

153 FERC ¶ 61,064
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. CP14-17-001

ORDER DENYING REHEARING AND STAY

(Issued October 14, 2015)

1. On December 18, 2014, the Commission issued an order authorizing Columbia Gas Transmission, LLC (Columbia) under section 7 of the Natural Gas Act (NGA) to construct and operate its East Side Expansion Project. The December 18 Order also granted Columbia section 7(b) authorization to abandon facilities that will be replaced as part of the project.¹ Timely requests for rehearing were filed by the Clean Air Council and the Allegheny Defense Project (Allegheny).² A request for stay of the December 18 Order was also filed by the Clean Air Council. This order denies the requests for rehearing and stay, for the reasons discussed below.

I. Background

2. Columbia proposed to construct and operate the East Side Expansion Project to increase firm pipeline transportation service on the Columbia system by 312,000 dekatherms (Dth) per day in order to serve mid-Atlantic and northeast markets. Columbia's proposed system expansion includes: (1) constructing approximately 9.5 miles of 26-inch-diameter pipeline that will loop existing Line 1278 between the Eagle and Downingtown Compressor Stations in Chester County, Pennsylvania; (2) constructing approximately 9.6 miles of 20-inch-diameter pipeline that will loop existing Line 10345 in Gloucester County, New Jersey; (3) abandoning existing

¹ *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014) (December 18 Order).

² The Downingtown Area School District also filed a timely request for rehearing which was withdrawn on January 28, 2015. On January 7, 2015, Kenneth Collins filed a request for late intervention. We note that Mr. Collins previously filed a timely request to intervene on November 19, 2013, and is therefore a party to this proceeding.

compressors and installing new compressors at the Milford and Easton Compressor Stations located in Pike and Northampton Counties, Pennsylvania, respectively; and (4) installing various measurement, station piping, valves, and appurtenant facilities at existing sites located in Orange County, New York, Bucks and Chester Counties, Pennsylvania, and Harford County, Maryland. The pipeline loops will be collocated with the existing pipeline for approximately 84 percent of the project, and the compressor modifications will be confined to property owned by Columbia. The capacity of the project is fully subscribed under long-term contracts with five shippers.

3. In the December 18 Order, the Commission found that the benefits the East Side Expansion 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. The Commission concluded after preparing an Environmental Assessment (EA) of the East Side Expansion Project to satisfy the requirements of the National Environmental Policy Act (NEPA) that with the adopted mitigation measures, the project would not constitute a major federal action significantly affecting the human environment.³ The majority of the issues raised on rehearing relate to the Commission's environmental analysis in the EA and the December 18 Order.

II. Discussion

A. Procedural Issues

1. Answers to Requests for Rehearing

4. On February 5, 2015, Columbia filed a request for leave to answer and answer to the requests for rehearing of the Clean Air Council and Allegheny. On February 12, 2015, Allegheny filed leave to reply to Columbia's answer. Answers to requests for rehearing are prohibited by Rule 713(d)(1) of the Commission's Rules of Practice and Procedure⁴ and Columbia has not established any need for an exception to this rule. Accordingly, we reject Columbia's answer and dismiss Allegheny's subsequent response as moot.

2. Request for Stay

5. On April 7, 2015, the Clean Air Council filed a request for stay of any construction activity and other land disturbances associated with the project until the

³ The environmental conditions are listed in the appendix to the December 18 Order.

⁴ 18 C.F.R. § 385.713(d)(1) (2015).

Commission completes its review of the December 18 Order on rehearing. On April 15, 2015, Columbia filed an answer in opposition to the stay.

6. The Clean Air Council asserts that unless a stay is granted, irreparable harm to the environment will occur. The Clean Air Council also contends that the balance of equities favors granting a stay because Columbia would not be significantly harmed by the delay. In addition, the Clean Air Council asserts that Columbia has not been compliant with pre-construction procedures. In support, it refers to Columbia's proposal filed after issuance of the EA to cross the Beaver Creek in Pennsylvania using a direct or trenchless construction rather than by Horizontal Direction Drilling (HDD), as proposed in the EA. In addition, it claims that Columbia has made misrepresentations to the Commission on the status of certain permits that Columbia must obtain before it can proceed with construction, citing Columbia's March 4, 2015 Request to Proceed in which it claims Columbia misrepresented that it had obtained air permits from the Pennsylvania Department of Environmental Protection (PADEP). Finally, the Clean Air Council maintains that it is likely to succeed on the merits in this proceeding.

Commission Determination

7. The Commission's standard for granting a stay is whether justice so requires.⁵ The most important element of the stay standard is a showing that the movant will be irreparably injured without a stay. Our general policy is to refrain from granting stay to ensure definiteness and finality in our proceedings.⁶ For the reasons discussed below, we deny the stay request.

8. In alleging irreparable harm, the Clean Air Council describes aspects of the project, stating that the project will affect 26 separate waterbodies, cross or impact some 35 wetlands, result in disturbance of at least 151 acres of vegetation and permanent loss of riparian vegetation in forested areas, as well as damage the habitat of roughly 65 species identified in Columbia's application. However, the Clean Air Council makes no showing that these circumstances will result in irreparable harm. In its environmental review, the Commission fully considered and addressed the comments of the Clean Air Council and others individuals and entities. The EA in this proceeding took a hard look

⁵ Administrative Procedure Act, 5 U.S.C. § 705 (2012); *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,254, at P 8 (2008). Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest. *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 6 (2005).

⁶ See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000).

at the environmental impacts of the proposal, including the impacts of the circumstances noted in Clean Air Council's stay request, and concluded that the proposed action would not have a significant impact on the human environment. Under these circumstances, we deny the Clean Air Council's request for stay. In any event, this order addresses the requests for rehearing and affirms our finding in the December 18 Order that, with the imposition of the adopted mitigation measures, the project would not constitute a major federal action significantly affecting the quality of the human environment.

9. The December 18 Order discussed Columbia's request to change the method of crossing Beaver Creek from the HDD method originally proposed, and required Columbia to file site-specific plans for the crossing of Beaver Creek to ensure that adequate protective measures are developed and implemented to minimize adverse impacts on waterbodies.⁷ Although Columbia had indicated that it might not be able to use a trenchless crossing, ultimately, it determined that it would be able to cross Beaver Creek through trenchless methods and avoid impacts to Beaver Creek. In subsequent filings, Columbia provided plans to cross Beaver Creek through use of a conventional bore and HDD. On May 11, 2015, Columbia filed a request to cross Beaver Creek between mileposts 7.8 and 8.0 on Line 1278 in Pennsylvania (Crossing No. 1) using a conventional bore. On June 9, 2015, Columbia filed a request to cross Beaver Creek between mileposts 8.0 and 8.15 on Line 1278 Loop in Pennsylvania (Crossing No. 2) using a HDD. On May 13 and June 12, 2015, notices to proceed were issued authorizing Columbia to commence construction at Beaver Creek Crossing No. 1 and Crossing No. 2, respectively. These notices found that Columbia had met the pre-construction conditions of the December 18 Order for the authorized construction activities.

10. As to the Clean Air Council's concerns with preconstruction procedures, we note that while Columbia represented in its March 4, 2015 Request to Proceed that it had obtained air quality permits from the PADEP, it corrected that representation in its March 9, 2015 filing, and clarified that its request to proceed with construction at the Easton Compressor Station will be limited to construction activities that do not require authorization of the air quality permit. On March 13, 2015, Columbia was authorized to begin limited work at the Easton Compressor Station in, Pennsylvania, "as described in Columbia's March 9, 2015 filing." Thus, construction was not authorized nor did it commence in areas without the requisite federal permits.

⁷ December 18 Order, 149 FERC ¶ 61,255 at P 80, Environmental Condition 14.

