

153 FERC ¶ 61,284
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-496-001

ORDER ON REHEARING

(Issued December 8, 2015)

1. On August 19, 2015, the Commission issued a certificate order authorizing Dominion Transmission, Inc. (Dominion) under section 7 of the Natural Gas Act (NGA) to construct and operate its Clarington Project.¹ Allegheny Defense Project (Allegheny) filed a timely request for rehearing.

2. Because the Commission did not act on Allegheny's request for rehearing, its request was denied by operation of law on October 19, 2015.² For clarity, we issue this order to explain why Allegheny's arguments would have been unavailing in any event.

I. Background

3. Dominion proposed to construct and operate the Clarington Project to provide 250,000 dekatherms (Dth) per day of firm transportation service for CNX Gas Company, LLC (CNX), a subsidiary of CONSOL Energy. CNX subscribed to the project's full design capacity under a 15-year precedent agreement.

4. The Clarington Project will enable Dominion to receive gas from CNX at a new interconnect with CNX in Lightburn, West Virginia, for delivery to two new

¹ *Dominion Transmission, Inc.*, 152 FERC ¶ 61,138 (2015) (August 19 Order).

² 15 U.S.C. § 717r(a) (2012); 18 C.F.R. § 385.713(f) (2015) ("Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.")

interconnects in Monroe County, Ohio: one with Texas Eastern Transmission (TET) called the TET-Aram Hill Interconnect, and the other with Rockies Express Pipeline (REX) called the REX-German Ridge Interconnect. The Clarington Project will include: (1) a new 6,130 horsepower (hp) gas turbine compressor package and auxiliary equipment and station piping at its existing Burch Ridge Compressor Station in Marshall County, West Virginia; (2) two new 5,000 hp reciprocating units and auxiliary equipment at its existing Mullett Compressor Station in Monroe County, Ohio; (3) two new meter stations in Monroe County, Ohio: one meter station at the new TET-Aram Hill Interconnect, and the other at the new REX-German Ridge Interconnect; (4) 2,612 feet of 20-inch-diameter suction piping and 2,756 feet of 16-inch-diameter discharge piping to connect the Mullett Compressor Station to the proposed meter stations; and (5) 987 feet of 16-inch-diameter pipeline from the REX-German Ridge Interconnect to the tap location on the REX mainline. The facilities associated with the Clarington Project will be confined to property owned and leased by Dominion.

5. Commission staff prepared an Environmental Assessment (EA) of the Clarington Project to satisfy the requirements of the National Environmental Policy Act (NEPA), and concluded that with staff's recommended mitigation measures, the project would not constitute a major federal action significantly affecting the human environment. In the August 19 Order, the Commission found that the benefits the Clarington 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, and adopted staff's recommended mitigation measures.³

6. Allegheny's rehearing request raised issues related to the environmental analysis in the EA and the August 19 Order.

II. Discussion

A. Procedural Issue

7. On October 15, 2015, Dominion filed a request to leave to answer and an answer to Allegheny's rehearing request. Because Allegheny's rehearing request was denied as a matter of law, we dismiss Dominion's answer as moot.

³ The environmental conditions are listed in Appendix B to the August 19 Order.

B. Environmental Analysis

1. Indirect Effects

8. Council on Environmental Quality (CEQ) regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.⁴ 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.”⁵ 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.

9. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”⁶ in order “to make an [agency] responsible for a particular effect under NEPA.”⁷ As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”⁸ 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.⁹ 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.”¹⁰

⁴ See 40 C.F.R. § 1508.25(c) (2015).

⁵ See 40 C.F.R. § 1508.8(b) (2015).

⁶ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro Edison*)).

⁷ *Id.* (quoting *Metro Edison*, 460 U.S. at 774 n.7).

⁸ *Id.*

⁹ *Metro. Edison*, 460 U.S. at 774.

¹⁰ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 at 770.

10. 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.”¹¹ 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.”¹²

11. Allegheny argues that the EA should have analyzed induced natural gas production as an indirect effect because such production is sufficiently causally related to the Clarington Project and is reasonably foreseeable.

12. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, would be on a local and regional level. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, the Environmental Protection Agency regulates deep underground injection and disposal of wastewaters and liquids under the Safe Drinking Water Act, as well as air emissions under the Clean Air Act. On public lands, federal agencies are responsible for enforcing regulations that apply to natural gas wells.

13. 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 CEQ regulations.¹³ 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

¹¹ *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).

¹² *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

¹³ *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. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2d Cir. 2015) (unpublished opinion).

would be no other way to move the gas).¹⁴ 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.

14. 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.¹⁵

¹⁴ See *c.f.* *Sylvester v. U.S. Army Corps of Engin’rs*, 884 F.2d 394, 400 (9th Cir. 1989) (*Sylvester*) (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 Caramel-by-the-Sea v. U.S. 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).

¹⁵ *Habitat Educ. Ctr. v. U.S. Forest Service*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with sufficient specificity to make their consideration meaningful need not be included in the environmental analysis).

