154 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Algonquin Gas Transmission, LLC Docket No. CP14-96-001

ORDER DENYING REHEARING AND DISMISSING STAY REQUEST

(Issued January 28, 2016)

1. On March 3, 2015, the Commission issued an order granting Algonquin Gas Transmission, LLC (Algonquin)[1] a certificate of public convenience and necessity (March 3 Order) under section 7(c) of the Natural Gas Act (NGA)[2] authorizing Algonquin to construct and operate pipeline and appurtenant facilities in New York, Connecticut, Rhode Island, and Massachusetts (Algonquin Incremental Market Project or AIM Project).[3] The Commission also granted Algonquin authorization under section 7(b)[4] of the NGA to abandon a meter station and certain aboveground facilities.

2. The Commission received eight timely requests for rehearing from Allegheny Defense Project (Allegheny); City of Boston Delegation (Boston Delegation); Coalition of Environmental and Community Organizations, Impacted Landowners, and Municipalities (Coalition); Town of Cortlandt, New York; Town of Dedham, Massachusetts; Peter Harckham; Riverkeeper, Inc. (Riverkeeper); and West Roxbury

[1] Algonquin is a subsidiary of Spectra Energy Partners, LP (Spectra).

[2] 15 U.S.C. § 717f(c) (2012).

[3] *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (2015) (March 3 Order).

[4] 15 U.S.C. § 717f(b) (2012).

Intervenors.[5] Coalition and the Town of Cortlandt also request a stay of Algonquin's certificate. Algonquin filed an answer to the rehearing and stay requests.[6]

3. As discussed below, we deny the rehearing requests and dismiss the stay request.

I. Background

4. The March 3 Order authorized Algonquin to construct and operate the AIM Project to expand the pipeline capacity on its existing pipeline system, which extends from points near Lambertville and Hanover, New Jersey, through the States of New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, to points near the Boston area.

5. The AIM Project involves the construction, installation, operation, and maintenance of 37.4 miles of pipeline and related facilities in New York, Connecticut, and Massachusetts. A majority of the pipeline installation will replace existing pipeline with larger diameter pipeline. The remaining pipeline installation will be new pipeline, including the new West Roxbury Lateral, an approximately 5-mile lateral that will be constructed off Algonquin's existing I-4 System Lateral in Norfolk and Suffolk Counties, Massachusetts, and will connect to the new West Roxbury Meter Station in Suffolk County, Massachusetts.

6. The AIM Project will also add 81,620 horsepower (hp) of compression at six existing compressor stations in New York, Connecticut, and Rhode Island; involve the abandonment of certain facilities; include the construction of three new meter stations, including the West Roxbury Meter Station; and modify 24 existing meter stations. Through these expansion upgrades, the AIM Project will provide 342,000 dekatherms (Dth) per day of firm transportation service from an existing receipt point in Ramapo, New York, to eight local distribution companies and two municipal utilities (collectively,

[5] The parties joining the rehearing requests filed by Boston Delegation, Coalition, and West Roxbury Intervenors are listed in Appendix A.

[6] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to rehearing requests. 18 C.F.R. § 385.215(a)(2) (2015). However, because Algonquin's answers have assisted in our decision-making process, we will waive Rule 213(a)(2) to admit its answers.

the Project Shippers)[7] at their various city gate delivery points in Connecticut, Rhode Island, and Massachusetts.

7. On August 6, 2014, Commission staff issued a draft environmental impact statement (EIS), which established a 45-day comment period ending on September 29, 2014.[8] Commission staff held five public meetings to receive comments on the draft EIS, and continued to accept comments past the comment deadline. On January 23, 2015, Commission staff issued a final EIS.[9] The final EIS concluded that the impacts from the construction and operation of the AIM Project, some of which would be adverse, would be reduced to less-than-significant levels with the implementation of Algonquin's proposed mitigation and Commission staff's 32 recommended mitigation measures.

8. The March 3 Order concurred with the final EIS's findings and adopted the EIS's recommended mitigation measures as conditions of the order. The March 3 Order determined that the AIM Project, if constructed and operated as described in the final EIS, was an environmentally acceptable action and was required by the public convenience and necessity.

II. Procedural Issues

A. Late Interventions and Non-Parties Requesting Rehearing

9. On March 3, 2015, Paul Nevins filed a late motion to intervene followed by Karen L. Weber's on March 16; David Ludlow's and the Foundation for a Green Future, Inc.'s (Foundation) on March 17; and Paul D. Horn's on March 23. These late interventions have been filed nearly one year after the initial intervention deadline of April 8, 2014, more than five months after the draft EIS intervention deadline of September 29, 2014,[10] and on the date of, or after, the issuance of the Commission's

[7] The Project Shippers are Bay State Gas Company; Boston Gas Company; Colonial Gas Company; Connecticut Natural Gas Corporation; Middleborough Gas and Electric; The Narragansett Electric Company; Norwich Public Utilities; NSTAR Gas Company; The Southern Connecticut Gas Company; and Yankee Gas Services Company.

[8] 79 Fed. Reg. 47,100 (2014).

[9] 80 Fed. Reg. 5,104 (2015).

[10] Pursuant to sections 157.10(a)(2) and 380.10(a)(1)(i) of the Commission's regulations, motions to intervene based on environmental grounds are deemed timely if they are filed within the comment period on a draft EIS. 18 C.F.R. §§ 157.10(a)(2), 380.10(a)(1)(i) (2015).

March 3 Order on the merits. On March 23, 2015, Algonquin filed a timely answer to Ms. Weber's, Mr. Ludlow's, and the Foundation's pleadings, stating that the Commission should deny their late motions to intervene.

10. In ruling on a late motion to intervene, the Commission applies the criteria set forth in Rule 214(d),[11] and considers, among other things, whether the movant had good cause for failing to file the motion within the time prescribed, whether any disruption to the proceeding might result from permitting the intervention, and whether any prejudice to or additional burdens upon the existing parties might result from permitting the intervention. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden on the Commission of granting late intervention may be substantial. Thus, movants seeking intervention after a dispositive order's issuance bear a higher burden to demonstrate good cause for the granting of late intervention.[12]

11. None of these movants requesting late intervention adequately address the factors required to grant a late intervention under Rule 214(d) nor explain why they waited to request to intervene in this proceeding. Accordingly, we find that these late movants have not shown good cause to be granted intervention at this late stage. Allowing late intervention at this point would create prejudice and additional burdens to the Commission, other parties, and the applicant. Therefore, we deny these late motions.

12. The late movants also joined either Coalition's or West Roxbury Intervenors' request for rehearing. Under section 19(a) of the NGA[13] and Rule 713(b) of the Commission's Rules of Practice and Procedure, only parties to a proceeding are entitled to request rehearing of a Commission decision.[14] Because the late movants are not parties to this proceeding, they have no standing to seek rehearing of the March 3 Order, and cannot join the rehearing applicants. Joseph Matthew Hickey also joined Coalition's request for rehearing but never filed a motion to intervene.[15] Therefore, he is not a party to this proceeding and has no standing to seek rehearing along with Coalition's members. Nevertheless, by answering Coalition's and West Roxbury Intervenors' concerns below,

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[11] 18 C.F.R. § 385.214(d) (2015).

[12] *See, e.g.*, *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at PP 17-19; *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

[13] 15 U.S.C. § 717r(a) (2012).

[14] 18 C.F.R. § 385.713(b) (2015).

[15] *See* Coalition April 2, 2015 Rehearing Request at Exhibit 1 "List of Intervenors" at 5.

we also address the late movants' and Mr. Hickey's concerns.

B. Late Rehearing Request

13. On Thursday, April 2, 2015, at 11:22:56 p.m., William Huston electronically filed a request for rehearing. Because Mr. Huston's rehearing request was filed after 5:00 p.m. Eastern time, the end of the Commission's regular business hours,[16] we consider the rehearing request filed on the next business day, April 3, 2015.[17] Pursuant to section 19(a) of the NGA,[18] an aggrieved party must file a request for rehearing within 30 days after the issuance of a final Commission decision, in this case no later than April 2, 2015. The Commission cannot waive the 30-day statutory deadline for filing requests for rehearing. Consequently, because Mr. Huston filed his rehearing request on April 3, 2015, we will deny his rehearing request.

14. Nevertheless, below we address the issues raised by Mr. Huston in our response to the same issues raised by the rehearing applicants regarding whether the Commission's issuance of conditional approval violated section 401 of the Clean Water Act, whether Commission staff improperly segmented its environmental review of the AIM Project, whether the AIM Project is overbuilt, and whether the Commission sufficiently assessed project need, safety, indirect and cumulative impacts, and health impacts.[19]

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[16] 18 C.F.R. § 375.101(c) (2015).

[17] *See* 18 C.F.R. § 385.2001(a)(2) (2015) ("Any document received after regular business hours is considered filed on the next regular business day.").

[18] 15 U.S.C. § 717r (2012).

[19] Mr. Huston's rehearing request also alleges that the Commission delegated its authority to the American Petroleum Institute, allowed pipelines to begin construction before issuing a certificate, and violated Title V of the Clean Air Act by issuing the certificate order before states issued their air quality permits. Mr. Huston's claims are unfounded. The Commission independently evaluates pipeline applications based on the available public record. Pipelines cannot begin construction before receiving authorization from the Director of the Commission's Office of Energy Projects pursuant to a certificate order's conditions. Pipeline companies that violate certificate conditions are subject to general and civil penalties. *See* 15 U.S.C. §§ 717t; 717t-1 (2012). Further, the Commission may issue certificates conditioned on a pipeline obtaining Clean Air Act permits. *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1321 (D.C. Cir. 2015) (*Myersville*).

C. Late Comments

15. Several individuals filed comments after the March 3 Order's issuance without requesting rehearing.[20] These comments raised safety and environmental concerns that were previously addressed in the final EIS and the March 3 Order, and are addressed in this order below. Many of these individuals requested that we vacate the tolling order so parties may file an appeal in court.[21] Because we are issuing the rehearing order, and parties to this proceeding may seek judicial review, this issue is moot.

16. Occupy Providence, an entity that filed comments at a public meeting discussing the draft EIS but did not intervene, also filed nine reports after the March 3 Order's issuance for Commission staff to use in its environmental review. The Commission's longstanding policy is not to accept additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause.[22] Because other parties are precluded under Rule 713(d)(1) of our Rules on Practice and Procedure[23] from filing answers to requests for rehearing, allowing the late commenters to introduce new evidence at this stage would raise concerns of fairness and due process for other parties to the proceeding. In addition, accepting such evidence at the rehearing stage disrupts the administrative process by inhibiting the Commission's ability to resolve issues with finality. Occupy Providence neither explains nor justifies why the additional information should be admitted after the close of the record and after the issuance of a dispositive order in this proceeding. Therefore, we will not accept the additional reports as evidence.