B. Environmental Analysis

1. Segmentation

11. The Council on Environmental Quality (CEQ) regulations require the Commission to include “connected actions,” “cumulative actions,” and “similar actions” in its NEPA analyses.⁸ “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”⁹ “Connected actions” include actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.¹⁰

12. In evaluating whether connected actions are improperly segmented, courts apply a “substantial independent utility” test. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”¹¹ For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. Similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”¹²

⁸ 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

⁹ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. *See San Juan Citizens’ Alliance v. Salazar*, CIV.A.00CV00379REBCBS, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) for the proposition that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions’”).

¹⁰ 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

¹¹ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); *see also O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability”).

¹² *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

13. In *Del. Riverkeeper Network v. FERC*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.¹³ The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.¹⁴ Courts have subsequently indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.¹⁵ Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.¹⁶

14. Here, the Clean Air Council asserts that the Commission improperly segmented its environmental review of the East Side Expansion Project from other projects. In support, the Clean Air Council cites Resource Report 10 which sets forth three options for increasing natural gas capacity along Line 1278 by looping different segments of the line and asserts that if the proposed preferred loop is constructed, “Columbia must inevitably carry out further looping of this pipeline system as described in the other two ‘looping options’ in Resource Report 10.”¹⁷ Clean Air Council asserts that once Columbia completes its proposed loop on Line 1278 and begins shipping gas through the pipeline, gas velocities in the remaining unlooped segments along the line will substantially exceed the pipeline’s 50 feet per second (ft/sec) maximum velocity, thereby creating a safety issue. Under these circumstances, the Clean Air Council claims that the Commission must initiate a comprehensive corridor-wide review to examine the impact of upgrading the entire Columbia 1278 Line.

¹³ *Del. Riverkeeper Network*, 753 F.3d at 1308.

¹⁴ *Id.*

¹⁵ *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

¹⁶ *See Myersville Citizens for a Rural Community Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir, 2015).

¹⁷ Clean Air Council Request for Rehearing at 5-6.

Commission Determination

15. The December 18 Order fully addressed and rejected these same segmentation claims put forth by another party to this proceeding.¹⁸ We found that we are not impermissibly segmenting our review of the East Side Expansion Project from other projects on Line 1278 because there are no other projects on this line for us to consider in our environmental review. We also rejected the argument that once the project is in operation, gas velocities on the unlooped segments along the line will exceed 50 ft/sec, creating safety issues that require looping other portions of Line 1278.¹⁹ The Clean Air Council raises no new arguments in its request for rehearing. Thus, we summarily affirm our ruling in the December 18 Order.

2. Indirect Effects of Natural Gas Production

16. CEQ's regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.²⁰ Indirect impacts are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."²¹ Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

17. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"²² in order "to make an agency responsible for a particular effect under NEPA."²³ As the Supreme Court explained, "a

¹⁸ December 18 Order, 149 FERC ¶ 61,255 at PP 37-47.

¹⁹ *Id.* PP 44, 103-106.

²⁰ *See* 40 C.F.R. § 1508.25(c) (2015).

²¹ *See* 40 C.F.R. § 1508.8(b) (2015).

²² *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

²³ *Id.*

‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”²⁴ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if the causal chain is too attenuated.²⁵ Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”²⁶

18. An effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”²⁷ NEPA requires “reasonable forecasting,” but an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”²⁸

19. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations.²⁹ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there

²⁴ *Id.*

²⁵ *Metro. Edison*, 460 U.S. at 774.

²⁶ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 at 770.

²⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

²⁸ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

²⁹ *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

will be no other way to move the gas).³⁰ To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed pipeline as best suited for moving their gas to market.

20. Even accepting, *arguendo*, that a specific pipeline project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.³¹

³⁰ See *c.f. Sylvester v. U.S. Army Corps of Engin’rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). See also *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. United States Dept. of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project’s potential to induce additional development).

³¹ *Habitat Educ. Ctr.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with specific specificity to make their consideration meaningful need not be included in the environmental analysis).

21. Allegheny and the Clean Air Council assert that the Commission's environmental analysis of the East Side Expansion Project violated NEPA by failing to consider the indirect effects of gas drilling in the Marcellus and/or Utica shale formations.³²

22. The Clean Air Council claims that the incremental capacity of the project would create an incentive for future gas development along and around the pipeline. In support, the Clean Air Council asserts that the high demand for gas drilling in the Marcellus shale region and the requirement by the Environmental Protection Agency (EPA) and likely other agencies for "green completion" at all new wells will increase incentives to construct wells in the vicinity of existing and new interstate pipelines. It also claims that significant cost savings are associated with siting well pads as close as possible to pipeline receipt points. Moreover, it contends that tools exist to facilitate the analysis of induced natural gas development and its environmental impacts. In this regard, it claims that the New York State Department of Environmental Conservation (NYSDEC) has generated information regarding future gas development that can be used to predict future development patterns³³ and that there is a significant amount of information available from Pennsylvania.³⁴

23. Allegheny argues that the proposed project and regional shale gas extraction are "two links of a single chain" as allegedly shown by multiple industry and government sources, as well as common sense.³⁵ It cites to a 2007 report by the National Petroleum Council, a federal advisory committee to the U.S. Secretary of Energy, which described natural gas transportation infrastructure as a "key link in the chain" between producers and consumers. Allegheny asserts that this language shows that the National Petroleum

³² Allegheny Request for Rehearing at 4-8; Clean Air Council Request for Rehearing at 7-9. The Clean Air Council refers only to the Marcellus shale region.

³³ Clean Air Council Request for Rehearing at 9 n.5 (citing NYSDEC, *Revised Draft Supplemental Generic Environmental Impact Statement on The Oil, Gas and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs* (Sept. 7, 2011), <http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf>).

³⁴ *Id.* at 9 n.4 (citing The Nature Conservancy, *Natural Gas Pipelines: Excerpt from Report 2 of Pennsylvania Energy Impacts Assessment* (Dec. 16, 2011), <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/pennsylvania/ng-pipelines.pdf>).

³⁵ Allegheny Request for Rehearing of at 5-6 (citing *Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989)).

Council believes that upstream extraction and midstream transportation are two links of a single chain. Allegheny also points out that the Commission's *Strategic Plan for FY 2014-2018* calls development of interstate natural gas infrastructure "a critical link in ensuring that natural gas supply can reach market areas." Allegheny also cites to Columbia's application that states that the project will facilitate the transportation of Appalachian gas to growing northeast and mid-Atlantic markets and to recent reports which suggest that shale wells sharply decline in volume after the first few years, which it claims makes new production more likely.³⁶

24. Allegheny asserts that the Commission's claim that the causal connection between gas drilling and the project is insufficient because natural gas development will continue and is indeed continuing with or without the project is similar to the argument rejected by the 8th Circuit in *Mid-States Coalition for Progress*.³⁷

25. Allegheny also contends that additional natural gas production in the Marcellus Shale and Utica formations region is not uncertain. Allegheny cites a 2012 presentation from The Nature Conservancy which it claims predicted up to 60,000 possible future shale wells in Pennsylvania and estimated the miles of associated gathering pipelines.³⁸ Allegheny also cites a report by the investment firm Morningstar which reported that some of the most prominent players in the Marcellus region "have identified between 10 and 30 years of drilling locations across the Marcellus, which should fuel several more years of production growth at relatively low cost"³⁹

Commission Determination

26. The record in this proceeding, including the reports/statements cited by Allegheny, does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the East Side Expansion Project which would necessitate further analysis. The fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market is not in dispute. However, this does not mean that the

³⁶ *Id.*

³⁷ *Id.* at 6 (citing *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003)) (*Mid States*).

³⁸ *Id.* at 7.

³⁹ *Id.* at 8 (citing Morningstar, Energy Observer, *Shale Shock: How the Marcellus Shale Transformed the Domestic Natural Gas Landscape and What it means for Supply in the Years Ahead*, at 17) (Morningstar Report).

