegheny’s attempts to distinguish these decisions from this case fail. Both cases involved segmentation claims and application of the same CEQ regulations, which provide that “cumulative actions” are those which “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”<sup>31</sup> In the context of those regulations, “proposals” exist “when the agency...is preparing to make a decision, and the effects thereof ‘can be meaningfully evaluated.’”<sup>32</sup> As previously stated, Columbia has not yet proposed, and may never propose, some projects identified in its Modernization Program project aside from the current proposal. Contrary to Allegheny’s argument, Columbia’s cost estimates for projects that may change or may never be proposed do not establish that the projects meet the CEQ definition of “cumulative actions.” Thus, the Commission cannot prepare to make a decision on any Modernization Program project until it receives applications for specific projects.

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<sup>28</sup> *Fritiofson v. Alexander*, 772 F.2d 1225 (5th Cir. 1985), *overruled on other grounds*, *Sabine River Auth. v. U.S. Dep’t. of Interior*, 951 F.2d 669 (5th Cir. 1992).

<sup>29</sup> Rehearing request at 13.

<sup>30</sup> *Id.* At 14.

<sup>31</sup> 40 C.F.R. § 1508.25(a)(2) (2014).

<sup>32</sup> *Walsh v. U.S. Army Corps of Engineers*, 757 F. Supp. 781, 786 (W.D. TX 1990), (citing Council on Environmental Quality Terminology and Index, 40 C.F.R. § 1508.23 (2014)).

24. Allegheny also fails to demonstrate that the projects contemplated under the Modernization Program, if proposed, would have cumulatively significant impacts. As stated above and in the August 22 Order, the various projects contemplated under the Modernization Program are “generally physically independent” and would not interconnect or exist on the same mainlines. Construction of the potential Modernization Program projects, if it occurs at all, may take place over a period of 10-15 years over a span of six states and would have generally minimal environmental footprints. The EA found construction of the Line 1655 North Project would not “overlap in time or location” with other proposed projects identified by Allegheny in its protest, and no cumulative impacts would occur.<sup>33</sup> As the Commission explained in the August 22 Order, analyzing these projects in a single environmental document is not required, and no benefit would be derived from doing so.<sup>34</sup>

### iii. Similar Actions

25. Allegheny argues that the Line 1655 North Project and the other Modernization Program projects are similar, as projects contemplated for the first five years have been identified, including the time period when they will take place and the anticipated cost of each project. Due to this common timing, and the fact that the projects are not speculative, Allegheny maintains that the projects are similar enough to warrant group consideration under NEPA.<sup>35</sup>

26. CEQ regulations define “similar actions” as those which “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”<sup>36</sup>

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<sup>33</sup> EA at 5. Columbia received authorization for two other projects in 2014 that were identified through the Modernization Program. Columbia’s Smithfield Expansion Project is a pipeline replacement and expansion project in Greene and Washington Counties, Pennsylvania, and was approved by the Commission on February 7, 2014. *Columbia*, 146 FERC ¶ 61,075. Columbia’s East Side Expansion Project is a series of pipeline additions and appurtenant facility upgrades in Maryland, New York, New Jersey, and Pennsylvania and was authorized by the Commission on December 18, 2014. *Columbia*, 149 FERC ¶ 61,255. The projects are located in non-contiguous counties and different watersheds than the Line 1655 North Project.

<sup>34</sup> August 22 Order, 148 FERC ¶ 61,138 at P 29.

<sup>35</sup> Rehearing request at 15.

<sup>36</sup> 40 C.F.R. § 1508.25(a)(3) (2014).

27. Allegheny's argument that the projects identified by Columbia in Appendix E the Settlement are "similar actions" because they share common timing is unavailing. Although the Settlement identifies projects that Columbia intends to complete during the first five years of its Modernization Program, it goes on to state that "Columbia...shall have the discretion to shift the timing or sequence of the projects identified and approved...as [e]ligible facilities for the 2013-2017 period..."<sup>37</sup> Thus, until Columbia finalizes and submits proposals to the Commission, the underlying projects cannot be considered "reasonably foreseeable or proposed" similar actions, which must be analyzed in the same environmental document with the Line 1655 North Project.