[20] Bernard Vaughey labeled his two August 14, 2015, filings as requests. We treat these filings as comments.

[21] We note that section 19(b) of the NGA prohibits any entity from requesting judicial review of any order of the Commission if that entity did not request the Commission to rehear that order. 15 U.S.C. § 717r(b) (2012) ("No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure [to do so].").

[22] *See Tennessee Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,025, at P 28 (2013); *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005).

[23] 18 C.F.R. § 385.713(d)(1) (2015).

D. Motion to Assign Intervenor Status

17. On June 2, 2015, Mr. Harckham filed a motion requesting to assign his intervenor status to Mary Jane Shimsky, his successor as the chair to the Westchester County, New York, Board of Legislators' Labor, Parks, Planning, and Housing Committee (Committee).

18. Mr. Harckham filed a timely motion to intervene on April 8, 2014. Mr. Harckham's motion, however, does not clearly state that he acted on behalf of the Committee nor has Mr. Harckham provided us with evidence that he was authorized by the Westchester County Board of Legislators to intervene on behalf of the Committee. Therefore, we find that Mr. Harckham intervened as an individual. Because individuals represent themselves, an individual's interest or intervention cannot be assumed by another individual. We thus deny Mr. Harckham's motion to assign his status to Ms. Shimsky.

III. Rehearing Request

19. In the rehearing requests, the parties raise arguments concerning whether we erred in declining to hold an evidentiary hearing, whether our conditioned approval violated section 401 of the Clean Water Act, whether the project is required by the public convenience and necessity, as well as numerous issues related to the adequacy of the Commission staff's NEPA analysis. We address these arguments in turn below.

A. Evidentiary Hearing

20. Coalition argues that the Commission erred when it declined to hold a trial-type hearing to resolve disputed issues of material fact as requested by Mr. Huston. Mr. Huston requested a formal hearing to address issues regarding segmentation of planned Northeast natural gas pipeline projects, unconventional natural gas development impacts, project need, the project's potential to export natural gas, and general pipeline safety.[24] Coalition adds that an evidentiary hearing is necessary to resolve whether the project is overbuilt.

21. A trial type hearing is appropriate where resolution of the controversy would be facilitated by cross-examination of witnesses. Coalition correctly cites *Cajun Electric Power Co-op., Inc. v. FERC* (*Cajun*)[25] as stating that the Commission must hold a hearing to resolve disputed issues of material fact; however, the *Cajun* court goes on to

[24] *See* William Huston September 9, 2014 Motion to Intervene and Request for Full Hearing.

[25] 28 F.3d 173 (D.C. Cir. 1994).

say that the Commission "need not conduct such a hearing if [the disputed issues] may be adequately resolved on the written record."[26]

22. Here, we found that the written record was sufficient for us to resolve any material issue of fact, and therefore, we conducted a paper proceeding. We addressed Mr. Huston's concerns and Coalition's additional concern in the final EIS and the March 3 Order. Neither discovery nor cross-examination was necessary to address Mr. Huston's and Coalition's arguments.

B. Conditioned Approval and Section 401 of Clean Water Act

23. Section 401 of the Clean Water Act (CWA) provides that no federal "license or permit shall be granted until the" state certifies that any activity "which may result in a discharge into the navigable waters" will comply with the applicable provisions of the Act.[27] Several rehearing applicants argue that the Commission violated section 401 of the CWA by issuing a conditioned certificate order before the respective state agencies in Connecticut, Massachusetts, and New York had issued their water quality certifications for the proposed project. They argue that the language of section 401 is unambiguous when it states that "[n]o license or permit shall be granted until the certification required by this section has been obtained or has been waived . . . ."[28] The rehearing applicants also cite *PUD No. 1 of Jefferson County v. Washington Department of Ecology* and *City of Tacoma, Washington v. FERC* to bolster their argument that the Commission cannot issue a certificate order before a state issues its CWA section 401 water quality certification.[29]

24. The rehearing applicants argue that by issuing the certificate first, the Commission usurped the states' authority to issue their own, potentially more stringent, conditions. Rehearing applicants assert that the Commission cannot override the section 401 bar by relying on the Commission's authority under section 7(e) of the NGA. Rehearing applicants add that the certificate order limits the state's power by requiring that "any state or local permits issued with respect to the jurisdictional facilities authorized herein must be

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[26] *Id*. at 177. *See also Louisiana Ass'n of Independent Producers and Royalty Owners v. FERC*, 958 F.2d 1101, 1113-15 (D.C. Cir. 1992).

[27] 33 U.S.C. § 1341(a) (2012).

[28] *See, e.g.*, Mr. Harckham April 1, 2015 Rehearing Request at 3 (citing 33 U.S.C. § 1341(a)(1) (2012).

[29] *Id* . (citing and *PUD No. 1 of Jefferson County v. Washington Dept. of Ecology*, 511 U.S. 700, 707 (1994); *City of Tacoma, Washington v. FERC*, 460 F.3d 53, 67-68 (D.C. Cir. 2006)).

consistent with the conditions of this certificate."[30]

25. As an initial matter, we note that the respective state water quality agencies in the States of Connecticut, Massachusetts, and New York have all issued their section 401 water quality certifications. In fact, Massachusetts Department of Environmental Protection issued its water quality certification on November 14, 2014, before the Commission's March 3 authorization of the AIM Project.[31] Therefore, the rehearing applicants' argument on whether our March 3 Order violates the CWA is moot.

26. Even so, our March 3 Order complies with the CWA. The Commission routinely issues certificates for natural gas pipeline projects subject to the federal permitting requirements of the CWA, among other statutes. The practical reason is that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's issuance of its certificate without unduly delaying the project. It is entirely appropriate for the Commission to issue an NGA certificate conditioned on the certificate holder subsequently obtaining necessary permits under other federal laws. Section 7(e) of the NGA vests the Commission with broad power to attach to any certificate of public convenience and necessity "such reasonable terms and conditions" as it deems appropriate.[32]

27. The order is an "incipient authorization without current force or effect," since it does not allow the pipeline to begin the activity it proposes before the relevant environmental conditions are satisfied.[33] Section 401(a)(1) of the CWA prohibits licenses

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[30] March 3 Order, 150 FERC ¶ 61,163, at P 151.

[31] On March 9, 2015, the Connecticut Department of Energy and Environmental Protection issued its section 401 water quality certification, and on May 5, 2015, the New York Department of Environmental Conservation issued its section 401 water quality certification.

[32] 15 U.S.C. § 717f(e) (2012). *See also Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,402 n.195 (1990) ("The Commission has a longstanding practice of issuing certificates conditioned on the completion of environmental work or the adherence by the applicants to environmental conditions") (citing *Texas Eastern Transmission Corp.*, 47 FERC ¶ 61,341 (1989); *CNG Transmission Corp.*, 51 FERC ¶ 61,267 (1990); *Columbia Gas Transmission Corp.*, 48 FERC ¶ 61,050 (1989)).

[33] *Crown Landing LLC*, 117 FERC ¶ 61,209, at P 21 (2006). *See also Pub. Utils. Comm'n of Cal.*, 900 F.2d 269, 282 (D.C. Cir. 1990) (finding that the Commission did not err in granting certificate before environmental hearing was finished because agency can make "even a final decision" as long as it assesses the environmental data before the

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or permits that allow the licensee or permittee "to conduct any activity . . . which may result in any discharge into the navigable waters."[34] Consistent with such language, the March 3 Order ensured that until Connecticut, Massachusetts, and New York issued their water quality certifications, Algonquin could not begin an activity in the respective state that may result in a discharge into navigable waters.[35] Indeed, the rehearing applicants have not identified any activities authorized by the March 3 Order that may have resulted in such discharge before state approval or Commission staff's issuance of a notice to proceed. In fact, Commission staff issued all of its notices to proceed to begin construction of a pipeline segment that could result in a discharge after Connecticut, New York, and Massachusetts issued their water quality certifications.[36]

28. Conditioned certificates are a common Commission practice, affirmed by the courts. In *Myersville Citizens for a Rural Community, Inc. v. FERC*,[37] the D.C. Circuit found that the Commission had not violated the NGA or the Clean Air Act by conditioning its approval of new compressor station on the review process required by the Clean Air Act. The D.C. Circuit stated ". . . the certificate order has only whatever preemptive force it can lawfully exert, and no more. It did not purport to contravene the Natural Gas Act's savings clause [15 U.S.C. § 717b(d)(3) (2012)]. Nor did it purport to compel the [Maryland Department of Environment's] interpretation of Maryland's SIP."[38] Similarly, in *City of Grapevine v. Department of Transportation*,[39] the D.C. Circuit upheld the use of analogous federal conditioning authority. There, the court found that the U.S. Department of Transportation had not violated the National Historic Preservation Act by conditioning its approval of a new airport runway on the review process required by that federal statute.[40] In contrast, the cases that the rehearing applicants cite in support are inapplicable

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decision's effective date); *Finavera Renewables Ocean Energy, Ltd.*, 122 FERC ¶ 61,248, at P 15 (2008).

[34] 33 U.S.C. § 1341(a) (2012).

[35] *See* March 3 Order, 150 FERC ¶ 61,163, at Environmental Condition 9.

[36] On April 13, 2015, Commission staff did issue a notice to proceed to use four ware yards.

[37] *Myersville*, 783 F.3d 1301 (D.C. Cir. 2015).

[38] *Id*. at 1321.

[39] *City of Grapevine, Tex. v. Dep't of Transp.*, 17 F.3d 1502 (D.C. Cir. 1994).

[40] *Id*. at 1508-09.

as they do not evaluate the Commission's authority to condition its project approval on the successful completion of the state review process required by the CWA.[41]

29. We also find no merit in the claim that the March 3 Order limits state authority to issue state water quality conditions. Section 401(d) of the CWA states that any limitations or monitoring prescribed in the water quality certification to ensure that the applicant will comply with federal or state standards under the CWA shall become conditions of the federal license or permit and thus control the construction and operation of the project.[42] The Commission did not authorize Algonquin to disturb the environment before the states acted.

30. Further, our preemption language that the rehearing applicants cite does not apply to section 401 water quality certifications, which are federal permits administered by the respective state agency.[43] Accordingly, we deny rehearing on these issues.