Commission's action of approving this particular pipeline project will cause or induce the effect of additional or further shale gas production. Rather, as we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.⁴⁰ If the East Side Expansion Project were not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.⁴¹ Any such production would take place pursuant to the regulatory authority of state and local governments.

27. Moreover, future gas development in any particular region is not an essential predicate for Columbia's project. Rather, Columbia operates storage and transmission facilities in multiple states,⁴² and interconnects with other pipelines. Therefore, project shippers can source their gas from various supply regions. The parties fail to identify any production associated with the East Side Expansion Project.

28. Moreover, even if a causal relationship between our action here and additional production were presumed, the scope of the impacts from any induced production is not reasonably foreseeable. The fact that there may be some incentives for producers to locate wells close to pipeline infrastructure does not alter the fact that the location, scale, and timing of any additional wells are matters of speculation, particularly with respect to their relationship to the project. Moreover, the reports/articles cited by the parties are broad generic reports that do not show where or when additional development will occur if the project is approved.⁴³ As we have previously explained, a broad analysis, based on

⁴⁰ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

⁴¹ *Id.*

⁴² December 18 Order, 149 FERC ¶ 61,255 at P 3.

⁴³ The NYSDEC Revised Draft Supplemental Generic Environmental Impact Statement is a programmatic analysis prepared by the agency that has jurisdiction over natural gas production to assess the potential environmental impacts created by the use of high-volume hydraulic fracturing for natural gas extraction in New York. The Nature Conservancy documents contain projections about natural gas production and pipeline development in Pennsylvania and their environmental impacts over a twenty-year period. The Morningstar Report forecasts the growth of Marcellus Shale production for the next few years. The report explicitly states that "[w]ith so much inherent uncertainty, projections for Marcellus production beyond the next few years are essentially meaningless, in our opinion." Morningstar Report at 12, n. 1.

generalized assumptions rather than reasonably specific information of this type, will not yield information that would provide meaningful assistance to the Commission in its decision making, e.g., evaluating potential alternatives to the specific proposal before it.⁴⁴

29. We also find that the court's ruling in *Mid States* is distinguishable. *Mid States* involved the Surface Transportation Board's (Board) failure, in reviewing a proposal to construct 280 miles of new railroad and to upgrade 600 miles of existing railroad to reach coal mines in Wyoming's Powder River Basin, to examine the effects on air quality produced by a reasonably foreseeable increase in the supply of low-sulfur coal to power plants. Despite the Board's commitment early in the NEPA process that it would evaluate potential air quality impacts from the increased availability and use of Powder River Basin coal, the court found the Board had "completely ignored" the impacts.⁴⁵ The court held that the Board was required under NEPA to examine the potential air quality impacts of the reasonably foreseeable increase in coal consumption as the new rail capacity would move low-sulfur coal to power plants.⁴⁶ In response to the Board's argument that the effects of increased coal consumption could not be analyzed because the Board could not identify where coal-fired power plants would be built or how much coal would be burned, the court stated that when the nature of the effect was reasonably foreseeable but the extent of the effect was not, an agency cannot simply ignore the effect, but rather, must comply with CEQ regulations about incomplete or unavailable information.⁴⁷

30. But in *Mid States* the court found that the proposed rail project "will most assuredly affect the nation's long-term demand for coal . . ."⁴⁸ Thus, the impacts from the increased coal consumption made possible by providing new rail service to mines are effects that would not have occurred had the specific federal authorization not been granted.⁴⁹ Here, while Allegheny asserts that construction of the East Side Expansion

⁴⁴ *Rockies Express*, 150 FERC ¶ 61,161 at P 40.

⁴⁵ *Mid States*, 345 F.3d at 550.

⁴⁶ *Id.* at 550.

⁴⁷ *Id.* at 549-50.

⁴⁸ *Id.* at 549.

⁴⁹ For example, the Surface Transportation Board made a finding of public demand for the rail line because it would offer a shorter and less expensive method by which to transport low-sulfur coal from the mines to power plants, *id.* at 533, which the court concluded would "at the very least make coal a more attractive option to future entrants into the utilities market" *Id.* at 549.

Project would increase production, unlike the situation in *Mid-States*, there is no showing that there is a sufficient causal link between our authorization of the project and any additional production. As we have explained, natural gas development will likely continue with or without the East Side Expansion Project.

3. Cumulative Impacts Analysis

31. CEQ defines “cumulative impact” as “the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions”⁵⁰ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

32. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”⁵¹ CEQ has explained 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.”⁵² Further, a cumulative impact analysis need only 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.”⁵³ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.⁵⁴

33. As we have explained, consistent with CEQ guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by both a proposed

⁵⁰ 40 C.F.R. § 1508.7 (2015).

⁵¹ *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976) (*Kleppe*).

⁵² CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997).

⁵³ *Id.*

⁵⁴ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005).

project and other past, present, and reasonably foreseeable future actions.⁵⁵ While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.⁵⁶

34. Both the Clean Air Council and Allegheny argue that the cumulative impact analysis in the EA did not adequately consider the environmental harms associated with natural gas development activities in the Marcellus and/or Utica Shale formations.⁵⁷ Allegheny asserts that the Commission provided no rational explanation for its 0.5-mile “region of influence” for considering the cumulative impacts of ongoing and future Marcellus and Utica Shale gas extraction activities. The Clean Air Council similarly argues that the region of influence the Commission analyzed with respect to cumulative impacts is so small “as to make it difficult if not impossible to conduct a meaningful cumulative impact analysis.”⁵⁸

35. Allegheny asserts that the Commission misreads the 1997 CEQ Guidance to “limit the scope of the cumulative impact analysis to an arbitrarily narrow 0.5-mile radius ‘region of influence.’”⁵⁹ Allegheny notes that the 1997 CEQ Guidance contrasts between a project-specific analysis, for which it often suffices to analyze effects within the immediate area of the proposed action, and an analysis of the proposed action’s contribution to cumulative effects, for which “the geographic boundaries of the analysis almost always should be expanded.”⁶⁰ Allegheny cites *Natural Resources Defense Council v. Hodel* to bolster its claim that the Commission is required to consider the “inter-regional” impacts of Marcellus and Utica shale development activities.⁶¹ Allegheny also asserts that “recent research” identifies the “substantial impact” that shale

⁵⁵ See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁵⁶ *Id.* P 120.

⁵⁷ Clean Air Council Request for Rehearing at 14-16; Allegheny Request for Rehearing at 8-13. The Clean Air Council refers only to the Marcellus shale region.

⁵⁸ Clean Air Council Request for Rehearing at 15.

⁵⁹ Allegheny Request for Rehearing at 8.

⁶⁰ *Id.* at 9 (citing 1997 CEQ Guidance at 9).

⁶¹ *Natural Resources Defense Council v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988).

gas drilling will have throughout the Marcellus and Utica shale formations, thus the Commission “has an obligation under NEPA to take a hard look at these impacts on a much broader scale”⁶²

36. The Clean Air Council contends that the 0.5-mile region of influence is especially inadequate with respect to analyzing cumulative impacts on watersheds and airsheds.⁶³ It argues that pollution released or other disturbances to the environment created in one area of a watershed or airshed may have significant negative impacts on water or air quality in other locations throughout that watershed or airshed, potentially many miles away. It goes on to claim that while the EA recognized this problem with respect to air pollution and has not used the 0.5-mile radius in its cumulative impacts analysis with respect to air impacts, the EA does not appear to explain what radius has been considered with respect to air impacts and it is therefore impossible to know whether any meaningful cumulative impacts analysis has in fact been performed with respect to air impacts.