28. Allegheny fails to address the second portion of CEQ's definition of similar actions – common geography. As stated above, the Modernization Program spans six states, and individual projects will occur on various, non-contiguous portions of Columbia's system. The length of time over which these projects may be implemented and the great distances between projects render an EIS covering all Modernization Program projects, including Appendix E eligible projects, both unnecessary and unhelpful.<sup>38</sup>

#### **b. Cumulative Impacts**

29. Allegheny contends that the Commission violated its obligations under NEPA by failing to provide any "meaningful analysis" of the cumulative impacts of the Line 1655 North Project, in conjunction with other Modernization Program projects and the shale gas drilling industry as a whole, particularly the development of the Marcellus and Utica shale formations. Allegheny asserts that sufficient information exists for the Commission to assess the potential environmental impacts of Modernization Program projects, as well as natural gas drilling in regional shale formations.

30. CEQ regulations require agencies to consider three kinds of impacts: direct, indirect and cumulative.<sup>39</sup> A "cumulative impact" is defined as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency

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<sup>37</sup> Columbia's September 4, 2012 Offer of Settlement and Petition for Approval of Settlement at Article VII, 7.2.

<sup>38</sup> 40 C.F.R. § 1508.25(a)(3) (2014); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 1000-1001 (9th Cir. 2004) (similarly emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the *best way* to do so.).

<sup>39</sup> 40 C.F.R. § 1508.25 (2014).

(federal or non-federal) or person undertakes such other actions.”<sup>40</sup> A cumulative impacts analysis may require an examination of actions unrelated to the proposed project if they occur in the project area, or the region of influence, of the project being analyzed.<sup>41</sup> Whether an impact is reasonably foreseeable depends on whether it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.<sup>42</sup> Agencies are not required “to engage in speculative analysis,”<sup>43</sup> and are 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.”<sup>44</sup>

31. Allegheny’s claims with respect to cumulative impacts are largely repetitive of those raised in its protest and comments on the EA and were fully addressed in the August 22 Order. There, the Commission found that consideration of the regional cumulative impacts of Marcellus Shale development and all potential Modernization Program activities would require the Commission to engage in speculative analysis.<sup>45</sup> The Commission explained that the full range of Marcellus Shale development is both widespread and uncertain in nature and timing, making it highly difficult and speculative to identify and quantify cumulative impacts of possible future drilling related to pipeline projects. Moreover, an analysis of all potential Modernization Program activities, which

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<sup>40</sup> 40 C.F.R. § 1508.7 (2014).

<sup>41</sup> CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, 17 (January 1997), available at [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf).

<sup>42</sup> *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

<sup>43</sup> *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011); *Wyoming v. U.S. Dep’t of Agric.*, 661 F.3d 1209, 1253 (10th Cir. 2011) (citing *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228–31 (10th Cir. 2008)); *Sierra Club v. Lujan*, 949 F.2d 362, 368 (10th Cir. 1991); *Safeguarding The Historic Hanscom Area’s Irreplaceable Res., Inc. v. FAA*, 651 F.3d 202, 218 (1st Cir. 2011); *Envtl. Def. Fund, Inc. v. Andrus*, 619 F.2d 1368, 1375 (10th Cir. 1980)).

<sup>44</sup> *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)).

<sup>45</sup> August 22 Order, 148 FERC ¶ 61,138 at P 34.

are numerous, uncertain, and likely to be distant in time and place from the Line 1655 North Project, is too speculative to aid the Commission.<sup>46</sup>

32. The Commission also noted that CEQ guidance states that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action. Given the limited scope of the Line 1655 North Project and the minimal environmental footprint, the Commission found that the broader cumulative effects analysis sought by Allegheny was not required under NEPA.<sup>47</sup> Indeed, even the broader inquiry sought by Allegheny only “extends to the effects that can be anticipated from ‘reasonably foreseeable future actions.’”<sup>48</sup> Because the other Modernization Program projects have not yet been proposed, their effects are not reasonably foreseeable.<sup>49</sup> Moreover, the Commission found that the Line 1655 North Project was not a broad program or plan for regional gas exploitation that would require a programmatic EIS.<sup>50</sup>

33. Much of Allegheny’s rehearing request consists of claims that the Commission’s reliance in its August 22 order on various court decisions was misplaced. For example, Allegheny asserts that the Commission erred in its reliance on *Sierra Club v. Marsh* for its definition of reasonable foreseeability.<sup>51</sup> *Sierra Club* states that only reasonably foreseeable impacts must be discussed, and defines these impacts as those that a “person of ordinary prudence would take into account when reaching a decision.”<sup>52</sup> Allegheny states that because the court in *Sierra Club* defined “reasonably foreseeable” in the context of indirect effects rather than cumulative impacts, the *Sierra Club* definition cannot be relied on in the context of cumulative impacts. However, Allegheny does not suggest an alternative definition.