C. Preemption

31. Mr. Harckham and the West Roxbury Intervenors raise preemption arguments on rehearing. Mr. Harckham states that New York State's parkland alienation law requires Algonquin to receive approval from the New York State Legislature in order to obtain its proposed additional temporary workspace area outside its existing easement in the Blue Mountain Reservation.[44] Mr. Harckham argues that the NGA will not preempt the

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[41] *S.D. Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370 (2006) (regarding whether an operating dam to produce hydroelectricity may discharge into navigable waters of the United States and would thus require a section 401 water quality certification); *PUD No. 1 of Jefferson Cty. v. Wash. Dep't of Ecology*, 511 U.S. 700 (1994) (regarding minimum stream flow rates as part of a section 401 water quality certificate); *City of Tacoma v. FERC*, 460 F.3d 53 (D.C. Cir. 2006) (requiring the Commission to seek affirmation from the state agency that it complied with state law notice requirements when it issued its water quality certification); *State of N.C. v. FERC*, 112 F.3d 1175 (D.C. Cir. 1997) (regarding whether a decrease in volume of a preexisting discharge at a hydropower project required a section 401 water quality certification before the Commission issued a license amendment).

[42] 33 U.S.C. § 1341(d) (2012).

[43] *See Islander E. Pipeline Co. et al.*, 102 FERC ¶ 61,054, at P 115 (2003) ("While state and local permits are preempted under the NGA, state authorizations required under federal law are not.").

[44] The requirement that a municipality obtain legislative authorization to alienate parkland is founded in New York State case law and common law. *See* State of

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parkland alienation law in New York because the parkland alienation law is unrelated to the regulation of natural gas facilities and does not involve state public service commissions as was the case in the preemption cases, *Schneidewind v. ANR Pipeline Company*[45] and *Natural Fuel Gas Supply v. Public Service Commission*.[46] Moreover, Mr. Harckham argues that the Commission's certificate should not preempt the parkland alienation law because the environmental conditions in a Commission certificate inadequately avoid environmental harms and would conflict with state delegated authority under the Clean Air Act and Clean Water Act.

32. West Roxbury Intervenors argue that Article 97 of the Massachusetts Constitution[47] would apply to the West Roxbury Lateral's route along certain streets and across the Gonzalez Field in the Town of Dedham, Massachusetts. Article 97 mandates that a change in use or a disposal of lands held for public purposes must be approved by a two-thirds vote from both houses of the Massachusetts Legislature. While West Roxbury Intervenors acknowledge that the NGA grants the Commission broad authority to regulate interstate pipelines, West Roxbury Intervenors appear to argue that federal preemption should be limited in this case because Algonquin has not demonstrated project need or that the gas supplies will not be exported.[48]

33. The Commission does not take preemption lightly. Whether or not a state or local law is related to natural gas activities or public service commissions, the NGA and the Commission's regulations implementing that statute generally preempt state and local law that conflict with federal regulation, or would unreasonably delay the construction and operation of facilities approved by the Commission.[49] The Commission, however,

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New York, New York State Office of Parks, Recreation and Historic Preservation, *Handbook on the Alienation and Conversion of Municipal Parkland in New York* at 7 (2012), http://parks.ny.gov/publications/documents/AlienationHandbook.pdf.

[45] 485 U.S. 293 (1988).

[46] 894 F.2d 571 (2d Cir. 1990).

[47] Mass. Const. Amend. Art. 97 (2015).

[48] We note the March 3 Order found that Algonquin demonstrated need for the AIM Project, and that there is no evidence that the natural gas supplies transported on the project will be exported. *See* March 3 Order, 150 FERC ¶ 61,163, at PP 22-25.

[49] *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); *(continued ...)*

encourages applicants to cooperate with state and local agencies regarding the location of pipeline facilities, environmental mitigation measures, and construction procedures.

34. That a state or local authority requires something more or different than the Commission does not necessarily make it unreasonable for an applicant to comply with both the Commission's and state or local agency's requirements. It is true that additional state and local procedures or requirements could impose more costs on an applicant or cause some delays in constructing a pipeline. Not all additional costs or delays, however, are unreasonable in light of the Commission's goal to include state and local authorities to the extent possible in the planning and construction activities of pipeline applicants. The Commission's practice of encouraging cooperation between interstate pipelines and local authorities does not mean, however, that those agencies may use their regulatory requirements to undermine the force and effect of a certificate issued by the Commission.[50] A rule of reason must govern both the state and local authorities' exercise of their power and an applicant's bona fide attempts to comply with state and local requirements.

35. If a conflict arises between the requirements of a state or local agency and the Commission's certificate conditions, the principles of preemption will apply and the federal authorization will preempt the state or local requirements. Having said this, we note that the Commission cannot act as a referee between applicants and state and local authorities regarding each and every procedure or condition imposed by such agencies. In the event compliance with a state or local condition conflicts with a Commission certificate, parties are free to bring the matter before a Federal court for resolution.

Iroquois Gas Transmission System, L.P., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

[50] *See Dominion Transmission, Inc.*, 141 FERC ¶ 61,240, at P 68 (2012) (finding "state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission.") *See also Transcontinental Gas Pipe Line Corp., LLC*, 145 FERC ¶ 61,152, at P 75 n.36 (2013).

36. In response to Mr. Harckham's comments, we emphasize that state permits required under federal law are not preempted by the NGA.[51] Further, as discussed below, we also find that the final EIS found based on substantial evidence that impacts to the Blue Mountain Reservation would be adequately minimized.[52]

D. Certificate Policy Statement

1. Project Need

37. Several rehearing applicants argue that the Commission failed to demonstrate project need as required by the public convenience and necessity and the Certificate Policy Statement. Town of Dedham argues that the Commission should evaluate project need on a regional basis. Coalition and West Roxbury Intervenors argue that Algonquin cannot demonstrate need for the AIM Project when other alternatives may serve the demand, such as alternative energy sources (i.e., wind, solar, geothermal, and kinetic technologies), importing liquefied natural gas (LNG), and repairing leaking natural gas pipelines.

38. In support of repairing leaking gas pipelines, Coalition and West Roxbury Intervenors cite a *Boston Globe* article summarizing a study, published after the final EIS, conducted by Harvard University scientists.[53] The study evaluated methane emissions from leaking natural gas distribution pipelines in the greater Boston area (Boston Methane Emissions Study). Coalition argues that repairing pipelines should have been considered because it is consistent with the Commission's cost-recovery policy.[54] Coalition and West Roxbury Intervenors also for the first time on rehearing introduce new findings from the February 2015 U.S. Department of Energy report, "Natural Gas Infrastructure Implications of Increased Demand from the Electric Power Sector" (DOE Report), which studies the

[51] *See Islander E. Pipeline Co. et al.*, 102 FERC ¶ 61,054, at 61,130 (2003) ("While state and local permits are preempted under the NGA, state authorizations required under federal law are not.").

[52] *See* paragraphs 164-167 of this order.

[53] Kathryn McKain *et al*., *Methane emissions from natural gas infrastructure and use in the urban region of Boston, Massachusetts*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, February 17, 2015, http://www.pnas.org/content/112/7/1941.full.pdf?sid=5a42b412-77c8-4326-a6d4-bcced7c4ac13 (Boston Methane Emissions Study).

[54] *See Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015).

potential infrastructure needs of the U.S. interstate natural gas pipeline transmission system under multiple future natural gas demand scenarios.[55] The DOE Report, they argue, states that diverse sources of natural gas supply and demand as well as the increased utilization of existing interstate natural gas infrastructure will reduce the need for additional interstate natural gas pipeline infrastructure.[56]

39. We reaffirm our March 3 Order's finding that Algonquin demonstrated project need for the AIM Project.[57] Algonquin executed long-term firm transportation agreements with its ten Project Shippers for the full capacity being offered, which the Certificate Policy Statement states constitutes "significant evidence of demand for the project."[58] It is Commission policy to not look beyond precedent or service agreements to make judgments about the needs of individual shippers.[59] The D.C. Circuit affirmed this policy in *Minisink Residents for Environmental Preservation & Safety v. FERC*,[60] finding that the petitioners

> identify nothing in the policy statement or in any precedent construing it to suggest that it requires, rather than permits, the Commission to assess a project's benefits by looking beyond
>
> the market need reflected by the applicant's existing contracts

[55] U.S. Department of Energy, *Natural Gas Infrastructure Implications of Increased Demand from the Electric Power Sector* (2015), http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V_02-02.pdf (DOE Report).

[56] *Id.* at vi.

[57] March 3 Order, 150 FERC ¶ 61,163, at PP 22-25.

[58] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[59] *See id.*, 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)). Indeed, since the advent of unbundling and open-access transportation, it is often impossible to discern who the ultimate consumers of gas transported under any particular agreement will be.

[60] *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97 (D.C. Cir. 2014) (*Minisink*).

with shippers.[61]

40. We decline the Town of Dedham's request for an assessment of project need on a regional basis. Under the Certificate Policy Statement, the Commission considers all relevant factors reflecting on the need for the project. Although not the exclusive means of establishing need, precedent agreements "always will be important evidence of demand for a project."[62] Here, Algonquin has executed precedent agreements with the shippers for 15-year firm transportation service agreements subscribing the entire 342,000 Dth per day of service that will be created by the AIM Project. In addition, all of the shippers are local distributors of gas to residential and commercial end users in their service areas and will use the expansion capacity on Algonquin's pipeline system to receive system supplies. Given this strong evidence of market demand for the project under review, the Commission does not believe it is necessary in this case to separately assess need across the region.

41. Notwithstanding our finding that Algonquin's executed long-term firm transportation agreements with its ten Project Shippers for the full capacity being offered demonstrates need under the Certificate Policy Statement, we note that, as stated in the March 3 Order, staff's environmental review considered the potential for energy conservation and renewable energy sources to serve as alternatives to the AIM Project. Staff's review, however, concluded that these alternatives were not practical project alternatives. We agreed, and also stated that we cannot assume that the Project Shippers failed to consider the feasibility of additional gas storage, including LNG storage, before committing to additional pipeline capacity. Nor can we assume that project shippers failed to consider importing natural gas to LNG import facilities.[63]

42. Similarly, Commission staff was not required to consider repairing leaking pipelines as an alternative. Section 102(C)(iii) of the National Environmental Policy Act of 1969 (NEPA) requires an agency to discuss in its environmental document alternatives to the proposed action.[64] While the Council on Environmental Quality's (CEQ) regulations require agencies to evaluate all reasonable alternatives,[65] CEQ provides that agencies need to only consider feasible alternatives and not remote and conjectural

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[61] *Id*. at 111 n.10.

[62] Certificate Policy Statement, 88 FERC P 61,227 at 61,748.

[63] *See* March 3 Order, 150 FERC ¶ 61,163, at P 25.

[64] 42 U.S.C. § 4332(C)(iii) (2012).