15. Nonetheless, we note that, although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The Department of Energy has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts may have temporary minor impacts to water resources.¹⁶ The EPA has reached a similar conclusion.¹⁷ With respect to air quality, the Department of Energy found that natural gas development leads to both short-and long-term increases in local and regional air emissions.¹⁸ It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, the Department of Energy found there may be a net positive impact in terms of climate change.¹⁹

16. Allegheny asserts that induced natural gas production and the Clarington Project are “two links of a single chain” as allegedly shown by Dominion’s application, a Commission staff presentation, and common sense.²⁰ In Dominion’s application, Allegheny cites to Dominion’s statements that the Clarington Project will provide increased access to gas produced in the Appalachian region. Allegheny claims that it is unlikely that Dominion would invest \$76.5 million to increase capacity without

¹⁶ See U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From The United States* (August 2014) at 19, available at <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf> (“DOE Addendum”).

¹⁷ See U.S. Environmental Protection Agency, *Draft Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, at ES-6, available at http://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=244651#_ga=1.161236345.552502682.1445635975. See also Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16128, (Mar. 26, 2015) (Bureau of Land Management promulgates regulations for hydraulic fracturing on Federal and Indian lands to “provide significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health”).

¹⁸ DOE Addendum at 32.

¹⁹ *Id.* at 44.

²⁰ Allegheny Request for Rehearing at 7 (citing *Sylvester*, 884 F.2d 394, 400).

understanding where the increased supplies of natural gas will come from, and points out that CNX is a subsidiary of CONSOL Energy. In addition, Allegheny states that a presentation by the Commission's Office of Energy Projects demonstrates that shale gas extraction and natural gas infrastructure are causally related.

17. Further, Allegheny challenges the Commission's argument that gas drilling and the project are not causally related because natural gas development will continue with or without the project; Allegheny states that such argument is similar to the one rejected by the Eighth Circuit in *Mid States Coalition for Progress*.²¹ Allegheny also claims that Commission staff conducted its environmental analysis using "tunnel vision" similar to the U.S. Army Corps of Engineers' (Corps) environmental analysis rejected by a district court in *Colorado River Indian Tribes v. Marsh (Colorado River)*.²²

18. By not quantifying the indirect effects of natural gas production activities, Allegheny asserts that the Commission shifted to the public its burden to identify the environmental impacts and thus, thwarted one of the twin aims of NEPA.²³ Specifically, Allegheny claims that the August 19 Order shifted its burden to Allegheny by stating, "Allegheny fails to identify any induced gas production causally associated with the Clarington Project"²⁴

19. Allegheny also argues that induced gas production is reasonably foreseeable, and that because speculation is implicit in NEPA, there is no need to know the exact location, scale, scope, and timing of shale gas drilling as the Commission contends.

20. The record in this proceeding, including Dominion's application and the presentation cited by Allegheny, does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the Clarington Project that 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. This does not mean, however, that the Commission's approval of this particular pipeline project will cause or

²¹ *Id.* at 11 (citing *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*)).

²² *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425 (C.D. Cal. 1985) (*Colorado River*).

²³ Allegheny Request for Rehearing at 6.

²⁴ *Id.* at 5-6 (citing August 19 Order, 152 FERC ¶ 61,138 at 44).

induce the effect of additional or further shale gas production. As Allegheny contends, the Clarington Project appears to be a response to production, not a cause.

21. Nor does the fact that the project shipper is the subsidiary of a producer that has existing mineral interests and may have plans to use the project to transport production from those interests mean the proposed project will induce future development or production will not occur in the absence of the proposed project. Information cited by Allegheny suggests that the shipper's parent company, CONSOL Energy, intends to utilize multiple pipelines, of which Dominion is just one, to transport their production.²⁵

22. As we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.²⁶ If the Clarington Project was 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.²⁷ Again, any such production would take place pursuant to the regulatory authority of state and local governments.²⁸

²⁵ Allegheny cites CONSOL Energy's 2014 Annual Report (available at <http://phx.corporate-ir.net/phoenix.zhtml?c=66439&p=irol-reports>). *See id.* at 8. CONSOL Energy's Annual Report states on page 15, "[i]n September [2014], we entered into a precedent agreement with DTE Energy and Spectra Energy for its Nexus project as an anchor shipper to transport gas from the Appalachian Basin to Midwest markets."

²⁶ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). *See also Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Min. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *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).

²⁷ *Rockies Express*, 150 FERC ¶ 61,161 at P 39.