34. The Commission cites *Sierra Club* for the generally acceptable definition of reasonable foreseeability, which is applicable to the analysis of both indirect effects and

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* P 36.

<sup>48</sup> *Fritiofson*, 772 F.2d at 1242-1243.

<sup>49</sup> August 22 Order, 148 FERC ¶ 61,138 at P 28.

<sup>50</sup> *Id.* P 37.

<sup>51</sup> Rehearing request at 17 (citing *Sierra Club v. Marsh*, 976 F.2d 763, 767-68 (1st. Cir. 1992) (*Sierra Club*)).

<sup>52</sup> *Sierra Club*, 976 F.2d 763, 767.

cumulative impacts.<sup>53</sup> The Commission's citation to *Sierra Club* does not, as Allegheny claims, "transpose case law interpreting indirect effects...onto issues regarding cumulative impacts."

35. Similarly, Allegheny alleges that the Commission, in its August 22 Order, mischaracterized the decision in *Northern Plains*, and used it to "shirk its responsibilities under NEPA by labeling any attempt to analyze the environmental impacts of the Modernization Program...as 'crystal ball inquiry.'"<sup>54</sup> We disagree. The August 22 Order appropriately cited *Northern Plains* and several other decisions for the well-established principle that agencies are not required to engage in "speculative analysis."<sup>55</sup> The court in *Northern Plains* disagreed with the agency's claim that insufficient information existed to permit meaningful consideration of cumulative impacts. However, *Northern Plains* involved a situation where significantly more detailed, concrete information was available than exists here. In *Northern Plains*, the specific details of the proposed railroad were known, as was the likely scope of future gas development in the project area. Thus, enough information was available for the agency to give "meaningful consideration" to potential cumulative impacts.<sup>56</sup> In contrast, because Columbia has not yet finalized and proposed its Modernization Program projects to the Commission and made specific details of those projects available for Commission staff to evaluate, the potential impacts of these projects cannot be reasonably foreseen.

36. Allegheny challenges the Commission's reliance on *Central New York Oil and Gas Co., LLC (CYNOG)*<sup>57</sup> as justification for the Commission's assertion that a site-specific environmental analysis of a project need not consider the potential impacts associated with regional natural gas development. Allegheny asserts that the decision in

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<sup>53</sup> August 22 Order, 148 FERC ¶ 61,138 at P 33 (citing *Sierra Club v. Marsh*, 976 F.2d at 767 (1st Cir. 1992)). See also *Gulf Restoration Network v. U.S. Dep't. of Transp.*, 452 F.3d 362, 368 (5th Cir. 2006) (citing *Sierra Club* definition of "reasonably foreseeable" in context of cumulative impacts).

<sup>54</sup> Rehearing request at 18 (citing *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067 (9th Cir. 2011)).

<sup>55</sup> August 22 Order, 148 FERC ¶ 61,138 at P 33, fn.58.

<sup>56</sup> *N. Plains*, 668 F.3d at 1078.

<sup>57</sup> *Central New York Oil & Gas Co., LLC (CYNOG)*, 137 FERC ¶ 61, 121 (2011), order on reh'g, 138 FERC ¶ 61,104 (2012), petition for review dismissed, sub nom. *Coal for Responsible Growth, et al. v. FERC*, 485 Fed. Appx 472 WL 1596341 (2d Cir. Apr. 17, 2012) (unpublished opinion).

*CYNOG* was based on a flawed interpretation of NEPA regulations regarding the causal relationship between the development of the Marcellus Shale and its potential environmental impacts and the project being proposed. We find Allegheny's argument unpersuasive. The Commission appropriately cited *CYNOG* in the August 22 Order for the factual finding that “the exact location, scale, and timing of future Marcellus Shale upstream facilities that could potentially contribute to cumulative impacts in the project area is unknown at this time.”<sup>58</sup> The causal relationship test is not at issue here.