[65] *See* 40 C.F.R. § 1502.14 (2015).

alternatives.[66] The Boston Methane Emissions Study, which was issued after the final EIS, approximates that 15 billion cubic feet (Bcf) of methane is emitted annually in the Greater Boston Area.[67] In comparison, the AIM Project will provide 342,000 Dth per day of additional firm transportation service, potentially delivering more than 100 Bcf per year of natural gas. Therefore, the repair of leaking pipelines is not a reasonable alternative to the AIM Project as there would still be a need for delivery of additional natural gas supplies. Further, the AIM Project is an expansion project, with the entirety of the replacement pipe being a larger diameter than the current pipe. Thus, Algonquin's current pipeline system is too small to handle the additional volumes, invalidating this option as an alternative.

43. We also need not consider the DOE Report as the Commission has a longstanding policy to not accept additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause.[68] Even so, the DOE Report does not undermine our finding that Algonquin has demonstrated project need. The DOE Report studies the potential aggregate infrastructure needs of the U.S. interstate natural gas pipeline transmission system under multiple future natural gas demand scenarios. The DOE Report does not, however, evaluate the need for natural gas infrastructure in any specific region, including New England.

2. Landowner Impact

44. Boston Delegation argues that the Commission violated the Certificate Policy Statement by concluding, without evidentiary support, that Algonquin had taken steps to minimize adverse safety impacts on landowners and surrounding communities.

45. Boston Delegation misconstrues our Certificate Policy Statement discussion regarding landowner impacts. Our discussion on landowner impacts is concerned with the pipeline's use of eminent domain authority and the steps the pipeline has taken to minimize the economic impacts on landowners. Safety impacts are evaluated in the

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[66] CEQ, *Guidance Regarding NEPA Regulations*, at 9 (1983), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-GuidanceRegulations.pdf. *See also* CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act*, at 4 (1981), http://energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act ("Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.").

[67] Boston Methane Emissions Study at 1945.

[68] *See, e.g.*, *Tennessee Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,025, at P 28 (2013); *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005).

Commission's NEPA environmental analysis. As discussed below, the Commission did conduct a careful safety review, as demonstrated by section 4.12 of the final EIS.[69]

E. Segmentation of the Atlantic Bridge and Access Northeast Projects from Commission Staff's Environmental Review

46. CEQ regulations require the Commission to include "connected actions," "cumulative actions," and "similar actions" in its NEPA analyses.[70] "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."[71] "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.[72]

47. 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."[73] 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

[69] *See* final EIS at 4-264 to 4-282.

[70] 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

[71] *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. 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'.").

[72] 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

[73] *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.").

aggregation, no project could be said to enjoy independent utility."[74]

48. In *Del. Riverkeeper Network v. FERC* (*Del. Riverkeeper*), 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.[75] 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.[76] Courts have 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.[77] Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.[78]

49. In the March 3 Order, we dismissed the argument that the AIM Project was improperly segmented from Algonquin's and its affiliate Maritimes & Northeast Pipeline, L.L.C.'s (Maritimes)[79] Atlantic Bridge Project and Algonquin's Access Northeast Project, which were at the time both contemplated expansion projects. The March 3 Order found that because an application was not yet filed for either the Atlantic Bridge Project or the Access Northeast Project, neither project was a proposal, and without a proposal, improper

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

[75] *Del. Riverkeeper*, 753 F.3d at 1308.

[76] *Id.*

[77] *Minisink*, 762 F.3d at 113 n.11 (D.C. Cir. 2014). *See also Weinberger v. Catholic Action of Haw.*, 454 U.S. 139, 146 (". . . an EIS need not be prepared simply because a project is *contemplated*, but only when the project is *proposed*") (emphasis in original); *Del. Riverkeeper*, 753 F.32d at 1318 ("NEPA, of course, does not require agencies to commence NEPA reviews of projects not actually proposed.")

[78] *See Myersville*, 783 F.3d at 1326.

[79] Maritimes is a joint venture of Spectra, Emera, Inc., and ExxonMobil. Maritimes pipeline system extends approximately 684 miles and transports natural gas from developments offshore Nova Scotia to markets in Atlantic Canada and the northeastern United States. The Atlantic Bridge Project will modify the Maritimes system to be bidirectional.

segmentation did not apply.[80] Even so, the March 3 Order discussed the potential cumulative impact that the AIM Project would have when added to the Atlantic Bridge and Access Northeast Projects.[81]

50. Since the March 3 Order, Algonquin and Maritimes filed their application for the Atlantic Bridge Project, and Algonquin requested Commission approval to use the pre-filing process for the Access Northeast Project.[82]

51. The Atlantic Bridge Project as proposed is designed to provide capacity to enable Algonquin to provide 132,705 Dth per day of firm transportation service, and Maritimes to provide 106,276 Dth per day of firm transportation service, to project shippers. Algonquin will provide service on its system from receipt points at Mahwah, New Jersey, and Ramapo, New York, to various new and existing delivery points on Algonquin's system in Massachusetts and Maine, including its interconnection with Maritimes in Beverly, Massachusetts. The Atlantic Bridge Project will consist of 6.3 miles of replacement pipeline across two segments, and 26,500 hp of new compression through the modification of three existing compressor stations and the construction of a new compressor station. These activities will occur in New York, Connecticut, and Massachusetts, and some of these activities may physically overlap or abut with AIM Project facilities, including modifications to the Stony Point, Oxford, and Chaplin Compressor Stations and pipeline installations in Westchester County, New York; Fairfield County, Connecticut; and Norfolk County, Massachusetts.

52. Details regarding the Access Northeast Project are limited. In its request to use the pre-filing process, Algonquin states that it has executed memoranda of understanding with seven electric distribution companies. Further, currently Algonquin anticipates that the Access Northeast Project will consist of 123 miles of various pipeline facilities; modifications to seven existing compressor stations; construction of a new compressor station; construction of associated facilities, such as meter stations; and the construction of an LNG peaking facility. These activities will occur in New York, Connecticut, Rhode Island, and Massachusetts, and some of these activities may physically overlap or abut with AIM Project facilities, including modifications to the Stony Point, Southeast, Burrillville, and Chaplin Compressor Stations and pipeline installations in Rockland,

[80] *See* March 3 Order, 150 FERC ¶ 61,163, at P 110.

[81] *See id*. PP 117-119.

[82] On October 22, 2015, Algonquin and Maritimes filed their application for the Atlantic Bridge Project in Docket No. CP16-9-000. On November 3, 2015, Algonquin requested Commission approval to initiate the pre-filing review process for the Access Northeast Project in Docket No. PF16-1-000.

Putnam, and Westchester Counties, New York; Fairfield and Hartford Counties, Connecticut; and Norfolk County, Massachusetts.

53. Several rehearing applicants renew their argument that the Commission improperly segmented the environmental review of the AIM Project from that of the Atlantic Bridge and Access Northeast Projects.

1. Atlantic Bridge and Access Northeast Projects did not Constitute Proposals

54. As noted above, the courts have found that 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.[83] Section 102(C) of NEPA requires agencies to prepare an environmental document for "proposals" for major federal actions affecting the human environment.[84] The CEQ's regulations state that "proposals" exist when the action is at the stage when an agency "has a goal and is actively preparing to make a decision . . . and the effects [of that action] can be meaningfully evaluated."[85] The courts have described proposed actions as "proposals in which action is imminent."[86]

55. The rehearing applicants argue that the Atlantic Bridge Project was a proposal because it was in pre-filing and therefore could be meaningfully evaluated. Riverkeeper states that at the pre-filing stage, the Commission's immediate goal is determining whether and to what extent a project will be subject to NEPA environmental review. Mr. Harckham argues that being in pre-filing means there is a proposal because it is reasonably foreseeable that the pipeline in pre-filing will file an application. Further, Mr. Harckham argues that because Commission staff analyzed the cumulative effects of the Atlantic Bridge Project, the Commission admitted that the project was a proposal. As for the Access Northeast Project, Riverkeeper argues it was a proposal because Algonquin publicly announced the project and said it planned to begin pre-filing later in the year. In addition, Riverkeeper argues that the *Transcontinental Gas Pipe Line Company, LLC*[87]

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[83] *See supra* note 79.

[84] 42 U.S.C. § 4332(2)(C) (2012).

[85] 40 C.F.R. § 1508.23 (2015).

[86] *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1229 (10th Cir. 2008) (citing *O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 236 (5th Cir. 2007).

[87] 149 FERC ¶ 61,258 (2014).

case, which the March 3 Order cites in support of its argument that the Atlantic Bridge and Access Northeast Projects were not proposals, is inapposite to the facts here.

56. By finding that the Atlantic Bridge and Access Northeast Projects did not constitute proposals, Allegheny and Riverkeeper assert that the Commission allowed Algonquin to shield its broader plans from a more comprehensive review. Riverkeeper adds that the Commission's alleged segmentation inhibited the public's ability to evaluate project costs to the environment and communities.

57. We disagree. A project at the pre-filing stage is not a proposal, but is in its early stages of development and the NEPA process. The purpose of pre-filing is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed.[88] Commission staff gathers information for its environmental review and solicits the public's and agencies' participation. Commission staff then determines the scope of issues to be addressed and identifies the significant environmental issues related to a proposed action. By raising environmental issues at an early stage, we avoid a situation where the pipeline completes planning and eliminates all alternatives to the proposed action before staff commences its environmental review.[89]

58. When Commission staff conducted and completed its environmental review, both the Atlantic Bridge and Access Northeast Projects were in the early stages of project development. On January 30, 2015, Algonquin and Maritimes, had only requested Commission approval for the pre-filing process for the Atlantic Bridge Project, which Commission staff approved on February 20, 2015. On April 27, 2015, nearly two months after the March 3 Order's issuance, Commission staff began its environmental scoping process when it issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Atlantic Bridge Project*. As for the Access Northeast Project, Spectra had only announced the project on its website. The Atlantic Bridge and Access Northeast Projects were far from proposals in which action was imminent.

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[88] *See Weaver's Cove Energy, LLC*, 107 FERC ¶ 61,022, at P 11 (2004).

[89] Our pre-filing process is consistent with section 1501.2(d) of the CEQ regulations, which provide in pertinent part:

> Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

40 C.F.R. § 1501.2 (2015).

59. Projects that are in the early stages of development have uncertain futures. Not all projects that enter the pre-filing process go on to be proposed in applications. In almost all cases, projects in the pre-filing process change in project scope, facilities, or location before an application is filed. Indeed, Algonquin reduced the size of the AIM Project during the pre-filing process. As Riverkeeper points out, Algonquin removed four of six miles of proposed pipeline in Yorktown and Sommers, New York, during the pre-filing process to match customer commitments. The removed facilities are currently contemplated as part of the Atlantic Bridge Project, which itself evolved based on customer agreements.