²⁸ As reflected on a map in an attachment to Allegheny's request for rehearing, there are more than 217,000 miles of existing interstate gas transmission pipeline in the United States, and the Marcellus shale area is one of the regions with the greatest concentrations of interstate pipelines facilities. *See Allegheny Request for Rehearing at Attachment 1 "Natural Gas in the U.S.: Supply and Infrastructure = Security"* at page 3 (slide presentation by Michael McGhee, Director of the Commission's Division of

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23. Allegheny asserts that the court's ruling in *Mid States* supports the contention that the Commission must analyze the effects of upstream gas drilling in the Marcellus and Utica shale formations. But *Mid States* involved the Surface Transportation Board's failure to analyze the downstream effects of a proposal to build and upgrade rail systems to reach coal mines in Wyoming's Powder River Basin.²⁹ The court found – and the project proponent did not dispute – that the proposed project would increase the use of coal for power generation. The court held that where such downstream effects are reasonably foreseeable, they must be analyzed, even if the extent of those effects is uncertain.³⁰ Here, unlike *Mid States*, Allegheny asserts that construction of the Clarington Project would increase production, rather than end use. And unlike *Mid States*, there is an insufficient 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 Clarington Project. Thus, it is not merely the extent of production-related impacts that we find speculative, as was the case in *Mid States*, but also whether the project at issue will have any such impacts.

24. Similarly, we find *Colorado River* distinguishable. In *Colorado River*, a district court held that the Corps violated NEPA by not preparing a final environmental impact statement (EIS) for a permit authorizing a developer to place riprap along a riverbank. The court stated that without the permit, the developer could not have received local government approval for its proposed residential and commercial development project along the riverbank.³¹ The Corps originally prepared a draft EIS because proposed development along the banks would cause significant environmental impacts.³² Before completing a final EIS, however, the Corps retracted its draft EIS because it determined

Pipeline Certificates, at October 2010 8th EU-US Energy Regulators Roundtable). Further, in some instances, producers proceed with the development of new wells that produce both oil and gas based on oil prices, and the associated gas production is flared because it is not economical to construct gathering lines to transport the gas to the pipeline grid.

²⁹ *Mid States* 345 F.3d at 550.

³⁰ *Id.*

³¹ 605 F. Supp. 1425, 1428.

³² *Id.*

that the appropriate scope of its environmental analysis should be limited to the activities within its jurisdiction, i.e., the river and the bank.³³

25. The court disagreed finding that the Corps violated NEPA because it narrowed the scope of its analysis to primary or direct impacts of its authorization, ignoring the indirect and cumulative effects analysis required by NEPA. Here, Commission staff analyzed the indirect and cumulative effects of the project. Commission staff did not analyze the effects of induced natural gas production because, unlike in *Colorado River*, there is no sufficient causal link between our authorization of the project and any additional production. Natural gas development will likely continue with or without the Clarington Project.

26. The mere fact that we found that induced natural gas production activities are not causally related to the Clarington Project does not mean, as Allegheny asserts, that we shifted our burden to conduct an environmental analysis to Allegheny or the public. Moreover, the August 19 Order noted that Allegheny did not provide any evidence of causally related production facilities to demonstrate that not only could Commission staff not find any causally related production activities, but Allegheny did not identify any either.

27. Even if a causal relationship between our action and additional production were presumed, the scope of the impacts from any such induced production is not reasonably foreseeable. Knowing the identity of a producer of gas to be shipped on a pipeline, and even the general area where that producer's existing wells are located, does not alter the fact that the number and location of any additional wells are matters of speculation. Ultimately, Allegheny's information shows that well development already exists, but this information does not show where or when additional development will occur if the project is approved. A broad analysis, based on generalized assumptions rather than reasonably specific information of this type, will not meaningfully assist the Commission in its decision making, e.g., evaluating potential alternatives. While *Northern Plains* states that speculation is implicit in NEPA, it also states that agencies are not required "to do the impractical, if not enough information is available to permit meaningful consideration."³⁴

³³ *Id.*

³⁴ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (citing *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)). See also *The Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008) (speculation in an EIS is not precluded, but the agency is not obliged to engage in endless hypothesizing as to remote possibilities).

2. Cumulative Effects

28. 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”³⁵ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

29. 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.”³⁶ 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.”³⁷ 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.”³⁸ 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.³⁹

30. 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 a proposed project

³⁵ 40 C.F.R. § 1508.7 (2015).

³⁶ *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976) (*Kleppe*).

³⁷ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997) (1997 CEQ Guidance), available at http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf.

³⁸ *Natural Resources Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

³⁹ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005) (2005 CEQ Guidance), available at http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf.

and other past, present, and reasonably foreseeable future actions.⁴⁰ 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.⁴¹

31. Allegheny argues 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 Utica shale formations. Allegheny argues that the Commission intentionally restricted its region of influence to exclude unconventional natural gas production facilities in Ohio, Pennsylvania, and West Virginia as identified in a map published by Penn State University's Marcellus Center for Outreach and Research. In a footnote, Allegheny also appears to allege that the Commission failed to analyze unconventional natural gas production facilities within the Clarington Project's region of influence. Allegheny states that the Commission could have analyzed the impacts of natural gas production activities using information provided by certain state agencies in Ohio, Pennsylvania, and West Virginia, and Pennsylvania State University's Marcellus Center for Outreach.