37. In addition, the Clean Air Council claims the Commission’s cumulative impact analysis takes the approach of merely “listing” the kinds of cumulative impacts that will result from the project and past present and future projects, instead of engaging in a meaningful analysis of cumulative effects. The Clean Air Council complains that while the Commission acknowledges that cumulative impacts could be significant in a variety of ways, the Commission then goes on to impermissibly rely on presumed compliance with permitting requirements or mitigation plans as a basis for a conclusion that there will be no significant impacts without providing any support for such a conclusion.⁶⁴

Commission Determination

38. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.⁶⁵ The agency should then establish the geographic scope for analysis.⁶⁶ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project’s direct

⁶² Allegheny Request for Rehearing at 13 (citing M.C. Brittingham, et al., *Ecological Risks of Shale Oil and Gas Development to Wildlife, Aquatic Resources, and their Habitats*, Environmental Science & Technology 11035–37 (Sept. 4, 2014)).

⁶³ Clean Air Council Request for Rehearing at 16-17.

⁶⁴ *Id.* at 12-14.

⁶⁵ 1997 CEQ Guidance at 11.

⁶⁶ *Id.*

and indirect impacts.⁶⁷ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁶⁸ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁶⁹

39. The cumulative effects analysis in the EA took precisely the approach the CEQ guidance advises.⁷⁰ Based on the small scale of the project and the lack of significant direct and indirect impacts on resources, the Commission staff concluded that a 0.5-mile radius for an analysis of cumulative impacts analysis was sufficient for all but air impacts. For most of the resource areas, including soils, wetlands, vegetation, wildlife, land use, visual resources, and traffic, a region of influence of 0.5 miles is appropriate because project impacts to these resources would be minor, temporary, and localized. For water resources and fisheries, the region of influence for analyzing cumulative effects is generally within a watershed, either local or regional. However, because construction through waterbodies avoided or minimized impacts through either trenchless or dry crossing methods, and Columbia had committed to implementation of timing restrictions to further reduce impacts, staff concluded that the cumulative impacts analysis at a local watershed level was appropriate. So, while the EA identified both the regional and local watersheds that had the potential to be affected by the project, the cumulative impacts analysis was restricted to a level that staff identified as meaningful. For these reasons, and as discussed in the December 18 Order,⁷¹ we disagree with the Clean Air Council's assertion that the EA's region of influence for waterbodies was inadequate.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2 (June 24, 2005), which notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action. Further, the Supreme Court held that determination of the extent and effect of cumulative impacts, “and particularly identification of the geographic area within which they occur, is a task assigned to the special competency of the agenc[y],” and is overturned only if arbitrary and capricious. See *Kleppe*, 427 U.S. 390, 414-15 (1976).

⁷⁰ We note that the 1997 CEQ Guidance at 15 states that the “applicable geographic scope needs to be defined case-by-case.”

⁷¹ December 18 Order, 149 FERC ¶ 61,255 at P 115.

40. Regarding the region of influence for air quality impacts, while the EA does not explicitly state a radius of potential air quality impacts during construction and operation of the project, the scope of staff's analysis was appropriately reflective of the specific characteristics of the East Side Expansion Project. In section 2.8-1, the EA explained that construction of the project would result in short-term emissions that would be highly localized (i.e., would not spread beyond the immediate area of active construction) and intermittent.⁷² The EA also explained that once construction activities in a given area were completed, fugitive dust and construction equipment emissions would quickly subside and the construction-related impact on air quality would terminate. Given the temporary nature of project construction, and the limited geographic scope of each construction spread, staff considered construction-related air quality impacts to be highly localized, confined to the pipeline construction right-of-way and/or the aboveground facility site. Notwithstanding this consideration, staff gave weight to public comments concerning construction emissions and the proximity of the construction activities to residences and local businesses and recommended that Columbia file a Fugitive Dust Control Plan that specifies the precautions that Columbia would take to minimize fugitive dust emissions from construction activities.⁷³ The Commission adopted staff's recommendation as Environmental Condition 22 in the December 18 Order. Staff subsequently reviewed the Fugitive Dust Control Plan and found it acceptable. Given the limited scope of construction emissions, Columbia's mitigation measures, and the state requirements applicable to Columbia for mitigating fugitive dust, combined with the temporal and geographic separation of the other projects listed in table 2.10-1, we find that the project would not result in significant cumulative construction-related air quality impacts.

41. With respect to the region of influence for cumulative operational air quality impacts, the EA acknowledged that cumulative air quality impacts would occur as a result of the modified compressor stations and meter stations.⁷⁴ The EA used the air dispersion modeling analyses for the Milford and Easton Compressor Stations as the basis for its region of influence, which evaluated the impacts of the applicable criteria pollutants at varying receptor spacings at 1 kilometer (0.62 mile), 5 kilometers (3.1 miles), and 10 kilometers (6.2 miles) from the compressor stations.⁷⁵ The air dispersion modeling analysis demonstrated that the cumulative air quality impacts added

⁷² EA at 2-85 to 2-89.

⁷³ *Id.* at 2-88.

⁷⁴ *Id.* at 2-89 to 2-94.

⁷⁵ The distances utilized were dictated by the air dispersion modeling analysis. AERMOD is specified as the EPA-preferred model for regulatory applications.

by the modified Milford and Easton Compressor Stations to the existing background air quality would not be significant and would not result in any violations of the NAAQS for any criteria pollutant. The EA also explained that Columbia would be required to comply with federal, state, and local air quality permitting requirements for both compressor stations. Therefore, the EA correctly concluded that based on the results of the air modeling analyses, and because any permanent air emissions sources associated with projects in table 2.10-1 would also need to adhere to federal, state, and local regulations for the protection of ambient air quality, significant cumulative operational impacts on air quality would not occur. We find that the EA utilized an adequate region of influence for the analysis of cumulative operational air quality impacts of the project.⁷⁶

42. Based on the region of influence for the project, the EA identified fourteen present and reasonably foreseeable future actions whose impacts when added to the impacts of the proposed actions could result in cumulative impacts.⁷⁷ The EA considered the potential cumulative impacts associated with the project and these fourteen projects pertaining to each potentially affected resource, including: soils; water resources and fisheries; wetlands; vegetation and wildlife; threatened, endangered, and other special status species; land use and visual resources; traffic; air quality and noise; and climate change. The EA concluded that when considered with the other projects planned or ongoing within the relevant regions of influence, the project would not result in significant long-term cumulative effects.

43. For these reasons, we find that the EA identified the appropriate geographic scope for considering cumulative effects, and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus and Utica shale formations. Such impacts will occur far outside the 0.5-mile region of influence of the East Side Expansion Project.⁷⁸ Further, given the large geographic scope of the Marcellus and/or Utica shale, the magnitude of the type of analysis requested by Allegheny and the Clean Air Council – of the impacts of gas drilling in the Marcellus and/or Utica shale formations – bears no relationship to the limited magnitude of Columbia’s instant proposal, which involves temporary construction impacts on 248.89 acres and permanent

⁷⁶ December 18 Order, 149 FERC ¶ 61,255 at P 115.

⁷⁷ EA at 2-112 to 2-113. While the Clean Air Council complains that the list of reasonably foreseeable projects does not contain any projects with a construction date starting later than 2014, with the exception of future gas production, it fails to identify any other project in the region that should have been considered. We also note that projects considered in the cumulative impacts analysis were not limited only to those projects with a causal connection to the proposed project.

⁷⁸ *Id.* at 2-112.

impacts to 72.04 acres of land within a mixed use area of mostly agricultural, residential, and commercial land uses. Moreover, for the reasons discussed above and in the December 18 Order,⁷⁹ even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, the impacts from such development are not reasonably foreseeable.⁸⁰

44. In our view, Allegheny's and the Clean Air Council's arguments with respect to the geographic scope of the analysis are based on their erroneous claim that the Commission must conduct a regional programmatic NEPA review of natural gas development and production in the Marcellus and/or Utica shale formations, an area that covers potentially thousands of square miles. We decline to do so. As the Commission explained in the December 18 Order⁸¹ and herein, there is no Commission program or policy to promote additional natural gas development and production in shale formations.