60. The Atlantic Bridge Project has been modified to eliminate originally contemplated facilities since Commission staff evaluated it in the AIM Project's final EIS using the generic details provided by Algonquin in September 2014. In January 2015, Algonquin and Maritimes filed a pre-filing request letter for the Atlantic Bridge Project that stated the scope of the project included fewer miles of pipe and less compression than the preliminary details that Algonquin previously provided. Since the time of that filing, the Atlantic Bridge Project has undergone even more changes, further reducing its scope.[90] As projects before and in the pre-filing stage are uncertain, without an application, the Commission cannot actively prepare to make a decision on the projects and the effects of the projects cannot be meaningfully evaluated.

61. Our finding is not inconsistent with our decision in the *Transcontinental Gas Pipe Line Co., LLC* case as Riverkeeper contends. Similar to the facts here, in that case the Commission found that two projects, among others, were not connected to the Leidy Project: one project that was in pre-filing (Atlantic Sunrise Project) and one project that had not reached pre-filing stage (Diamond East Project).[91] The Commission explained that

it did not have a proposal in front of it for either project to sufficiently examine the projects' environmental or landowner impacts.[92]

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[90] The Atlantic Bridge Project's design capacity was reduced by approximately 40 percent since the final EIS was issued (from 220,000 Dth per day to 137,705 Dth per day); its replacement pipeline was reduced by approximately 88 percent (52.5 miles to 6.3 miles); and the total additional compression was reduced by 11 percent (29,530 hp to 26,500 hp).

[91] 149 FERC ¶ 61,258, at PP 64-66.

[92] *Id.*

62. Although the final EIS evaluates the cumulative impacts of the Atlantic Bridge Project, doing so does not mean that we found the Atlantic Bridge Project to constitute a proposal. A cumulative impacts analysis is not limited to the cumulative impacts that can be expected from proposed actions. Rather the cumulative impacts analysis extends to impacts that can be anticipated from proposed actions and "reasonably foreseeable actions," i.e. contemplated actions.[93] CEQ regulations "mandate consideration of the impacts from actions that are not yet proposals and from actions – past, present, or future – that are not themselves subject to the requirements of NEPA."[94] As discussed below in "Cumulative Impacts," we appropriately considered the cumulative impacts of the Atlantic Bridge and Access Northeast Projects in accordance with NEPA and CEQ's implementing regulations.

63. Accordingly, we find there has been no improper segmentation associated with our review of this project.

2. Projects are not Cumulative, Connected, or Similar Actions

64. Rehearing applicants argue that the AIM, Atlantic Bridge, and Access Northeast Projects are connected, cumulative, and similar actions that should have been evaluated in a single EIS.

a. Connected Actions

65. Citing *Del. Riverkeeper*, rehearing applicants argue that the AIM Project and the Atlantic Bridge Project are physically, temporally, and functionally connected. Riverkeeper also argues that the Access Northeast Project is also physically, temporally, and functionally connected to the AIM Project.

66. Rehearing applicants assert that the AIM and Atlantic Bridge Projects are physically connected because they involve the upgrade and expansion of Algonquin's existing linear pipeline system in the same four states. Riverkeeper argues that both the AIM Project and the Atlantic Bridge Project involve removing an existing 26-inch-diameter pipeline and installing a 42-inch-diameter pipeline. Mr. Harckham argues that the projects are physically connected because they impact the same watershed and airshed, they abut one another, and they have overlapping construction zones. Coalition adds that the projects are also physically connected because they will provide shippers an opportunity to obtain firm transportation service from Ramapo, New York, to deliver to

[93] 40 C.F.R. § 1508.7(a)(2) (2015).

[94] *Fritiofson v. Alexander*, 772 F.2d 1225, 1244 (5th Cir. 1985) (*Fritiofson*) *overruled on other grounds by Sabine River Auth. v. U.S. Dep't of the Interior*, 951 F.2d 669 (5th Cir. 1992).

New England, will transport shale gas, and are intended to meet local distribution company demand in New England. Even though few details were, and are still, available on the potential Access Northeast Project, Riverkeeper argues that the Access Northeast Project is also physically connected to the AIM Project because it will occur in the same general location.

67. Rehearing applicants argue that the AIM, Atlantic Bridge, and Access Northeast Projects are temporally connected because the projects will come online sequentially one year after the other. Coalition argues that Algonquin intentionally avoided simultaneous review of its projects by filing a deficient application for the AIM Project midway through the open season for the Atlantic Bridge Project and by filing its request to begin pre-filing for the Atlantic Bridge Project one week after Commission staff issued the final EIS for the AIM Project.

68. Lastly, rehearing applicants argue that the projects are functionally connected because the finished projects will function as a unified whole, and will upgrade and expand sections of the same linear pipeline system that will deliver gas to Northeast consumers and the Maritimes pipeline system. Coalition also reasserts the argument that the AIM Project and the Atlantic Bridge Project are functionally interdependent based on a report prepared by Richard Kuprewicz, a pipeline safety expert. Mr. Kuprewicz argued that Algonquin's proposed 42-inch-diameter replacement pipeline between the Stony Point and Southeast Compressor Stations overcompensated on one portion of the system, leaving the second portion in need of upgrade and, thus, suggested that the projects had been segmented.

69. Citing *Hammond v. Norton* (*Hammond*),[95] Coalition notes that courts recognize that permit applicants are inclined to portray a project as an independent unit to evade review and expedite the permit process. Coalition argues that the facts in this case parallel those in *Hammond*. Coalition states that like *Hammond*, presentations and press releases by Spectra, Algonquin's corporate parent, show that the AIM and Atlantic Bridge Projects have been planned as a single unit. In addition, Coalition asserts that the draft EIS comment filed by U.S. Army Corps of Engineers (Corps) states the projects are connected, thereby corroborating Coalition's claim.

70. We disagree. The AIM, Atlantic Bridge, and Access Northeast Projects are not connected actions. First, the projects are not physically connected. The AIM Project will receive gas at Ramapo, New York, and will deliver gas to its Project Shippers' various city gates. In contrast, the Atlantic Bridge Project will receive gas at both Mahwah, New Jersey, and Ramapo, New York, and will deliver gas to its Project Shippers in New England and Atlantic Canada. As for the Access Northeast Project, Algonquin has

[95] *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005).

not provided information on where the project will receive gas, but Algonquin has stated it plans to deliver gas to seven electric distribution companies in New England at their various delivery points. The fact that some of the projects' facilities will overlap does not mean that the projects are interdependent. Connectivity by itself does not equate to interdependence. If this were the case, no project in the interstate pipeline grid could be independently proposed, evaluated, or constructed. The needs of customers with nearby geography would all be held captive by one another.

71. Second, the projects are not connected temporally. The March 3 Order explained that the AIM Project construction is planned for 2015 and 2016 whereas construction of the Atlantic Bridge Project would likely take place after that time, as the earliest projected in-service date for the Atlantic Bridge Project is November 2017, and the Access Northeast Project would at the earliest be in service by the end of 2018.[96]

72. While rehearing applicants contend that the timing is similar to that in *Del. Riverkeeper*, the *Del. Riverkeeper* court's rationale and concerns do not pertain to the facts here. As we noted above, the Atlantic Bridge and Access Northeast Projects were not proposals when Commission staff conducted its environmental review of the AIM Project. The *Del. Riverkeeper* court stated, "NEPA, of course, does not require agencies to commence NEPA reviews of projects not actually proposed."[97]

73. Moreover, the *Del. Riverkeeper* court's project timing discussion was primarily concerned that the project's environmental review did not "take into account the condition of the environment reflected in the recently related and connected upgraded."[98] The court explained that the prior disturbance could not be ignored in the Commission's NEPA review. Here, the final EIS for the AIM Project considered whether there would be any cumulative impacts from the AIM Project, the Atlantic Bridge Project, and the Access Northeast Project.[99] Further, Commission staff's current environmental review of the Atlantic Bridge Project and potential review of Access Northeast Project will also take into account the condition of the environment reflected by the authorized projects.

74. Coalition erroneously states that Algonquin filed a deficient application for the AIM Project to evade an environmental review of both the AIM and Atlantic Bridge Projects. Algonquin filed its application for the AIM Project on March 11, 2014. At that time, the

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[96] March 3 Order, 150 FERC ¶ 61,163, at PP 118-119.

[97] *Del. Riverkeeper Network*, 753 F.3d at 1318.

[98] *Id*.

[99] *See* final EIS at 4-288 to 4-290.

Atlantic Bridge Project was far from complete as Algonquin held a reverse open season for the project nearly a year later from January 16, through January 26, 2015. Even so, if Algonquin's application patently failed to comply with applicable statutory requirements or Commission rules for filing an application, Commission staff would have rejected Algonquin's application within ten business days.[100] On March 18, 2014, however, Commission staff accepted Algonquin's application.

75. Third, the projects are not functionally connected. Each project has independent utility and will serve a distinct transportation purpose. Algonquin held separate open seasons and reverse open seasons for all three projects at various periods from 2010 to 2015.[101] As a result of these open seasons, Algonquin executed individual precedent agreements with ten project shippers for the AIM Project, seven project shippers for the Atlantic Bridge Project, and seven memoranda of understanding for the Access Northeast Project. While there is some overlap in project shippers for the three projects, there are several other shippers that contracted for firm transportation service on the projects.[102] Each agreement for the AIM Project and Atlantic Bridge Project meets a project shipper's need to receive gas at a certain time. The projects also have different negotiated and recourse rates and separate in-service dates.

76. Mr. Kuprewicz's argument that Algonquin overcompensated in its design of the AIM Project and that demonstrates that the projects are functionally connected is incorrect. As confirmed by hydraulic models of Algonquin's system, Algonquin has appropriately sized the AIM Project facilities to meet the specific capacity requirements set forth by the Project Shippers. No additional facilities are needed on Algonquin's system to provide the requested services of the AIM Project Shippers and Algonquin has not over designed the

[100] 18 C.F.R. § 157.8(a) (2015).

[101] Algonquin held an open season for the AIM Project from December 13, 2010, through February 11, 2011, and from September 20, 2012, through November 2, 2012. Algonquin held a supplemental open season and a reverse open season for AIM Project from June 11 through June 25, 2013. Algonquin held an open season for Atlantic Bridge Project from February 5, 2014, to March 31, 2014, and a reverse open season from January 16 through January 26, 2015. Algonquin held an open season for the Access Northeast Project from February 18, 2015, through May 1, 2015, and a reverse open season from October 2 through October 30, 2015.

[102] Norwich Public Utilities and NSTAR Gas Company are shippers in both the AIM and Atlantic Bridge Projects. The Narragansett Electric Company is a shipper in both the AIM and Access Northeast Projects.

proposed facilities to meet future expansions.