32. Allegheny states that the Commission routinely restricts its cumulative impact analysis of proposed natural gas projects, citing various Commission natural gas proceedings.⁴² Allegheny argues that when considering these other projects together with the Clarington Project, it is clear that the Commission ignores the majority of the Clarington Project impacts.

33. Allegheny asserts that the Commission misreads the 1997 CEQ Guidance to limit the scope of the cumulative impact analysis to an arbitrarily narrow 5-mile radius region of influence.⁴³ Allegheny notes that the 1997 CEQ Guidance contrasts between a project-specific analysis, for which it is often appropriate to analyze effects within the immediate area of the proposed action, and an analysis of the proposed action's contribution to

⁴⁰ See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁴¹ *Id.* P 120.

⁴² Allegheny Request for Rehearing at 15-16.

⁴³ *Id.* at 15.

cumulative effects, for which “the geographic boundaries of the analysis almost always should be expanded.”⁴⁴

34. Allegheny cites *LaFlamme v. FERC (LaFlamme)*⁴⁵ and *Natural Resources Defense Council, Inc. v. Hodel (Hodel)*⁴⁶ to bolster its claim that the Commission must expand its cumulative impacts analysis and consider inter-regional impacts of Marcellus and Utica shale development activities. Allegheny also cites various recent research that identifies the “substantial impact” that shale gas drilling will have throughout the Marcellus and Utica shale formations, arguing that the Commission thus “has an obligation under NEPA to take a hard look at these impacts on a much broader scale”⁴⁷

35. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.⁴⁸ The agency should then establish the geographic scope for analysis.⁴⁹ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project’s direct and indirect impacts.⁵⁰ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁵¹ 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.⁵²

⁴⁴ *Id.* (citing 1997 CEQ Guidance at 12).

⁴⁵ 852 F.2d 389 (9th Cir. 1988).

⁴⁶ 865 F.2d 288 (D.C. Cir. 1998).

⁴⁷ Allegheny Request for Rehearing at 21.

⁴⁸ 1997 CEQ Guidance at 11.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See 2005 CEQ Guidance, *supra* note 42, at 2, 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

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36. The cumulative effects analysis the Commission undertook in the Clarington Project EA took precisely the approach the CEQ guidance advises.⁵³ Based on the small scale of the Clarington Project and the lack of significant direct and indirect impacts on resources, Commission staff concluded that a 5-mile radius to assess cumulative impacts would provide a conservative range of analysis.⁵⁴ Establishing a 5-mile radius region of potential influence was appropriate to analyze the resource areas including land use, visual resources, soils, geology, wetlands, vegetation, wildlife, cultural resources, noise, and air quality, because project impacts to these resources will be minor and localized. The EA explains that the project will disturb 40 acres of land in total (about 19 acres of which is previously disturbed land within the existing Burch Ridge and Mullet Compressor Stations), the project will not directly affect wetlands, the project will limit forest clearing to 6 acres within or adjacent to existing cleared pipeline rights-of-way, and the project's noise impacts will be unnoticeable at nearby noise sensitive areas.

37. Further, the EA explained the air quality modeling results show that the emissions from the Burch Ridge and Mullet Compressor Stations will not contribute to a violation of the National Ambient Air Quality Standards.⁵⁵ The project will have a potential-to-emit less than the thresholds for the Title V Operating Permit Program, as described in Title 40 of the Code of Federal Regulations Part 70, which requires major sources of air emissions and certain affected non-major sources to obtain a federal operating permit. Short-term air emissions during construction will be highly localized (i.e., will not spread beyond the immediate area of active construction) and intermittent.⁵⁶

38. For water resources and fisheries, the region of influence for analyzing cumulative effects is generally within a watershed, either local or regional. The EA identified the regional watersheds that had the potential to be affected by the Clarington Project (Upper

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).

⁵³ We note that the 1997 Guidance states that the “applicable geographic scope needs to be defined case by case.” 1997 CEQ Guidance at 15.

⁵⁴ In fact, due to the highly localized nature of the project's impacts, the actual region within which cumulative impacts might occur is much less than 5 miles.

⁵⁵ EA at 34-35.

⁵⁶ EA at 33.

Ohio-Wheeling watershed and Middle Ohio North watershed).⁵⁷ Commission staff, however, concluded that a 5-mile radius was appropriate because project construction through waterbodies will be limited to two streams in Ohio (an intermittent stream and a perennial tributary to Big Run), Dominion proposed no surface water withdrawals, and Dominion committed to implementing its Erosion and Sediment Control Plan and the Commission's Wetland and Waterbody Construction and Mitigation Procedures. We agree that the EA's region of influence for waterbodies was adequate.

39. Based on the region of influence for the project, the EA identified seventeen present and reasonably foreseeable future actions whose impacts when added to the impacts of the proposed actions could result in cumulative impacts.⁵⁸ The EA considered the potential cumulative impacts associated with the project and these seventeen projects pertaining to potentially affected resources, including: soils, geologic hazards, cultural resources, noise and air quality, water resources, vegetation, and wildlife. The EA concluded that, when considered with the other projects planned or ongoing within the relevant regions of influence, the Clarrington Project would not result in significant long-term cumulative effects.