45. We also disagree with Allegheny's argument that the Commission's use of regions of influence and reliance on a project's or action's geographic proximity to the proposed action is inconsistent with the CEQ regulations. The cumulative impacts analysis considered the additive impact of a proposed action's direct and indirect effects with other past, present, or reasonably foreseeable actions that have impacts occurring in the same region (and within the same time span) *as the impacts of the proposed action*.⁸² We believe this is consistent with the CEQ's Guidance.

46. Allegheny's reliance on *Natural Resources Defense Council v. Hodel*⁸³ is misplaced. The court found that the Department of Interior's permitting of simultaneous oil and gas leasing activity in regions on the Outer Continental Shelf (OCS) should have been considered in the cumulative impact assessment for proposed oil and gas leasing activity on other areas on the OCS. Allegheny interprets this case to mean that the Commission must consider the reasonably foreseeable impacts of shale gas extraction at a broader scale. We disagree. The court was persuaded by an earlier Supreme Court

⁷⁹ December 18 Order, 149 FERC ¶ 61,255 at PP 118-119.

⁸⁰ The Brittingham study cited by Allegheny offers general conclusions about the potential qualitative impacts on terrestrial and aquatic ecosystems from shale development, but provides no specifics regarding those impacts, much less specifics with respect to the East Side Expansion Project.

⁸¹ December 18 Order, 149 FERC ¶ 61,255 at PP 122-123.

⁸² EA at 2-112.

⁸³ 865 F.2d 288 (D.C. Cir. 1988) (*Hodel*)

statement that under NEPA “. . . proposals for . . . related actions that will have cumulative or synergistic environmental impact upon a region *concurrently pending before an agency* must be considered together.”⁸⁴ Unlike the Department of Interior, the Commission’s proposed action was not the permitting of oil and gas leasing activity; indeed the Commission has no jurisdiction over such activities. Accordingly, production and gathering activities in the Marcellus and Utica shale areas are not related actions concurrently pending before the Commission. As discussed above, there is no way to relate any specific production and gathering activities to this project. Accordingly, we find this case unavailing.⁸⁵

47. Finally, we disagree with the Clean Air Council’s claim that the EA did not properly analyze cumulative impacts and improperly concluded that cumulative impacts would be minimized below a significant level. The cumulative effects analyses varied depending on the resource and impact type, but generally included a consideration of the severity and duration of the potential impacts of the project when added to those of other projects. For instance, the cumulative effects from project traffic and construction noise were analyzed with projects under construction at the same time. The EA found that construction of the project combined with other road improvements or residential and commercial development projects would have the potential to create a cumulative impact on traffic, but concluded that only minor increases over current traffic conditions would be expected due to mitigation requirements (including the necessity to receive local highway use permits). Thus, the EA determined that the project would not have a cumulative impact on traffic when combined with the potential impacts associated with other road improvements or residential or commercial development in the area.⁸⁶

48. The cumulative effects analysis for wetlands described the types of wetlands that would be affected by other projects (palustrine emergent, palustrine scrub-shrub, palustrine forested), indicated the duration of the effects (short term, long term, or permanent), discussed permitting restrictions for other projects that would limit adverse impacts, analyzed the success of previous mitigations measures, and discussed mitigation

⁸⁴ *Hodel*, 865 F.2d at 297 (citing *Kleppe*, 427 U.S. 390, 410 (1976)) (emphasis added).

⁸⁵ Allegheny also cites to EPA’s comments in the Algonquin Incremental Market (AIM) Project proceeding (FERC Docket No. CP14-96-000) that the 10-mile region of influence for the cumulative impact analysis for Marcellus Shale development was too narrow. The Commission considers projects on a case-by-case basis, and the AIM proceeding has no bearing in the instant case. Moreover, EPA did not comment on the region of influence in this proceeding.

⁸⁶ *Id.* at 2-115.

measures for the East Side Expansion Project. Based on the impacts of the proposed action and Columbia's implementation of mitigation measures, along with other federal and state mitigation requirements, the EA determined that the impacts of the East Side Expansion Project on wetlands, when added to the impacts of other actions identified, would not result in a significant cumulative impact on this resource.⁸⁷

49. Moreover, we find it is appropriate for the Commission to look to its required mitigation measures to determine whether an applicant's compliance with those requirements will adequately safeguard and protect resources.⁸⁸ Federal agencies may incorporate mitigation measures as part of a proposed action.⁸⁹ In developing mitigation, agencies necessarily rely on their staff's expertise to assess mitigation needs, develop mitigation plans, and oversee mitigation implementation.⁹⁰ Mitigation measures are sufficient when based on agency assessments or studies,⁹¹ or when they are likely to be

⁸⁷ *Id.* at 2-114.

⁸⁸ As we have previously found, it is also appropriate for the Commission to look to the requirements of other expert agencies to determine whether an applicant's compliance with those agencies' permitting and other requirements will adequately safeguard and protect resources; we do not abdicate our responsibilities under NEPA. *See Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 131-132 (2011), *order on reh'g*, 138 FERC ¶ 61,104 (2012), *petition for review dismissed sub nom. Coalition for Responsible Growth v. FERC*, 485 F. Appx. 472 (2012). *See also Transcon. Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091, at PP 140-141 (2012) (citing *Sierra Club v. Hassell*, 636 F.2d 1095, 1098 (5th Cir. 1981)).

⁸⁹ *See, e.g., Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1015 (9th Cir. 2006).

⁹⁰ CEQ, *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*, 76 *Fed. Reg.* 3843, 3847 (2011).

⁹¹ *See Transcon. Gas Pipe Line Corp.*, 126 FERC ¶ 61,097, at P 20 (2009) (citing *National Audubon Society v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997) (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1556-57 (2d Cir. 1992)).

adequately policed, such as when they are included as mandatory conditions imposed on licenses.⁹²

50. Here, the mitigation measures imposed to reduce any adverse environmental impacts associated with the project were discussed in the EA and were based on the detailed record, including public comments, developed regarding the project's impacts on specific resources, as well as reflecting our Staff's expertise. For example, section 2.1.2 of the EA discusses impacts to soils associated with the project, and based on this information, Columbia is required to file, prior to construction, a revised *Erosion and Sediment Control Plan*, for review and written approval by the Director of the Office of Energy Projects, that includes: (a) a statement that burial of construction debris, including large rocks and stumps, within the construction work area is an unacceptable method of disposal; (b) a statement that final grading will be completed within 20 calendar days of backfilling (10 days in residential areas), weather and soil conditions permitting; (c) a definition of vegetation success in agricultural areas that is consistent with the Commission's 2013 *Upland Erosion Control, Revegetation, and Maintenance Plan* (revegetation shall be considered successful when upon visual survey, crop growth and vigor are similar to adjacent undisturbed portions of the same field, unless the easement agreement specifies otherwise); and (d) a statement that mowing and clearing of riparian areas is prohibited between April 15-August 1 of any year. (Environmental Condition 13).

51. Moreover, the conditions imposed in the December 18 Order are mandatory, and, viewed as a whole, are sufficient to ensure Columbia's compliance with the requirements of the Commission order. For example, Columbia is required to employ environmental inspectors to monitor and ensure compliance with all mitigation measures required by the order (Environmental Condition 7), and identify any area of non-compliance during construction in weekly status reports (Environmental Condition 8), as well as in the report filed after the in-service date of the facilities (Environmental Condition 11), so that we can take appropriate action. We will ensure that Columbia is fulfilling its duties by conducting our own compliance monitoring during construction, including regular field inspections.

⁹² See *id.* (citing *National Audubon Society v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997); *Abenaki Nation of Missisquoi v. Hughes*, 805 F. Supp. 234, 239 n.9 (D. Vt. 1992), *aff'd* 990 F.2d 729 (2d Cir. 1993)).