77. Contrary to Coalition's assertions, this case is not similar to *Hammond*. In *Hammond*, the court reviewed a challenge to the decision of the Bureau of Land Management (BLM) to consider two proposed pipeline projects as independent for NEPA purposes. The project was filed as a joint venture with the BLM for two pipelines to connect Salt Lake City to the national petroleum products grid. After the BLM decided to examine the entire pipeline as a single project for NEPA purposes, however, the joint venture dissolved and separate applications were filed for the two pipeline segments. The court found that the BLM improperly segmented the cases and violated NEPA based on the history of the two pipelines, the project proponents' manifest intention to circumvent the NEPA review process, and BLM's failure to support its finding that the two pipelines held independent utility.

78. Here, however, the projects do not depend on the other for access to the natural gas market and Algonquin did not jointly propose the AIM Project and Atlantic Bridge Project. While an early plan of the AIM Project included some modifications that are now part of the Atlantic Bridge Project, such a plan merely demonstrates the uncertainty of a project at its infancy stage and not that Algonquin deliberately used the pre-filing process to shield itself from a more comprehensive review. Market demand drives each application for transportation service. It is unrealistic to expect a pipeline to defer requesting approval of projects designed to serve discrete markets, and to require shippers to forgo receipt of needed service, until all projects on a pipeline's system can be packaged into one consolidated application.

79. Coalition also mischaracterizes the Corps' letter. The Corps did not find that the projects were connected. Rather, the Corps requested that the Commission elaborate on the independent utility and the cumulative impacts of these projects. Commission staff addressed the Corps' comments in the cumulative impacts section of the final EIS.[103]

80. Accordingly, we find that the AIM, Atlantic Bridge, and Access Northeast Projects are not connected actions as they do not share a physical, temporal, or functional nexus.

b. Cumulative Actions

81. Rehearing applicants also argue that the projects are cumulative actions because each would affect many of the same resources in the same area, and the combined incremental effect of each has the potential to be cumulatively significant.[104]

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[103] *See* final EIS at 4-288 to 4-290.

[104] Riverkeeper April 2, 2015 Rehearing Request at 16.

82. We disagree. Cumulative actions are those "which when viewed with other proposed actions have cumulatively significant impacts . . . ."[105] As stated by the Fifth Circuit Court of Appeals, actions that are merely contemplated, as opposed to proposed, are not cumulative actions:

> Proposed actions with potential cumulative impacts may mandate the preparation of a regional or comprehensive impact statement, contemplated actions with potential cumulative impacts cannot . . . .[106]

83. Therefore, because when Algonquin filed its application for the AIM Project, the Atlantic Bridge and Access Northeast Projects were contemplated actions, they did not constitute cumulative actions. Many of the details of the Atlantic Bridge and the Access Northeast Projects had not yet been completed as the projects were in the planning and development stage. The courts have held that in such circumstance, it would be impractical for an agency to consider those actions in a single environmental document.[107]

[105] 40 C.F.R. § 1508.25(a)(2) (2015).

[106] *Fritiofson*, 772 F.2d at 1242. *See also Piedmont Heights Civic Club, Inc. v. Moreland,* 637 F.2d 430, 441-42 (5th Cir. 1981) (holding that comprehensive review is not required for contemplated but not yet proposed actions under 40 C.F.R. § 1508.25(a)(2)); *Del. Riverkeeper*, 753 F.3d 1304 (D.C. Cir. 2014) (noting that "NEPA, of course, does not require agencies to commence NEPA reviews of projects not actually proposed").

[107] *See Wetlands Action Network v. U.S. Army Corps of Eng's*, 222 F.3d 1105, 1119 (9th Cir. 2000) *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

84. Further, the courts have indicated that an agency is not required to analyze actions in a single EIS if that agency did not intend to segment review to minimize its cumulative impacts analysis.[108] Nothing in the record suggests that Commission staff's goal was to minimize its cumulative impact analysis of the AIM Project.[109] In fact, the March 3 Order and the final EIS explicitly discussed the cumulative impact of the AIM Project when added to the Atlantic Bridge and Access Northeast Projects. The courts have held that an agency may assess the cumulative impacts of an action but not consider that action with the proposed project in single environmental document,[110] and that "an agency need not revise an almost complete environmental impact statement to accommodate new proposals submitted to the agency, regardless of the uncertainty of maturation."[111]

c. Similar Actions

85. Riverkeeper contends that the projects are similar actions because they share similar project components, construction activities, and likely environmental impacts.

86. Actions are "similar" if they, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.[112] Unlike connected and cumulative actions, analyzing similar actions is not always mandatory.[113] As the 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."[114] Given that Commission staff lacked the necessary information to assess

[108] *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305 (9th Cir. 2003) (*Earth Island*) (citing *Churchill Cnty v. Norton*, 276 F.3d 1060, 1079-80 (9th Cir. 2001)).

[109] *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895 (9th Cir. 2002).

[110] *Earth Island*, 351 F.3d at 1305.

[111] *Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 514 (D.C. Cir. 2010).

[112] *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCB, 2009 WL 824410, at *13 (D. Colo. 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").

[113] 40 C.F.R. § 1508.25(a)(3) (2015).

potential impacts of the Atlantic Bridge and Access Northeast Projects, and that each project has independent utility, we find that a single EIS was neither required nor the best way to assess Algonquin's proposal.[115]

F. Other Environmental Issues

1. Public Participation

87. Coalition and Mr. Harckham argue that the draft EIS did not provide sufficient information to allow meaningful analysis because the draft EIS requested that Algonquin provide supplemental information on environmental and safety issues. These arguments were raised in comments on the draft EIS and addressed in the March 3 Order. Coalition and Mr. Harckham raise no new arguments here. Accordingly, we find no cause to respond in detail, and will deny rehearing. As the March 3 Order states, Algonquin's filings did not present new environmentally-significant information, pose substantial changes to the proposed action, or present previously undisclosed impacts, and therefore, Commission staff did not reissue a draft EIS or issue a supplemental EIS.[116] The public had the opportunity to comment on the supplemental information and plans requested by Commission staff and filed by Algonquin after the draft EIS was issued, and Commission staff continued to review and respond to other comments filed after the publication of the draft EIS.

88. Rehearing applicants similarly argue that the environmental conditions in the final EIS and the March 3 Order require information that should have been received and analyzed before the certificate issuance. Town of Dedham argues that the final EIS's environmental conditions demonstrate that the Commission rushed to issue the final EIS to

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[114] 40 C.F.R. § 1508.25(a)(3) (2015) (emphasis added). *See also Klamath-Siskiyou*, 387 F.3d 989, 1000-01 (9th Cir. 2004) (similarly emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the *best way* to do so).

[115] With respect to similar actions, "an agency should be accorded more deference in deciding whether to analyze such actions together." *Klamath-Siskiyou*, 387 F.3d at 1000 (citing *Earth Island*, 351 F.3d 1291, 1306).

[116] *See* March 3 Order, 150 FERC ¶ 61,163 at P 56 (citing 40 C.F.R. § 1502.9(c)(1) (2014)). Under section 1502.9(c)(1) of the CEQ's regulations, an agency is only required to prepare a supplemental EIS if (1) "the agency makes substantial changes in the proposed action that are relevant to environmental concerns" or (2) "there are significant new circumstances or information relevant to environmental concerns." *Id*.

meet self-imposed deadlines.[117] Instead, Town of Dedham argues, the Commission should have withheld the certificate until the Commission received all required mitigation plans, including those required by Condition 22 that requires Algonquin to file a Residential Construction Plan and Condition 26 that requires Algonquin to file a construction schedule for the West Roxbury Lateral that would be shared with each affected municipality. Town of Dedham argues that by requiring Algonquin to develop mitigation measures after issuing the certificate, the Commission placed municipalities in an inferior negotiating position.

89. Riverkeeper argues that the final EIS violated NEPA because the final EIS is based on incomplete information as evident by the final EIS's conditions that require: a site-specific crossing plan for the Catskill Aqueduct (Environmental Condition 15); a revised site-specific crossing plan incorporating additional avoidance or mitigation measures for two vernal pools in New York (Environmental Condition 18); and a site-specific plan for Harriman State Park, including additional avoidance and mitigation measures (Environmental Condition 20). Citing *Northern Plains Resource Council, Inc. v. Surface Transportation Board* (*Northern Plains*),[118] Riverkeeper argues that by requiring these filings after issuing a certificate violates NEPA because baseline conditions, environmental impacts, and proposed mitigation measures must be included and evaluated in an EIS before project approval.

90. As our final EIS explains, we did not accelerate our environmental review.[119] Algonquin utilized the pre-filing process for eight months, instead of the minimum six months. The draft EIS comment period was consistent with other Commission draft

[117] West Roxbury Intervenors similarly argue that the Commission rushed to issue the March 3 Order. In support, West Roxbury Intervenors point out that the Commission issued the March 3 Order one day after receiving EPA's comments. *See* West Roxbury Intervenors April 2, 2015 Rehearing Request at 29. As we note below, we did not accelerate our review. Moreover, the majority of the issues that the EPA raised in its final EIS comments were the same issues that the EPA raised in its draft EIS comments, which Commission staff addressed in the final EIS.

[118] 668 F.3d 1067, 1085 (9th Cir. 2011).

[119] *See* final EIS at Vol. II, SA-7.

EIS comment periods. Further, Commission staff issued a revised schedule for environmental review adding time to complete the final EIS.[120]

91. Environmental Conditions 22 and 26 also do not place the Town of Dedham or other municipalities at a disadvantage. While Condition 22 requires Algonquin to file revised residential construction plans based on any additional landowner input, the final EIS found Algonquin's original plans acceptable to minimize residential impact. As for Condition 26, it merely ensures communication about the timing of project construction; it does not require additional mitigation.

92. Further, our environmental conditions that require Algonquin to file mitigation plans do not violate NEPA. The purpose of NEPA is to ensure that an agency will carefully consider detailed information concerning significant environmental impacts in reaching its decisions. NEPA guarantees that relevant information will be made available to the larger audiences that may also play a role in both the decision making process and implementation of that decision. NEPA, however, "does not require a complete plan be actually formulated at the onset, but only that the proper procedures be followed for ensuring that the environmental consequences have been fairly evaluated."[121]

93. The required filings in the final EIS, and adopted in the March 3 Order, do not parallel the final EIS at issue in *Northern Plains* as Riverkeeper contends. In that case, the Surface Transportation Board issued a final EIS that gathered baseline data as part of mitigation measures to be completed after the NEPA process. Here, Commission staff published a final EIS that evaluated baseline data. Algonquin's filings will not present new environmentally-significant information nor pose substantial changes to the proposed action that would otherwise require a supplemental EIS.