40. Contrary to Allegheny's assertions, the EA noted that natural gas wellheads and related infrastructure are located in the same regions as the Burch Ridge and Mullet Compressor Stations.⁵⁹ The EA recognized the existence of natural gas wellheads and related infrastructure throughout the landscape and considered this as part of the environmental baseline, rather than conducting an evaluation of their impact individually. Focusing on the current aggregate effects of past actions, without delving in the historic details of individual past actions, complies with CEQ Guidance.⁶⁰

41. Further, while state agencies provide data on when a majority of well permits are issued, the data does not convey if and when permitted wells would be drilled. Accordingly, the timing of future natural gas is uncertain and there is not enough information available to permit meaningful consideration. Any further detailed analysis of the impacts of current and potential future drilling activity was therefore precluded and appropriately not included in the cumulative impact analysis in the EA.

⁵⁷ EA at 17.

⁵⁸ EA at 39-41.

⁵⁹ EA at 41.

⁶⁰ 2005 CEQ Guidance, *supra* note 42, at 2.

42. 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. Given the large geographic scope of the Marcellus and Utica shale, the magnitude of the type of analysis requested by Allegheny – of the impacts of gas drilling in the Marcellus and Utica shale formations – bears no relationship to the limited magnitude of Dominion’s instant proposal, which involves temporary construction impacts on 40 acres and permanent impacts to 12 acres of land within a mixed-use, rural area of mostly forest, agricultural, residential, and commercial land uses. Moreover, 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.⁶¹

43. In our view, Allegheny’s arguments regarding the geographic scope of our cumulative impacts 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 Utica shale formations, an area that covers potentially thousands of square miles. We decline to do so. As the Commission explained in the August 19 Order,⁶² there is no Commission program or policy to promote additional natural gas development and production in shale formations.

44. We also disagree with Allegheny’s argument that the Commission’s use of regions of influence is inconsistent with CEQ regulations. Our 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*. We believe this is consistent with the CEQ’s Guidance.⁶³

45. Allegheny's reliance on *LaFlamme* is misplaced, as that case in fact supports the Commission's use of a region of influence and an analysis of cumulative impacts limited to those impacts occurring in the area of the project at issue. In *LaFlamme*, the court found that in preparing an EA for the Sayles Flat Project, a hydroelectric project on the American River in California, the Commission failed to consider the cumulative impacts

⁶¹ 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 Clarington Project.

⁶² August 19 Order, 152 FERC ¶ 61,138 at P 32.

⁶³ EA at 39-41.

of other projects on the American River because it had relied on a previous EIS for another project on the river, which had limited its review to assessing the impact of that project's diversion dams and other proposed facilities in that project's area. Thus, the court criticized the Commission's use of the "narrow analysis" of another project's EIS as a substitute for the analysis required for the Sayles project.⁶⁴ The court in *LaFlamme* did not fault the Commission for limiting its cumulative impacts analysis for the Sayles Flat Project to the cumulative effects of dams and facilities in the area of the project. If anything, *LaFlamme* supports identifying a region of influence appropriately connected to the location of the project under review.

46. Similarly, Allegheny's reliance on *Hodel* is unavailing. The *Hodel* court found that the Department of the 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 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."⁶⁵ Unlike the Department of Interior, the Commission's proposed action did not permit 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. Thus, there is no way to relate any specific production and gathering activities to this project.

3. Segmentation

47. CEQ regulations require the Commission to include "connected actions," "cumulative actions," and "similar actions" in its NEPA analyses.⁶⁶ "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or

⁶⁴ 852 F.2d 389 at 401-02. The court stated: "At no point did the [[Upper Mountain Project] EIS analyze the effects of other projects, pending or otherwise, might have on this section of the American River Basin," i.e., the Sayles Flat Project section. *Id.* at 399.

⁶⁵ 865 F.2d 288, at 297 (citing *Kleppe*, 427 U.S. 390, 410 (1976)) (emphasis added).

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

similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”⁶⁷ “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.⁶⁸

48. 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.”⁶⁹ 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.”⁷⁰

49. 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.⁷¹ 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

⁶⁷ *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)(c) for the proposition that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions’”).

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

⁶⁹ *Coal. 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”).