4. Programmatic Environmental Impact Statement

52. CEQ's regulations do not require broad or "programmatic" NEPA reviews. CEQ has stated, however, that such a review may be appropriate where an agency: (1) is adopting official policy; (2) is adopting a formal plan; (3) is adopting an agency program; or (4) is proceeding with multiple projects that are temporally and spatially connected.⁹³ The Supreme Court has held that a NEPA review covering an entire region (that is, a programmatic review) is required only "if there has been a report or recommendation on a proposal for major federal action" with respect to the region,⁹⁴ and the courts have concluded that there is no requirement for a programmatic EIS where the agency cannot identify the projects that may be sited within a region because individual permit applications will be filed at a later time.⁹⁵

53. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.⁹⁶ Rather, the Commission acts on individual applications filed by entities proposing to construct interstate natural gas pipelines. Under NGA section 7, the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities "is or will be required by the present or future public convenience and necessity."⁹⁷ What is required by NEPA, and what the Commission provides, is a thorough examination of the potential impacts of specific projects. In the circumstances of the Commission's actions, a broad, regional analysis would "be little more than a study . . . concerning estimates of potential development and attendant environmental consequences,"⁹⁸ which would not present "a credible forward look and would therefore not be a useful tool for basic program planning."⁹⁹ As to projects that are closely related in time or geography, the Commission

⁹³ *Id.* at 13-15, citing 40 C.F.R. §1508.18(b).

⁹⁴ *Kleppe*, 427 U.S. 390 (1976) (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

⁹⁵ *See Piedmont Envtl. v. FERC*, 558 F.3d 304, 316-17 (4th Cir. 2009).

⁹⁶ *See, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014); *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014).

⁹⁷ 15 U.S.C. § 717f(e) (2012).

⁹⁸ *Kleppe*, 427 U.S. at 402.

⁹⁹ *Piedmont Envtl. Council*, 558 F.3d at 316.

may, however, prepare a multi-project environmental document, where that is the most efficient way to review project proposals.¹⁰⁰

54. As they have in other proceedings, Allegheny contends that the Commission violated NEPA by failing to prepare a programmatic EIS for natural gas infrastructure projects in the Marcellus and Utica Shale formations.¹⁰¹ Allegheny claims that the Commission is engaged in regional development and planning with the gas industry as evidenced by: (1) the Commission's participation in the development of the National Petroleum Council's 2007 Prudent Development report, which stresses the need to increase natural gas infrastructure; (2) the Commission's Strategic Plan that identifies the approval of natural gas pipeline infrastructure as a specific goal; and (3) the Commission's initiation of proceedings related to the Coordination Between Natural Gas and Electricity Markets (Docket No. AD12-12-000), Coordination of Scheduling Process of Natural Gas Pipelines and Public Utilities (Docket No. RM14-2-000), Order Initiating Investigation into ISO and RTO Scheduling Practices (146 FERC ¶ 61,202), and Posting of Offers to Purchase Capacity (146 FERC ¶ 61,203).

55. Further, Allegheny claims that even if future pipeline projects may be theoretical, this does not mean that the Commission "would not be able to establish parameters for subsequent analysis"¹⁰² Allegheny claims that a programmatic EIS may aid the Commission's and the public's understandings of broadly foreseeable consequences of NGA-jurisdictional projects and non-jurisdictional shale gas production.

56. Allegheny also argues that CEQ's December 2014 guidance on programmatic NEPA reviews explicitly recommends a programmatic EIS when "several energy development programs proposed in the same region of the country...[have] similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document."¹⁰³ In support, Allegheny points to, among other things, a table listing a number of projects proposed, planned, or placed in service,

¹⁰⁰ See, e.g., Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Project Nos. 1888-030, 2355-018, and 405-106 (2015).

¹⁰¹ Allegheny Request for Rehearing at 14-20.

¹⁰² *Id.* at 14 (citing Memorandum from CEQ to Heads of Federal Departments and Agencies, Effective Use of Programmatic NEPA Reviews at 11 (notice published at 79 Fed. Reg. 76,986 (Dec. 23, 2014)). We refer to the memorandum as 2014 Programmatic Guidance.

¹⁰³ *Id.* Citing 2014 Programmatic Guidance at 21.

and an Energy Information Administration publication discussing new pipeline projects to move Marcellus and/or Utica Shale production. Allegheny asserts that an agency cannot escape the existence of a comprehensive program with cumulative environmental effects by “disingenuously describing it as only an amalgamation of unrelated smaller projects.”¹⁰⁴

Commission Determination

57. Documents cited by Allegheny do not show that the Commission is engaged in regional planning. For example, the Strategic Plan sets forth goals for the efficient processing of individual pipeline applications in order to carry out the Commission’s responsibilities under the NGA. Similarly, the other proceedings cited by Allegheny focus on various initiatives proposed by the Commission to carry out its statutory responsibilities under the NGA and/or Federal Power Act.

58. In addition, the mere fact that there are a number of approved, proposed, or planned infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not establish that the Commission is engaged in regional development or planning. Rather, this information confirms that pipeline projects to transport Marcellus and Utica Shale gas are initiated solely by a number of different companies in private industry. As we have noted previously, a programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.¹⁰⁵

59. The Commission’s siting decisions regarding pending and future natural gas pipeline facilities will be in response to proposals by private industry, and the Commission has no way to accurately predict the scale, timing, and location of projects, much less the type of facilities that will be proposed. Any broad, regional environmental analysis would “be little more than a study . . . containing estimates of potential development and attendant environmental consequences,”¹⁰⁶ and could not present “a credible forward look” that would be “a useful tool for basic program planning.”¹⁰⁷ In

¹⁰⁴ Allegheny Request for Rehearing at 17 (citing *Churchill County v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001) (citing *Nat’l Wildlife Fed’n*, 677 F.2d at 890 (D.C. Cir. 1981)).

¹⁰⁵ See *Kleppe*, 427 U.S. at 401-02.

¹⁰⁶ *Id.*

¹⁰⁷ *Piedmont Env’tl. Council*, 558 F.3d at 316.

these circumstances, the Commission's longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected, "should facilitate, not impede, adequate environmental assessment."¹⁰⁸ Thus, here, the Commission's environmental review of Columbia's actual proposed pipeline project in a discrete EA is appropriate under NEPA.

60. Further, as among the various referenced proposed pipeline projects to provide additional transportation capacity within and from the northeastern United States, Allegheny has not shown any interrelationship or connectedness beyond the fact that they might share a general regional proximity to the Marcellus and Utica Shale regions. None of these projects' utility is shown to be functionally or financially dependent upon any other project; nor are any proposals shown or claimed to be dependent upon the timing of another project's approval or in-service date. Based on this independent utility, these projects would not trigger one another and could proceed on their own.

61. In sum, there is no support for Allegheny's assertion that the application here is part of a comprehensive federal program. Therefore, a programmatic EIS is neither required nor useful under the circumstances here.

5. Air Quality

62. In addition to its criticism of our cumulative impact analysis, the Clean Air Council contends that the Commission's analysis of the project's impacts on air quality is inadequate.¹⁰⁹ The Clean Air Council asserts that because equipment in the natural gas cycle leak and other equipment require planned releases of air pollutants, the project will result in significant fugitive emissions of various air pollutants and greenhouse gases (GHGs) that the Commission fails to even consider, much less attempt to quantify, the impacts they would have.¹¹⁰ It goes on to claim that although it raised the issue of

¹⁰⁸ *Id.*

¹⁰⁹ Clean Air Council Request for Rehearing at 10-11.