37. Allegheny alleges that the Commission has an official policy of increasing “the nation’s reliance on natural gas” and that the Commission “actively” facilitates natural gas infrastructure projects.<sup>59</sup> As a result of this policy, Allegheny asserts, the Commission, needs to “carefully analyze and disclose to the public the cumulative impacts of natural gas drilling.”<sup>60</sup>

38. The Commission has no such plan or policy to promote the development of the Marcellus Shale or any other regional shale formation. Under the NGA, the Commission has jurisdiction over the transportation of natural gas in interstate commerce, not the production of natural gas.<sup>61</sup> Interstate natural gas infrastructure is proposed and developed by private industry, pursuant to applications filed under NGA section 7(c), by natural gas companies with the Commission. The Commission’s role is to authorize the proposed project if it “is or will be required by the present or future public convenience and necessity.”<sup>62</sup> In that role, the Commission approved Columbia’s proposal after careful consideration of all relevant facts, including environmental impacts. As explained in the August 22 Order, the Line 1655 North Project is a minor, routine replacement project focused on pipeline safety, with a minimal environmental footprint. It is not a broad program or plan for regional gas exploitation for which an EIS may be required under the CEQ regulations.

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<sup>58</sup> *CYNOG*, 138 FERC ¶ 61,104, at P 7 (2012).

<sup>59</sup> Rehearing request at 21-22.

<sup>60</sup> *Id.* at 22.

<sup>61</sup> 15 U.S.C. § 717 (2012).

<sup>62</sup> 15 U.S.C. § 717f(e) (2012).

c. **Failure to Consider Alternatives**

39. Allegheny also argues that the Commission failed to consider alternatives to the Line 1655 North Project, as required by CEQ and Commission regulations,<sup>63</sup> and asserts that the Commission should have considered, among other alternatives, a solution which enabled Columbia to replace the pipeline without increasing capacity.

40. NEPA requires the Commission to “identify the reasonable alternatives to the contemplated action” and “look hard” at the impacts of the final action.<sup>64</sup> NEPA does not define “reasonable alternatives;” however, CEQ has indicated that “a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”<sup>65</sup> For such a small project, the range of reasonable alternatives is quite limited. Further, agencies have discretion to reject alternatives that are “impractical” or otherwise unlikely to satisfy the objectives for a project.<sup>66</sup>

41. The primary purpose of the Line 1655 North Project is to address safety and reliability concerns by replacing older bare steel pipe with new, coated pipe. Secondly, Columbia seeks to provide a customer with a small amount of additional transportation capacity. No alternatives were suggested by any party. The EA appropriately considered the “no action” alternative and concluded that adopting this alternative would only cause Columbia to apply to replace this portion of its pipeline at a later date and would prevent Columbia from achieving its stated goal of improving the safety and reliability of its pipeline. The “no action” alternative would also prevent Columbia from providing UGI additional transportation service.<sup>67</sup> As the “no action” alternative would not have accomplished either of the objectives for the Line 1655 North

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<sup>63</sup> See 40 C.F.R. § 1501.2(c) (2014); 18 C.F.R. § 380.2(d)(3) (2014).

<sup>64</sup> *Minisink Residents for Env't'l Pres. and Safety v. FERC*, 762 F.3d 97, 102 (D.C. Cir. 2014) (quoting *Corridor H Alts., Inc. v. Slater*, 166 F.3d 368, 374 (D.C. Cir. 1999)).

<sup>65</sup> *CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 F.R. 18026, 18027 (1981).

<sup>66</sup> *W. Watersheds Project v. Bureau of Land Mgmt.*, 721 F.3d 1264, 1275-1276 (10th Cir. 2013).

<sup>67</sup> EA at 18.

Project, it is not a reasonable alternative.<sup>68</sup> In addition, the EA determined that the impacts of the project as proposed would not be significant.<sup>69</sup>

42. Allegheny belatedly proposes an alternative which would not increase the capacity of Line 1655. Even assuming that Allegheny had proposed this alternative at the appropriate stage of the proceeding, it would not achieve the project's stated objective of providing new firm transportation service to UGI using the additional capacity. Moreover, Allegheny fails to show how this alternative would result in any significantly reduced environmental impacts to the project area. Given the goals of the Line 1655 North Project, and its small environmental footprint, staff appropriately declined to recommend the no-action alternative or to consider an alternative which replaced the pipeline segment but did not increase capacity.