⁷⁰ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

⁷¹ *Del. Riverkeeper Network*, 753 F.3d at 1308.

pending before the Commission.⁷² Subsequently, the same court indicated that in considering a pipeline application the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.⁷³

50. In the August 19 Order, we found that the EA properly excluded from its analysis of the Clarington Project other Dominion projects cited by Allegheny, including the New Market Project (Docket No. CP14-497), the Lebanon West II Project (Docket No. CP14-555), and the Monroe to Cornwell Project (Docket No. CP15-7). The August 19 Order found that the Clarington Project and the projects cited by Allegheny are not similar actions because they are distinct and separate projects and each project's timing or geography differs from that of other projects.⁷⁴ The August 19 Order also found that these projects and the Clarington Project are not connected actions because each project has independent utility nor are they cumulative actions because they are outside the Clarington Project's region of influence.⁷⁵

51. Allegheny renews its argument that the Commission improperly segmented its analysis of the Clarington Project from Dominion's New Market, Lebanon West II, and Monroe to Cornwell Projects. In addition, Allegheny raises for the first time on rehearing that the Commission improperly segmented its review of the Clarington Project from the Leidy South Project (Docket No. CP15-492).⁷⁶ Allegheny asserts these projects and the

⁷² *Id.*

⁷³ *See Myersville Citizens for a Rural Cmty. Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

⁷⁴ August 19 Order, 152 FERC ¶ 61,138 at PP 35-39.

⁷⁵ *Id.* P 41.

⁷⁶ As a rule, we reject requests for rehearing that raise a novel issue, unless we find that the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances. *See Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043, at P 19 (2012), *appeal dismissed, No Gas Pipeline v. FERC*, 765 F.3d 764 (D.C. Cir. 2014). Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought, based on matters not available for consideration by the Commission at the time of the final decision or final order.” 18 C.F.R. § 385.713(c)(3) (2015). Allegheny does not explain why it could not have raised this new argument earlier, and we find no reason that Allegheny could not have raised this argument before the issuance of our August 19 Order.

Clarington Project are similar⁷⁷ and cumulative actions; Allegheny does not allege these projects are connected to the Clarington Project.

52. Allegheny argues that the Clarington Project and these other projects are similar actions because each project proposes to add compression to increase capacity for Marcellus and Utica shale gas in Ohio, Pennsylvania, and West Virginia, amounting to a “comprehensive overhaul of Dominion’s system to increase capacity for Marcellus and Utica shale producers.”⁷⁸ Allegheny adds that the Clarington, New Market, Monroe to Cornwell, and Lebanon West II Projects have the same in-service date of November 1, 2016, and that the Leidy South Project has an in-service date of October 1, 2017. Allegheny argues that we improperly restricted our analysis of similar actions to those with common timing and geography even though CEQ’s regulations contain no such limiting language.⁷⁹

53. Allegheny argues that the Clarington Project and the other Dominion projects are cumulative actions because each project is designed to increase capacity for shale gas along Dominion’s system, and when viewed together the projects will have cumulatively significant impacts. Allegheny states that Commission staff excluded these projects through its “impermissibly restrictive” region of influence.⁸⁰

54. We disagree and reaffirm the August 19 Order’s finding that Commission staff did not improperly segment the analysis of the Clarington Project from other projects. CEQ regulations define similar actions as those that “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁸¹ While CEQ regulations do not limit our analysis of similar actions to those with common timing or geography, they also do not require us to look beyond those factors.

⁷⁷ “Similar actions” are those which, when viewed with other reasonably foreseeable or proposed agency actions, provide a basis for evaluating their environmental consequence together, such as common timing, location, impacts, alternatives, or implementation methods. 40 C.F.R. § 1508.25(a)(3) (2015).

⁷⁸ Allegheny Request for Rehearing at 23.

⁷⁹ *Id.* at 22.

⁸⁰ *Id.* at 23.

⁸¹ 40 C.F.R. § 1508.25(a)(3) (2015).

55. In any event, Allegheny does not persuade us to analyze the Clarington Project and other cited projects as similar actions. Although the timing of the construction and contemplated in-service dates of the Dominion projects is relatively close, i.e., over a two-year period, timing by itself is not determinative. As the August 19 Order states, the Monroe to Cornwell, Lebanon West II, and New Market Projects do not share common geography with the Clarington Project; the projects will not cumulatively impact any of the same resources.⁸² Similarly, the Leidy South Project and Clarington Project do not overlap spatially; the Leidy South Project proposes to modify Dominion's system in Pennsylvania, Maryland, and Virginia, whereas the Clarington Project will add facilities in Ohio and West Virginia.

56. The fact that each project adds compression to increase capacity does not mean these projects are so closely related to each other that NEPA requires concurrent analysis. The projects are not an integrated overhaul of Dominion's system. Each project involves discrete modifications specifically sized to meet different shippers' contracted transportation needs from different receipt points to different delivery points.

57. The four projects at issue in *Del. Riverkeeper Network v. FERC* all involved construction along the eastern leg of Tennessee's 300 Line. By contrast, the various Dominion projects raised by Allegheny involve construction of facilities on various sections of Dominion's system: the Clarington Project involves the addition of compression at existing compressor stations in Marshall County, West Virginia, and Monroe County, Ohio (both on Dominion's Line TL-377); the New Market Project proposes the construction of new compressor stations on Lines LN-1, LN-31, and LN-50 in New York; the Lebanon West II Project replacement of pipeline and addition of compression along Dominion's TL-400 pipeline in Ohio and Pennsylvania, and the Leidy South Project adds compression in existing compressor stations in Clinton and Franklin Counties, Pennsylvania, Frederick County, Maryland, and Loudoun County, Virginia, on Lines PL-1, PL-2, and TL-465.