¹¹⁰ *Id.* at 10 (citing D.R. Caulton, Toward a Better Understanding and Quantification of Methane Emissions from Shale Gas Development, Proceedings of the National Academy of Sciences Early Edition (Approved March 12, 2014), *available at*: <http://catskillcitizens.org/learnmore/Caultonetal.%202014.pdf>; and A.R. Brandt, Methane Leaks from North American Natural Gas, *Systems Science*, 343 (6172) (2014), 733–735.

fugitive emissions in comments on the EA, the Commission only points out that the project does not involve any liquefaction facilities.¹¹¹

63. Additionally, the Clean Air Council submits that with respect to direct impacts on air quality, the Commission relies too heavily on a recitation of the impacts followed by a discussion of presumed compliance with other agencies' permitting and mitigation plans without conducting any independent analysis of the environmental impacts of the air emissions that will result from the project.¹¹²

Commission Determination

64. Initially, the Clean Air Council has mischaracterized its comments on the EA regarding fugitive emissions. Contrary to its current claim, the Council's comments were limited to liquefaction facilities: "recent studies have found that fugitive emissions from the natural gas industry are very significant, and yet the EA does not even quantify the fugitive emissions that would come from the liquefaction facilities."¹¹³ It is for this reason that the December 18 Order explained that the project does not involve liquefaction. In any event, we acknowledge that planned releases of natural gas can occur during operation of natural gas facilities, as stated by the Clean Air Council. The EA disclosed the estimated criteria pollutant and GHG emissions as a result of construction and operation of the project, including the applicable state and federal regulatory requirements for operation of the project. The GHG emissions estimates reported in the EA for the compressor stations incorporated startup/shutdown emissions based on 156 cycles totaling 36 hours per year, which would typically account for planned or maintenance-type blowdowns. Further, the EA discussed the federal requirements under Title 40 of the Code of Federal Regulations Part 98, Subpart W for reporting actual GHG emissions in excess of 25,000 metric tons per year in any year. Columbia would therefore be subject to this reporting requirement for emission related to the associated compressor stations and meter stations including, but not limited to, compressor venting, blowdown vent stacks, and leaks from valves, meters, and connectors. However, while we have no way of forecasting the extent of reportable incidents, based on previous projects of similar scope and even larger projects, we anticipate that the fugitive emissions from the pipeline loops would be far below the reference point provided by CEQ for determining a quantitative analysis of GHG

¹¹¹ *Id.* (citing December 18 Order, 149 FERC ¶ 61,255 at P 100).

¹¹² *Id.* (citing EA at 2-93).

¹¹³ Comments of the Clean Air Council on the Environmental Assessment in CP14-17-000 at 5-6 (footnote omitted).

emissions from a particular project.¹¹⁴ Given the information provided in the EA and Columbia's application, we find that the analysis of fugitive emissions of criteria pollutants and GHG emissions of the project is complete and adequate to conclude that there will be no significant impacts on air quality.¹¹⁵

65. We also disagree with the Clean Air Council's claim that the EA's conclusions on air quality impacts rely too heavily on compliance with federal and state permitting requirements. In its application, Columbia provided the information required by the state and federal air permitting agencies and the Commission's regulations. The Commission staff also requested that Columbia provide an air dispersion modeling analysis for the Milford and Easton Compressor Stations in order to provide a more thorough evaluation of the potential impacts on air quality, although these modeling analyses were not required by the state and federal air permitting agencies. Staff independently reviewed the air dispersion modeling analyses provided by Columbia and found that the results of the modeling analyses demonstrated that operation of the Milford and Easton Compressor Stations would not result in exceedances of the NAAQS for any criteria pollutant.¹¹⁶ Based on Columbia's compliance with the applicable state and federal permitting requirements in addition to Staff's independent analysis of the air quality impacts, the EA concluded that there would be no significant impact on air quality in the project area. We concur with this finding. The Clean Air Council has provided no basis for us to question Columbia's compliance and non-compliance would be a violation of the certificate.

6. Climate Change

66. The Clean Air Council asserts that the Commission fails to meaningfully evaluate the impacts of the GHGs that will be emitted as a result of the project.¹¹⁷ It complains that the GHG emissions expected to result from construction, as well as from the operation of the Milford Compressor Station and Easton Compressor Station on an annual basis, are listed in the EA separately. Thus, it contends that the EA fails to

¹¹⁴ CEQ, *Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews* (2014), 79 *Fed. Reg.* 77,802, at 77,829 (Dec. 24, 2014).

¹¹⁵ The studies the Clean Air Council cites to support its claim that fugitive emissions from the natural gas industry are significant, primarily address methane leaks from natural gas production. As explained *supra*, natural gas production is not an indirect effect of the project and its impacts need not be considered here.

¹¹⁶ EA at 2-91.

¹¹⁷ Clean Air Council Request for Rehearing at 17-18.

consider or calculate the total emissions that will result from the project. According to the Clean Air Council, over the course of construction and one year of operation of the project, over 150,000 tons of GHGs would be emitted. It claims that this is a significant level, particularly in light of the fact that GHGs do not dissipate over time or geographic area in the same way as other pollutants. The Clean Air Council also faults the EA for not even attempting to consider the GHGs that will be released from induced upstream and downstream natural gas development.

67. In addition, the Clean Air Council asserts that the Commission should have evaluated the project's impacts on GHG emissions using a tool known as the social cost of carbon that assigns a cost in dollars to the emissions of one metric ton of carbon dioxide. The Clean Air Council cites to a district court case in Colorado that it states held that it was not reasonable for the Bureau of Land Management "to ignore a [social cost of carbon] tool in which an interagency group of experts invested time and expertise."¹¹⁸

Commission Determination

68. The EA appropriately considered the GHG emissions that would result from construction and operation of the project.¹¹⁹ Although the GHG emissions associated with the construction and operation of the project were identified and quantified separately in the EA,¹²⁰ they were disclosed nevertheless. Assuming, as stated by the Clean Air Council, that construction and full operation of the project would occur in one single year; these total GHG emissions would contribute substantially less than 0.1 percent of the New Jersey or Pennsylvania GHG emission inventories.

69. In addition to quantifying GHG emissions from project construction and operation, the EA identified many climate change related environmental effects in the project's Northeast region resulting from overall GHG emissions, including higher temperatures, heavier precipitation, and sea level rise.¹²¹ The EA went on to explain that

¹¹⁸ *Id.* at 18 (citing *High Country Conservation Advocates v. U.S. Forest Service*, 2014 WL 2922751, at 11 (D. Colo. June 27, 2014)).

¹¹⁹ As discussed *supra*, additional natural gas production is not causally related to the East Side Expansion Project and the impacts of such production are not reasonably foreseeable for NEPA purposes. Therefore, the GHG impacts of such production are not indirect effects of the project and need not be considered in the Commission's environmental analysis.

¹²⁰ EA at 2-86 to 2-87 (construction), 2-78 (operation).

¹²¹ EA at 2-117 to 2-119.

there is no standard methodology to determine how a project's incremental contribution to GHG emissions would result in physical effects on the environment, either locally or globally. NEPA requires no further analysis.

70. The social cost of carbon tool is used to estimate the comprehensive costs associated with a project's GHG emissions. The tool provides monetized values, on a global level, of addressing climate change impacts and is intended for estimating the climate benefits of rulemakings and policy initiatives. While we recognize the availability of this tool, we believe that it would not be appropriate or informative to use this tool for this project, for the following reasons: (1) the EPA states that "no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations"¹²² and consequently, significant variation in output can result; (2) the tool does not measure the actual incremental impacts of a project on the environment; and (3) there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes. While the tool may be useful for rulemakings or comparing alternatives using cost-benefit analyses where the same discount rate is consistently applied, it is not appropriate for estimating a specific project's impacts or informing our analysis under NEPA.¹²³

7. Article I, Section 27 of Pennsylvania Constitution

71. Allegheny asserts that the Commission violated NEPA by failing to consider whether the project threatens a violation of Article I, Section 27 of the Pennsylvania Constitution that provides that "[t]he people have a right to clean air, pure water, and to the preservation of the natural scenic, historic and esthetic values of the environment."¹²⁴ In support, Allegheny relies on section 1508.27(b)(10) of the environmental

¹²² See *Fact Sheet: Social Cost of Carbon* issued by EPA in July 2015, available at <http://www.epa.gov/climatechange/Downloads/EPAactivities/social-cost-carbon.pdf>.