2. **Blanket Certificate Issues**

a. **FERC's Denial of Allegheny's Protest and Failure to Make a Case-Specific Determination.**

43. Allegheny asserts that the Commission's approval of the Line 1655 North Project under Columbia's Part 157 blanket certificate is inconsistent with Commission regulations.<sup>70</sup> We disagree. Consistent with its prior notice regulations,<sup>71</sup> in response to Allegheny's protest, the Commission treated Columbia's request as a case-specific application and conducted an environmental analysis. Ultimately, the Commission appropriately determined that Allegheny's protest should be dismissed and that the project should be authorized under Columbia's blanket certificate. In doing so, the August 22 Order cited the Commission's well-established policy against granting case-

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<sup>68</sup> See *Wyoming v. U.S. Dep't. of Agric.*, 661 F.3d 1209, 1244 (10th Cir. 2011).

<sup>69</sup> EA at 18-19.

<sup>70</sup> Rehearing request at 4-5.

<sup>71</sup> 18 C.F.R. § 157.205(f) (2014).

specific authorization when a project may be approved under a blanket certificate.<sup>72</sup> This policy has been applied for over twenty-five years.<sup>73</sup>

44. Contrary to Allegheny's claim, the Commission's regulations do not require that a project filed under the prior notice regulations but protested be issued a case-specific authorization; rather, the regulations only require that such a proposal be considered as a case-specific application instead of being deemed authorized by the blanket certificate, as would occur in the absence of protests. In this case, consistent with the regulations, Columbia's proposal was not deemed authorized, but instead was considered as an application for case-specific authorization. Upon consideration of the record, including the environmental assessment prepared for the project, the Commission determined Allegheny's protest to be invalid, i.e., that Columbia's proposal did indeed qualify for construction under Columbia's blanket certificate, which carries a presumption that the project is consistent with the public convenience and necessity. The Commission will uphold its authorization of Columbia's Line 1655 North Project under its Part 157 blanket certificate.<sup>74</sup>

**b. Cost Limitations and Environmental Constraints**

45. Allegheny contends that the Commission impermissibly segmented the Line 1655 North Project from other Modernization Program projects in order to satisfy the cost limitations applicable to blanket certificate authorizations. Projects must cost less than \$31.9 million in order to be approved under a blanket certificate in 2014.<sup>75</sup> While the Line 1655 North Project has an estimated cost of only \$11.8 million, Allegheny argues that the Commission should have considered the cost of the entire Modernization

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<sup>72</sup> August 22 Order, 148 FERC ¶ 61,138 at PP 38-39, (citing *Sea Robin Pipeline Co., LLC*, 147 FERC ¶ 61,197, at P 23 (2014)); *Kinder Morgan Gas Transmission LLC*, 133 FERC ¶ 61,044, at P 41 (2010).

<sup>73</sup> See, e.g., *Panhandle Eastern Pipe Line Co.*, 46 FERC ¶ 61,076, *reh'g denied*, 48 FERC ¶ 61,233 (1989) (rejecting argument that prior notice request must be converted to section 7(c) application and authorized pursuant to section 7(c)).

<sup>74</sup> We reject Allegheny's apparent argument that the Commission has an obligation to consider the environmental impacts of other Modernization Program projects and natural gas drilling in conjunction with its public convenience and necessity finding under the NGA which is distinct from any obligation imposed by NEPA. (See Rehearing request at 7). In any event, our discussion above of the unforeseeable nature of such impacts applies in either context.

<sup>75</sup> 18 C.F.R. § 157.208(b) (2014).

Program, estimated at \$300 million per year from 2013-2017. As the Commission has explained above and in its August 22 Order, the Line 1655 North Project is not connected to, cumulative with or similar to the other Modernization Program projects; therefore, it cannot have been impermissibly segmented from the projects, either for purposes of environmental analysis or cost limitations.

46. Allegheny similarly maintains that the Line 1655 North Project exceeds the limitations on environmental impacts for projects seeking approval under blanket certificates.<sup>76</sup> Allegheny contends that the Line 1655 North Project is sufficiently connected to other Modernization Program projects and regional shale gas drilling to require that their impacts be considered together. When considered together, Allegheny claims, the actions exceed the limitations on environmental impacts for blanket certificate authorizations.

47. As discussed above and in the August 22 Order, the environmental impacts of the Line 1655 North Project are minor and limited to the area immediately surrounding the project.<sup>77</sup> Allegheny has not demonstrated that the Line 1655 North Project is “connected,” as defined in the CEQ regulations, to other potential Modernization Program projects or to regional shale gas drilling. Moreover, the immense size of the shale formations, coupled with the speculative nature of shale gas development, render the impacts of shale gas drilling not reasonably foreseeable. Thus, the Commission was not required to consider the impacts of other potential Modernization Program projects or regional shale gas drilling in its evaluation of the environmental impacts for blanket certificate authorization.