94. Moreover, as we explain above and in other cases,[122] practicalities require the issuance of orders before completion of certain reports and studies because large projects such as this, take considerable time and effort to develop. Perhaps more important, their development is subject to many significant variables whose outcomes cannot be predetermined. Accordingly, consistent with longstanding practice, and as authorized by NGA section 7(e),[123] the Commission typically authorizes natural gas projects subject to

[120] FERC December 10, 2014 Notice of Revised Schedule for Environmental Review of the Algonquin Incremental Market Project.

[121] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

[122] *See, e.g., Weaver's Cove Energy, LLC*, 114 FERC ¶ 61,058, at PP 108-115 (2006); *Islander E. Pipeline Co.*, 102 FERC ¶ 61,054, at PP 41-44 (2003).

[123] *Supra* note 30.

conditions that must be satisfied by an applicant or others before the authorizations can be effectuated by constructing and operating the project.[124]

2. Programmatic EIS

95. As it has in other proceedings, on rehearing 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.[125]

96. 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.[126] 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,[127] 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.[128]

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[124] *See, e.g.*, *East Tennessee Natural Gas Co.*, 102 FERC ¶ 61,225, at P 23 (2003), *aff'd sub nom. Nat'l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323 (D.C. Cir. 2004).

[125] Allegheny April 1, 2015 Rehearing Request at 28-41.

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

[127] *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).

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

97. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.[129] 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."[130] 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,"[131] which would not present "a credible forward look and would therefore not be a useful tool for basic program planning."[132] 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.[133]

98. Allegheny claims that the Commission is engaged with the natural gas industry in regional development and planning. In support, Allegheny refers to the Commission's participation in the development of the National Petroleum Council's 2007 Prudent Development report, which it contends stresses the need to increase natural gas infrastructure, as well as the Commission's Strategic Plan, which it states identifies the approval of natural gas infrastructure projects as a specific goal. It also contends that the Commission's proceedings related to natural gas and electricity market coordination demonstrates that the Commission is engaged in long-term regional natural gas development and planning.[134] Further, Allegheny implies that because the Department of

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[129] *See, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014); *Dominion Transmission, Inc.*, 152 FERC ¶ 61,138, at P 30 (2015).

[130] 15 U.S.C. § 717f(e) (2012).

[131] *Kleppe*, 427 U.S. at 402.

[132] *Piedmont Envtl. Council*, 558 F.3d at 316.

[133] *See, e.g.*, Environmental Assessment for the Monroe to Cornwell Project and the Utica Access Project, Docket Nos. CP15-7-000 & CP15-87-000 (filed Aug. 19, 2015); Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Project Nos. 1888-030, 2355-018, and 405-106 (2015).

[134] Allegheny cites the following proceedings: Coordination Between Natural Gas and Electricity Markets, Docket No. AD12-12-000; *Coordination of the Scheduling Processes of Natural Gas Pipelines and Public Utilities* (Docket No. RM14-2); *California*

(continued ...)

Energy is the Commission's parent department, the Commission is involved with the Department of Energy's initiative to "analyze the natural gas infrastructure serving a large portion" of the areas where Marcellus and Utica shale gas are being delivered.[135]

99. Allegheny adds that CEQ guidance and case law supports developing a programmatic EIS. Allegheny states CEQ's December 2014 guidance on programmatic NEPA reviews states that "[p]rogrammatic NEPA reviews may also support policy- and planning-level decisions when there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of subsequent implementing action(s)."[136] Thus, Allegheny argues 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."[137] Allegheny also contends that *Northern Plains* supports the need for a programmatic EIS because a programmatic EIS would provide the Commission information to conduct a cumulative impacts assessment of natural gas production activities.

100. 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."[138] Allegheny cites *Kleppe v. Sierra Club* (*Kleppe*) to argue that, "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."[139]

101. Allegheny maintains that there is an enormous expansion of the natural gas pipeline system and much of it is due to gas drilling in the Marcellus and Utica shale formations.

Indep. Sys. Operator Corp., Order Initiating Investigation into ISO and RTO Scheduling Practices, 146 FERC ¶ 61,202 (2014), and *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (2014). *See* Allegheny April 1, 2015 Rehearing Request at 34.

[135] *Id*. at 37.

[136] Allegheny April 1, 2015 Rehearing Request at 29 (citing CEQ 2014 Programmatic EIS Guidance at 11).

[137] *Id*. at 29.

[138] *Id*. at 24 (citing 2014 CEQ Guidance).

[139] *Id*. at 25 (citing *Kleppe*, 427 U.S. 390, 410 (1976)).

Allegheny points to, among other things, an Energy Information Administration publication and various maps on new pipeline projects to move Marcellus or Utica shale production.[140] Allegheny states that these projects have similar proposed methods of implementation and similar best practice and mitigation measures, and therefore, should be considered together in a programmatic EIS.

102. Allegheny argues that the Commission's alleged program to support natural gas development meets the two-prong test that the courts have used to determine whether a programmatic EIS is appropriate: (1) the programmatic EIS would be sufficiently forward looking to contribute to the decisionmaker's basic planning of the overall program, and (2) the decisionmaker purports to 'segment' the overall program, thereby unreasonably constricting the scope of primordial environmental evaluation.[141] Allegheny argues that the Commission's alleged program satisfies the first prong because a programmatic EIS would 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. With respect to the second prong, Allegheny asserts that the Commission disingenuously described the pipelines as only an amalgamation of unrelated smaller projects to escape the existence of a comprehensive program.[142]

103. We disagree. Documents cited by Allegheny, including the Commission's Strategic Plan and the Commission's proceeding on coordinating natural gas and electricity markets, do not show that the Commission is engaged in regional planning. Rather, the Strategic Plan sets forth goals for the efficient processing of individual pipeline applications to carry out the Commission's responsibilities under the NGA. Similarly, the focus of the proceedings regarding the coordination of the natural gas and electric industries is to better coordinate the scheduling of wholesale natural gas and electricity markets as well as to provide additional scheduling flexibility to all shippers on interstate natural gas

[140] Allegheny April 1, 2015 Rehearing Request at Attachments 6, 11.

[141] *Id*. at 32 (citing *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)).

[142] *Id*. at 32-33 (citing *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001) (citing *Nat'l Wildlife Fed'n*, 677 F.2d 883, 890 (D.C. Cir. 1981))).

pipelines.[143] Further, while the Commission is established within the Department of Energy, the Commission is an independent regulatory agency and is not subject to any Department of Energy initiative regarding natural gas infrastructure.

104. 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. As we have noted above, 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.[144] Thus, here, the Commission's environmental review of Algonquin's AIM Project in a discrete EIS is appropriate under NEPA.

105. 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 relationship in time or geography beyond the fact that they might share a general regional proximity to the Marcellus and Utica shale regions. Thus, a multi-project environmental document would not be the most efficient way to review the proposed projects.

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

3. Indirect Effects

107. Allegheny, Coalition, and Mr. Harckham contend that the March 3 Order failed to

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[143] *See, e.g.*, *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 55 (2015); (discussing *Coordination of Scheduling Processes of Interstate Gas Pipelines and Public Utilities*, 80 Fed. Reg. 23,198 (2015), FERC Stats. & Regs., ¶ 31,368 (2015)).

[144] *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.")

adequately analyze the indirect effects of alleged induced natural gas production activities in the Marcellus and Utica shale plays and the associated environmental harms.

108. CEQ's regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.[145] 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."[146] 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.

109. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"[147] in order "to make an agency responsible for a particular effect under NEPA."[148] As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]."[149] 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.[150] 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."[151]

110. 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."[152] NEPA

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[145] *See* 40 C.F.R. § 1508.25(c) (2015).

[146] *See* 40 C.F.R. § 1508.8(b) (2015).

[147] *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)).

[148] *Id.*

[149] *Id.*

[150] *Metro. Edison*, 460 U.S. at 774.

[151] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 770.

[152] *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).

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."[153]

111. 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.

112. 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.[154] 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 will be no other way to move the gas).[155] 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

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

[154] *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. 2012) (unpublished opinion).

[155] *Cf. 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. 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).

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.

113. 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 depend 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.[156]

114. 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.[157] The EPA has reached a similar conclusion.[158] With respect to air

[156] *Habitat Educ. Ctr.*, 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).

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

quality, the Department of Energy found that natural gas development leads to both short- and long-term increases in local and regional air emissions.[159] 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.[160]

115. Below, we discuss rehearing applicants' challenges to our causation and reasonable foreseeability findings.

a. Lack of Causality

116. Allegheny and Coalition argue that additional, future production is causally related to the AIM Project. Allegheny asserts that induced natural gas production and the AIM Project are "two links of a single chain" as allegedly shown by a Commission staff presentation and Algonquin's application.[161] Allegheny states that a presentation by the Commission's Office of Energy Projects titled, "Natural Gas in the U.S.," demonstrates that shale gas extraction and natural gas infrastructure are causally related. In Algonquin's application, Allegheny cites to Algonquin's statements that the AIM Project will provide access to growing supply areas, which Allegheny assumes to mean Marcellus and Utica shale plays in the Appalachian Basin. Coalition also points to publications by Algonquin's parent company, Spectra, that marketed the open season for the AIM Project by promoting its potential to transport shale gas to New England markets.

117. Further, Allegheny challenges the Commission's argument that gas drilling and the project are not casually 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* (*Mid States*).[162] Overall,

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[158] *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, 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, (2015) (BLM 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").

[159] DOE Addendum at 32.

[160] *Id*. at 44.

[161] Allegheny April 1, 2015 Rehearing Request at 2, 12-14.

[162] *Id*. at 11 (citing *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d

(continued ...)

Allegheny claims that Commission staff conducted its environmental analysis using "tunnel vision" similar to the Corps' environmental analysis rejected by a district court in *Colorado River Indian Tribes v. Marsh* (*Colorado River*).[163] Mr. Harckham argues that even if other pipelines may transport the capacity, which he states the final EIS fails to support, that does not alter the fact that the AIM Project has the potential to induce additional natural gas production and infrastructure development.

118. The record in this proceeding, including Algonquin's application, Spectra's marketing materials, 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 AIM 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 induce the effect of additional or further shale gas production.[164]

119. As we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs, drive new drilling.[165] If the AIM Project was not

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520, 549 (8th Cir. 2003) (*Mid States*)).

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

[164] We note that our finding that we need not consider the environmental impacts of Marcellus shale region production when authorizing projects that may (or may not) make use of such supplies has been upheld in court. *See Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472 (2d Cir. 2012) ("FERC's analysis of the development of the Marcellus Shale natural gas reserves was sufficient. FERC included a short discussion of Marcellus Shale development in the EA, and FERC reasonably concluded that the impacts of that development are not sufficiently causally-related to the project to warrant a more in-depth analysis") (unpublished opinion).