58. The New Market, Lebanon West II, and Leidy South Projects have no shared facilities or similar paths from gas supply source to their respective markets. As a result, these projects are functionally independent and will not influence the hydraulic design of the other projects. There is no interaction between these projects' facilities. Service on the Clarington and Monroe to Cornwell Projects both involve transportation, at least in part, along Dominion's TL-377 line. However, while the Clarington Project is designed

⁸² The Clarington and Monroe to Cornwell projects are the closest geographically. We analyzed the cumulative impacts of the two projects in the Monroe to Cornwell EA and found no significant impacts. See Monroe to Cornwell EA at 63-64 (Accession No. 20150819-4009).

to transport gas supplies received from the Lightburn Processing Plant in West Virginia on Line TL-360 to the interconnection with Line TL-377 for transportation in a *northerly* direction for delivery to interconnections with Texas Eastern and Rockies Express, gas volumes associated with the Monroe to Cornwell Project will be received into Line TL-377 at the existing Boltz Hill interconnect and delivered in part via displacement to the LL Tonkin compressor station to be re-pressurized on Line TL-430 for delivery, in a *southerly* direction, to Columbia at Cornwell. Neither of these projects requires that the newly proposed facilities in any of the other project be used in order to provide the proposed service. As a result, both projects, as proposed, are functionally independent of the other projects.

59. Even if, for the sake of argument, the Commission were to find that the Clarington Project and any of the projects identified by Allegheny were similar actions, our determination as to whether to prepare a multi-project environmental document is discretionary. CEQ states, “[a]n agency *may* wish to analyze [similar] actions in the same impact statement. It *should* do so when the *best way* to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”⁸³ We do not find that such a multi-project analysis would be the best way to assess the impacts or alternatives to the Clarington Project and the projects Allegheny identifies here.

60. Allegheny’s argument that we should have analyzed these projects as cumulative actions is similarly unavailing. As discussed above, Commission staff appropriately established a 5-mile radius region of influence to evaluate the project’s cumulative effects. None of the other Dominion projects that Allegheny identifies are within, or at all near, the 5-mile radius. Thus, the projects are not cumulative actions.

4. Programmatic Environmental Impact Statement

61. 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.⁸⁴

⁸³ 40 C.F.R. § 1508.25(a)(3) (2015) (emphasis added). *See also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgt.*, 387 F.3d 989, 1001-01 (9th Cir. 2004) (emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the best way to do so).

⁸⁴ *See CEQ, Effective Use of Programmatic NEPA Reviews* at 13-15, (citing 40 C.F.R. § 1508.18(b) (2015)).

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,⁸⁵ 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.⁸⁶

62. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.⁸⁷ 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.”⁸⁸ 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,”⁸⁹ which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”⁹⁰ As to projects that are closely related in time or geography, the Commission may, however, prepare a multi-project environmental document, where that is the most efficient way to review project proposals.⁹¹

⁸⁵ *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).

⁸⁶ See *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 316-17 (4th Cir. 2009) (*Piedmont*).

⁸⁷ See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014); August 19 Order, 152 FERC ¶ 61,138 at P 30.

⁸⁸ 15 U.S.C. § 717f(e) (2012).

⁸⁹ *Kleppe*, 427 U.S. at 402.

⁹⁰ *Piedmont*, 558 F.3d at 316.

⁹¹ See, e.g., Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Projects Nos. 1888-030, 2355-018, and 405-106 (2015).

63. As it has 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. Allegheny claims that the Commission is engaged in regional development and planning with the gas industry. In support of this claim, Allegheny points to a map prepared by Commission's Office of Energy Projects depicting Marcellus shale projects,⁹² and various presentations and documents discussing natural gas infrastructure and the Commission's role in ensuring that the nation's energy infrastructure adapts to support compliance with the Environmental Protection Agency's Clean Power Plan.

64. In addition, Allegheny states that the Commission should prepare a programmatic EIS to assist the Commission and the public in understanding the broader reasonably foreseeable consequences of jurisdictional projects and non-jurisdictional gas drilling in the Marcellus and Utica shale formations. Allegheny argues that when projects in a particular geographical region are foreseeable and similar, NEPA requires the preparation of a single EIS. Allegheny states 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."⁹³ Allegheny also cites *Kleppe*, where the Court found, "when several proposals . . . that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental impacts must be considered together."⁹⁴ Allegheny asserts that the Commission cannot escape the existence of a comprehensive program with cumulative environmental effects by "disingenuously describing it as only an amalgamation of unrelated smaller projects."⁹⁵

65. Documents and presentations cited by Allegheny do not show that the Commission is engaged in regional planning. The Commission did not develop the Clean

⁹² Allegheny Request for Rehearing at 10.

⁹³ *Id.* at 24 (citing 2014 CEQ Guidance).

⁹⁴ *Id.* at 25 (citing *Kleppe*, 427 U.S. at 410).