**c. Eligibility of the Line 1655 North Project**

48. Allegheny contends that the Line 1655 North Project is not eligible for replacement under Columbia’s blanket certificate, and asserts that lateral line replacements such as the proposed project are eligible under a blanket certificate only if the replacement results in an “incidental increase” in capacity.<sup>78</sup> Allegheny claims that Columbia’s proposed capacity increase from 8- to 12-inches in diameter is more than an “incidental increase.”

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<sup>76</sup> Projects authorized under a blanket certificate “shall not have a significant adverse impact on a sensitive environmental area.” 18 C.F.R. § 157.206(b)(4) (2014).

<sup>77</sup> EA at 5, 18.

<sup>78</sup> Rehearing request at 4.

49. Allegheny misstates the Commission's regulations. As pertinent here, the regulations provide that, for purposes of NGA section 7(c), existing facilities that have deteriorated or become obsolete may be replaced without Commission approval if, among other things, the replacement facilities will have a substantially equivalent designed delivery capacity.<sup>79</sup> The Commission's regulations provide, however, that for purposes of construction under a pipeline's blanket certificate, "eligible facilities" include lateral pipeline replacements, such as the Line 1655 North Project, that do not qualify under § 2.55(b) of the regulations, because they will result in an incidental increase in the capacity of main line facilities.<sup>80</sup> The regulations further provide that replacements for the primary purpose of creating additional mainline capacity are not eligible facilities.<sup>81</sup>

50. Here, the Line 1655 North Project would not qualify under § 2.55(b) as it will expand the delivery capacity of the line. However, the primary purpose of the project is not to create additional mainline capacity. As the Commission stated in the August 22 Order, the Line 1655 North Project is focused on pipeline safety.<sup>82</sup> The capacity increase is a secondary purpose. In addition, the expansion is designed for a lateral line, not mainline facilities.<sup>83</sup> Thus, the Line 1655 North Project meets the definition of an eligible facility under the Commission's blanket certificate regulations.

#### **B. Motion for Stay**

51. In addition to the above issues, Allegheny requests that the Commission stay its August 22 Order, as the "interests of justice support" it.<sup>84</sup> The Commission considers several factors when evaluating applications for stay, including: (1) if there will be irreparable injury if a stay is not granted; (2) if any interested party will be substantially

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<sup>79</sup> 18 C.F.R. § 2.55(b) (2014).

<sup>80</sup> 18 C.F.R. § 157.202(b)(2)(i) (2014).

<sup>81</sup> *Id.*

<sup>82</sup> August 22 Order at P 37.

<sup>83</sup> We note, however, that mainline facilities that are not eligible facilities under § 157.202(b)(2)(i) may also qualify for construction under a pipeline's blanket certificate pursuant to 18 C.F.R. § 157.210 (2014).

<sup>84</sup> Rehearing request at 1, 23-25.

harmed by the stay; and (3) if the stay is in the public interest.<sup>85</sup> For the reasons discussed below, the Commission will deny Allegheny's request.

52. The principle element in examining a request for stay is irreparable harm. If a party requesting a stay is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not consider the other factors.<sup>86</sup> Allegheny asserts that the "construction and operation" of the Line 1655 North Project will cause "irreparable environmental impacts," as well as induce production in the Marcellus and Utica shale plays.<sup>87</sup> As explained above, in the EA and in the August 22 Order, the Commission thoroughly considered the potential environmental effects of the Line 1655 North Project, and concluded that, if constructed and operated in accordance with Columbia's application and in compliance with the environmental conditions and mitigations included in the EA, the project would not constitute a major federal action significantly affecting the quality of the human environment. In addition, both this order and the August 22 Order found that the environmental impacts from increased shale gas production are not reasonably foreseeable, and that any increased natural gas production would be incidental to the construction and operation of the Line 1655 North Project. Accordingly, the Commission finds that Allegheny has not demonstrated that it will suffer irreparable harm, and Allegheny's request for stay is denied.

The Commission orders:

- (A) Allegheny's September 22, 2014 request for rehearing is denied.
- (B) Allegheny's September 22, 2014 motion for stay is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>85</sup> *Nantahala Power and Light Co.*, 21 FERC ¶ 61,274, at 61,743 (1982).

<sup>86</sup> *Devon Power, LLC*, 119 FERC ¶ 61,150, at P 21 (2014).

<sup>87</sup> Rehearing request at 24-25.