¹²³ See, e.g., *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,253, at P 48 (2015). The Clean Air Council's reliance on the court's decision in *High Country* is misplaced. In that case, the court stated that "[e]ven though NEPA does not require a cost-benefit analysis, it was nonetheless arbitrary and capricious to quantify the benefits of the lease modification and then explain that a similar analysis of the costs was impossible when such an analysis was in fact possible and was included in an earlier draft EIS." *High Country* at 10. Here, unlike in *High Country*, our environmental analysis did not attempt to quantify anticipated benefits of project approval while excluding potential costs from a cost-benefit analysis.

¹²⁴ Allegheny Request for Rehearing at 20.

regulations¹²⁵ that sets forth factors agency should consider in defining “significantly,” including “[w]hether an action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”

Commission Determination

72. Allegheny’s argument is without merit. Based on the environmental record developed in this proceeding, we have found that the project will not have a significant effect on the environment. In addition, the Commission has exclusive authorization under the NGA to certificate interstate pipelines. As explained in the December 18 Order, while the Commission encourages cooperation between interstate pipelines and local authorities, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by the Commission.¹²⁶

8. Project’s Purpose and Need and No-action Alternative

73. The Clean Air Council also claims that the Commission too narrowly defined the project’s purpose and need as expanding Columbia’s pipeline system capacity in order to provide 312,000 Dth per day of firm transportation service to mid-Atlantic markets, including specifically to particular local distribution companies already connected to existing Columbia facilities.¹²⁷ According to the Clean Air Council, by framing the purpose of the project not just as the transportation of a certain amount of natural gas, but as the transportation by Columbia of the stated amount of gas, the Commission narrowed the purpose and need for the project so as to reject the no action alternative as well as other alternatives.

74. The Clean Air Council contends that the no-action alternative adopted by the Commission fails to weigh appropriately the environmental benefits of the status quo against the adverse environmental impacts of the project.¹²⁸ According to the Clean Air Council, the EA did not take into account the full extent of the project’s environmental impacts, and therefore the Commission underestimates the environmental impacts that would be avoided from the no-action alternative.

¹²⁵ 40 C.F.R. § 1508.27(b)(10) (2015).

¹²⁶ December 18 Order, 149 FERC ¶ 61,255 at P 129.

¹²⁷ Clean Air Council Request for Rehearing at 19-20.

¹²⁸ *Id.* at 18-19.

Commission Determination

75. The CEQ regulations provide that the purpose and need statement “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed actions.”¹²⁹ Courts have upheld federal agencies’ use of applicants’ identified project purpose and need as the basis for evaluating alternatives.¹³⁰ This general principle is subject to the admonition that a project’s purpose and need may not be so narrowly defined as to preclude consideration of what may actually be reasonable choices.¹³¹

76. Consistent with NEPA’s requirements, the EA adopted Columbia’s stated purpose and need for the project. Contrary to the Clean Air Council’s claim, the EA did not dismiss all alternatives on the basis that the transportation of gas would not be provided by Columbia. For example, the no action alternative examined whether other pipeline systems in the project area have the ability to provide the necessary capacity and finds that they do not. Similarly, the EA also examined whether alternative energy projects, including solar, wind or energy efficiency projects, could meet Columbia’s objectives, and concluded that they could not.¹³²

77. We also reject Clean Air Council’s argument that the EA omits the environmental impacts avoided by a no-action alternative. The EA explicitly states that the no-action alternative would avoid the environmental impacts of the proposed project.¹³³ The resource-by-resource discussion in section 2 first details the existing state of each resource and then describes the environmental impacts of the preferred alternative. By providing a description of the existing state of each resource and a description of the

¹²⁹ 40 C.F.R. § 1502.13 (2015).

¹³⁰ *City of Grapevine, Texas v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

¹³¹ *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1085 (9th Cir. 2012); *Simmons v. U.S. Army Corps. of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997); *Citizens against Burlington, Inc. v. Busey*, 938 F.2d 190, 198-99 (D.C. Cir. 1991).

¹³² EA at 3-2.

¹³³ EA at 3-2.

environmental impacts of the preferred alternative, the EA provides the decision maker with a meaningful comparison of the harm to be avoided under a no-action alternative.¹³⁴

C. Whether the East Side Expansion Project is Required by the Public Convenience and Necessity

78. The Clean Air Council asserts that the Commission erred in finding that the project was required by the public convenience and necessity.¹³⁵ In support, it asserts that the project will have negative impacts on water quality, air quality, and GHG emissions and is likely to induce additional drilling for natural gas with associated negative impacts. On this basis, it concludes that the record does not demonstrate that adverse effects on landowners and the surrounding communities would be outweighed by any public benefit the project would provide.

79. Allegheny claims that because one of the goals of the Certificate Policy Statement is the avoidance of unnecessary disruption of the environment, the Commission violated the NGA by failing to consider the indirect effects of Marcellus and Utica Shale gas extraction.¹³⁶

Commission Determination

80. We affirm our finding in the December 18 Order that authorizing the East Side Expansion Project is in the public convenience and necessity. As explained in the December 18 Order, under the Certificate Policy Statement¹³⁷ the Commission evaluates a proposed project by balancing the evidence of public benefits to be achieved against any residual adverse effects on the economic interests of: (1) the applicant's existing customers; (2) existing pipelines in the market and their captive customers; and (3) landowners and communities affected by the construction.

¹³⁴ See, e.g., *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066-67 (9th Cir. 1998) (stating that while agencies are afforded "considerable discretion to define the purpose and need of a project," agencies' definitions will "be evaluated under a reasonableness standard.").

¹³⁵ Clean Air Council Request for Rehearing at 21.

¹³⁶ Allegheny Request for Rehearing at 21-22.

¹³⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

81. The December 18 Order concluded that the East Side Expansion Project would have no adverse economic impacts on either Columbia's existing customers or on other existing pipelines or their captive customers. Further, the Commission found that Columbia had taken steps to minimize any adverse economic impacts on landowners and surrounding communities by, to the extent practicable, maximizing its use of existing pipeline and utility corridors to reduce impacts to affected landowners.¹³⁸ As noted in the December 18 Order, Columbia has executed binding precedent agreements for firm service utilizing 100 percent of the design capacity of the project. Based upon the strong showing of public benefits (i.e., the creation of capacity to meet the firm contractual commitments of the project shippers) and the localized and relatively minimal, though not non-existent, impacts the project may have on the economic interests of landowners in the vicinity, the Commission found and continues to find that, on balance, pursuant to the criteria set forth in the Certificate Policy Statement, the East Side Expansion Project is required by the public convenience and necessity.

82. Moreover, after finding that the project will serve the public interest under the criteria of the Certificate Policy Statement, we turned to the completion of the analysis and consideration of the environmental impacts of the project pursuant to the requirements of the NEPA. The Commission has fully addressed the environmental issues raised by the Clean Air Council and Allegheny in the EA, the December 18 Order, and herein, and we continue to find the project would have no significant impacts.

The Commission orders:

The requests for rehearing and stay of the December 18 Order are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³⁸ December 18 Order, 149 FERC ¶ 61,255 at P 15. One goal of the Certificate Policy Statement was to protect the interests of landowners whose land might be condemned for right-of-way under the eminent domain rights conferred by the Commission's certificates from unnecessary construction. *See* Certificate Policy Statements, 88 FERC ¶ 61,227 at 61,737, 61,746, 61,748, and 61,749.