⁹⁵ *Id.* at 25 (citing *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)).

Power Plan nor does the Commission have the authority to implement it.⁹⁶ Rather, state compliance with the Clean Power Plan may drive the need for natural gas infrastructure, affecting the Commission's responsibilities.

66. 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. Instead, 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, influenced by the market and state policies. As we have noted above, in *Kleppe*, the Court found that an agency is not required to prepare a programmatic EIS to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, that agency's federal plan or program in that region.⁹⁷

67. 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,"⁹⁸ and could not present "a credible forward look" that would be "a useful tool for basic program planning."⁹⁹ In these circumstances, the Commission's longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that

⁹⁶ The relevant guidelines, the Clean Power Plan, were issued by the EPA as a Final Rule on August 3, 2015. See Environmental Protection Agency, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, Final Rule, Docket No. EPA-HG-OAR-2013-0602 (Aug. 3, 2015).

⁹⁷ *Kleppe*, 427 U.S. at 401-02 ("[The District Court] found no evidence that the individual coal development projects undertaken or proposed by private industry and public utilities in that part of the country are integrated into a plan or otherwise interrelated Absent an overall plan for regional development, it is impossible to predict the level of coal-related activity that will occur in the region identified by respondents, and thus impossible to analyze the environmental consequences and the resource commitments involved in, and the alternatives to, such activity.").

⁹⁸ *Id.* at 402.

⁹⁹ *Piedmont*, 558 F.3d at 316.

are interdependent or otherwise interrelated or connected, “should facilitate, not impede, adequate environmental assessment.”¹⁰⁰ Thus, here, the Commission’s environmental review of Dominion’s actual proposed pipeline project in a discrete EA is appropriate under NEPA.

68. As we discussed above and in the August 19 Order, we have determined that there are no other proposals with which the Clarington Project would have a cumulative environmental impact. Further, generally speaking we have identified no projects that are functionally or financially dependent upon any other project; nor any proposals that are dependent upon the timing of another project’s approval or in-service date.¹⁰¹

69. 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.

C. Natural Gas Act Analysis

70. 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. In addition, Allegheny argues that the Commission prematurely concluded that the Clarington Project was required by the public convenience and necessity before the Commission considered the environmental impacts. Allegheny states that the Commission should only determine whether a project is required by the public convenience and necessity after the Commission determines the project is not a major federal action.¹⁰²

71. We disagree and affirm our finding in the August 19 Order that authorizing the Clarington Project is in the public convenience and necessity. As explained in the August 19 Order, under the Certificate Policy Statement 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 (i.e., eminent domain

¹⁰⁰ *Id.*

¹⁰¹ As noted above, the Commission will review multiple projects in a single environmental document when it determines that it would be appropriate to do so.

¹⁰² Allegheny Request for Rehearing at 28.

impacts). The Certificate Policy Statement's balancing of adverse impacts and public benefits is not an environmental analysis process, but rather an economic test that we undertake before our environmental analysis.¹⁰³

72. The August 19 Order concluded that the Clarington Project will have no adverse economic impacts on either Dominion's existing customers or on other existing pipelines or their captive customers.¹⁰⁴ Further, the Commission found that the Clarington Project will minimize the impacts to affected landowners as Dominion stated in its application that all construction activities and project facilities will be located on lands owned and leased by Dominion.¹⁰⁵ The August 19 Order also noted that Dominion executed a binding precedent agreement for firm service utilizing all of the project's design capacity.¹⁰⁶ Based on the strong showing of public benefits (i.e., the creation of capacity to meet the firm contractual commitment of the project shipper) and the minimal impacts the project may have on the economic interests of landowners in the vicinity, the Commission found and continues to find that, the Clarington Project is required by the public convenience and necessity pursuant to the criteria set forth in the Certificate Policy Statement, subject to the order's environmental discussion and conditions.¹⁰⁷ Thus, contrary to Allegheny's assertions, our issuance of a certificate of public convenience and necessity to Dominion for the construction and operation of the Clarington Project was based on our finding that the project is required by the public convenience and necessity as informed by our environmental analysis.¹⁰⁸

73. The August 19 Order then turned to the completion of the analysis and consideration of the environmental impacts of the project pursuant to the requirements of NEPA. The Commission has fully addressed the environmental issues raised by Allegheny in the EA, the August 19 Order, and herein, and we continue to find the project will have no significant impacts.

¹⁰³ See *National Fuel Gas Supply Corp.*, 139 FERC ¶ 61,037, at P 12 (2012).

¹⁰⁴ August 19 Order, 152 FERC ¶ 61,138 at PP 15-16.

¹⁰⁵ *Id.* P 17.

¹⁰⁶ *Id.* P 16.

¹⁰⁷ *Id.* P 18.

¹⁰⁸ We note that we may find that a project is a federal action significantly affecting the human environment and still determine the project is required by the public convenience and necessity.

The Commission orders:

Allegheny Defense Project's request for rehearing of the August 19 Order is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.