[165] *See 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); *Fla. 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).

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.[166] Again, any such production would take place pursuant to the regulatory authority of state and local governments.[167]

120. Further, future shale production is not an essential predicate for the AIM Project, which can receive natural gas through interconnections with other pipelines. The Algonquin pipeline system interconnects with the Texas Eastern Transmission pipeline system which spans an area from Texas to Illinois to Pennsylvania, crossing multiple other transmission systems and both shale and conventional gas plays, and with Maritimes' pipeline system, which transports onshore and LNG-source natural gas from Atlantic Canada to North American markets.

121. 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.[168] 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. Here, unlike *Mid States*, Allegheny asserts that construction of the AIM 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 AIM Project. Thus, it is not merely the extent of production-related impacts that we find speculative, as

[166] *See Rockies Express*, 150 FERC ¶ 61,161 at 39.

[167] 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 April 1, 2015 Rehearing Request at Attachment 2 "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 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 uneconomical to construct gathering lines to transport the gas to the pipeline grid.

[168] *Mid States* 345 F.3d at 550.

was the case in *Mid States*, but also whether the project at issue will have any such impacts.

122. Similarly, we find *Colorado River* distinguishable. In *Colorado River*, a district court held that the Corps violated NEPA by not preparing a final 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.[169] The Corps originally prepared a draft EIS because proposed development along the banks would cause significant environmental impacts.[170] Before completing its final EIS, however, the Corps retracted its draft EIS because it determined that the appropriate scope of its environmental analysis should be limited to the activities within its jurisdiction, i.e., the river and the bank.[171]

123. 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 and any additional production. Natural gas development will likely continue with or without the AIM Project.

b. Lack of Reasonable Foreseeability

124. Allegheny and Mr. Harckham argue that induced production is a reasonably foreseeable effect of the AIM Project. Allegheny argues if gas production was not reasonably foreseeable, Algonquin would not be constructing the project. Allegheny contends that the March 3 Order misinterpreted NEPA case law when it found that natural gas production activities were not reasonably foreseeable because Commission staff could only speculate on the exact location, scale, scope, and timing of production. Allegheny and Mr. Harckham assert that speculation is implicit in NEPA. In support, Allegheny cites *Northern Plains*[172] to argue that there is no need for Commission staff to know the exact location of production activities.

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[169] 605 F. Supp. 1425, 1428.

[170] *Id.*

[171] *Id.*

[172] 668 F.3d 1067 (9th Cir. 2013).

125. *Northern Plains* addresses the issue of whether the Surface Transportation Board should have considered the cumulative impacts of coal bed methane well development as part of its NEPA analysis of a proposed 89-mile-long rail line intended to serve specific new coal mines in three Montana counties. *Northern Plains* is distinguishable because, as part of an earlier, programmatic EIS, the BLM had already analyzed reasonably foreseeable coal bed methane well development, which provided the Surface Transportation Board with information about the timing, scope, and location of future coal bed methane well development. Here, the Commission has no similar information in the present case about the timing, location, and scope of future shale (or conventional) well development that might be associated with the proposed AIM Project. As the Commission stated in the March 3 Order, *Northern Plains* establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, NEPA does not require an agency to "engage in speculative analysis."[173]

126. Further, *Northern Plains* concerned the foreseeability of impacts from coal bed methane extracted from specific new coal mines in three Montana counties, which the proposed rail line intended to service. Here, Allegheny asks us to consider the impacts from all potential gas production activities in a multistate region, which may or may not produce gas to be transported using the capacity created by the AIM Project. As stated in *Northern Plains*, agencies are not required "to do the impractical, if not enough information is available to permit meaningful consideration."[174] 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.

[173] *Id.* at 1078.

[174] *Id.* (citing *Envtl. Protection Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

4. Cumulative Effects

127. 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 . . . ."[175] The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

128. 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."[176] 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."[177] 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."[178] 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.

a. Cumulative Effects of Induced Production

129. 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 geographic scope within which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.[179] 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

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[175] 40 C.F.R. § 1508.7 (2015).

[176] *Kleppe*, 427 U.S. 390 at 413.

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

[178] *Nat. Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

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

information regarding potential future natural gas production within a geographic scope, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.[180]

130. Here, Commission staff established a geographic scope for the inclusion of other projects or activities based on the resources affected. To the extent production occurs outside of the AIM Project's geographic scope for cumulative impacts, the final EIS and the March 3 Order concluded that the potential environmental effects associated with shale production were not sufficiently reasonably foreseeable to warrant a detailed analysis for cumulative impacts.[181]

131. Allegheny, Coalition, and Mr. Harckham contend that the Commission unjustifiably restricts the cumulative impacts analysis. Citing various Commission natural gas proceedings, Allegheny states that such restriction is routine for the Commission and demonstrates that the Commission ignores the majority of the AIM Project impacts.[182]

132. Allegheny asserts that the Commission misread the 1997 CEQ Guidance to limit the scope of the cumulative impact analysis to an arbitrarily narrow geographic scope.[183] 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 cumulative effects, for which "the geographic boundaries of the analysis almost always should be expanded."[184] Similarly, Coalition and Mr. Harckham assert that the EPA stated geographic proximity is not the standard for NEPA's requirement to consider impacts that have a reasonably close relationship to the federal action.

133. To bolster their argument that the Commission should have considered as

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[180] *Id*. P 120.

[181] March 3 Order, 150 FERC ¶ 61,163, at PP 116, 123. We note that production would occur well over 10 miles from the AIM Project construction area, outside of the sub-watersheds crossed by the AIM Project facilities, and outside of the Air Quality Control Regions for the AIM Project compressor stations. *See* final EIS at 4-290.

[182] Allegheny April 1, 2015 Rehearing Request at 15-16.

[183] *Id*. at 15.

[184] *Id*. (citing 1997 CEQ Guidance at 12).

cumulative effects the impacts of Marcellus and Utica shale production activities, rehearing applicants cite various cases. Allegheny and Coalition cite *LaFlamme v. FERC* (*LaFlamme*) to argue that the Commission cannot consider the cumulative impacts of the AIM Project in isolation.[185] Allegheny cites *Natural Resources Defense Council, Inc. v. Hodel* (*Hodel*)[186] to argue that the Commission must consider 'inter-regional' impacts of Marcellus and Utica shale development activities. Allegheny also cites *Northern Plains* to argue that projects need not be finalized before they are reasonably foreseeable and that even if the Commission does not know the extent of natural gas production activities, the Commission is aware of its nature and cannot arbitrarily narrow its cumulative impacts analysis. In addition to case law, Allegheny references various recent research that identifies the "substantial impact" that shale gas drilling will have throughout the Marcellus and Utica shale formations, obligating the Commission under NEPA to take a hard look at these impacts on a broader scale.[187]

134. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.[188] The agency should then establish the geographic scope for analysis.[189] Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.[190] Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.[191] 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.[192]

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[185] *LaFlamme v.* FERC, 852 F.2d 389 (9th Cir. 1988).

[186] *Nat. Res. Def. Council, Inc. v. Hodel* 865 F.2d 288 (D.C. Cir. 1998) (*Hodel*).

[187] Allegheny April 1, 2015 Rehearing Request at 24-26.

[188] 1997 CEQ Guidance at 11.

[189] *Id.*

[190] *Id.*

[191] *Id.*

[192] *See* CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005) (2005 CEQ Guidance), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf. The 2005 CEQ Guidance notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and *(continued ...)*

135. The cumulative effects analysis in the EA took precisely the approach the CEQ guidance advises.[193] Because impacts on geology and soils, land use, residential areas, visual resources, cultural resources, and traffic by the AIM Project will be highly localized, the final EIS evaluated other projects within 0.25 mile of the construction work areas.[194] Similarly, impacts on waterbody and wetland crossings as well as on groundwater, vegetation, and wildlife by the AIM Project will occur in close proximity to the project. Therefore, the final EIS evaluated other projects within the sub-watersheds crossed by the AIM Project.[195] Likewise, long-term noise impacts from the AIM Project compressor stations will only occur within one mile of each station. Thus, the final EIS evaluated other projects that will result in long-term impacts on noise affecting the same noise-sensitive areas as the AIM Project compressor stations.[196]

136. With respect to operational air quality impacts, the final EIS acknowledged that the AIM Project compressor stations will result in long-term impacts on air quality in various Air Quality Control Regions. Therefore, the final EIS also considered other projects with the potential to result in long-term impacts on air quality (e.g. natural gas compressor stations or industrial facilities) within the Air Quality Control Regions that will also be impacted by an AIM Project compressor station.[197]

137. For these reasons, we find that the final EIS 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 AIM Project's geographic scope.[198]

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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).

[193] We note that the 1997 CEQ Guidance at 15 states that the "applicable geographic scope needs to be defined case-by-case."

[194] *See* final EIS at 4-293.

[195] *See id*.

[196] *See id*.

[197] *See id*.

[198] *See id*. at 4-290.

Further, given the large geographic scope of the Marcellus and Utica shale, the magnitude of the impacts of gas drilling in the Marcellus and Utica shale formations bears no relationship to the limited magnitude of Algonquin's instant proposal, which involves temporary construction impacts on 575.6 acres and permanent impacts to 42.4 acres of land within a mixed use area of mostly forest and open land.

138. In our view, Allegheny's arguments regarding the geographic scope of our cumulative impacts analysis are based on its 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 other proceedings,[199] there is no Commission program or policy to promote additional natural gas development and production in shale formations.

139. We also disagree with Allegheny's argument that the Commission's use of a project geographic scope is inconsistent with CEQ regulations. Our cumulative impacts analyses consider 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.[200] We believe this is consistent with the CEQ's Guidance.

140. Allegheny's and Coalition's reliance on *LaFlamme* is misplaced, as that case in fact supports the Commission's use of a geographic scope 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 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.[201] The

[199] *See, e.g.*, *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,064 at P 44; *Dominion Transmission, Inc.*, 152 FERC ¶ 61,138, at P 32 (2015).

[200] *See* final EIS at 4-282 to 4-304.

[201] *LaFlamme*, 852 F.2d 389 at 399, 401-02 ("At no point did the [[Upper Mountain Project] EIS analyze the effects other projects, pending or otherwise, might have on this section of the American River Basin.")

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 geographic scope appropriately connected to the location of the project under review.

141. Similarly, Allegheny's reliance on *Hodel* is unavailing. In *Hodel* the court considered the U.S. Department of the Interior's (Interior) EIS composed in conjunction with its plan to award five-year leases for hydrocarbon exploration and production on multiple offshore blocks. The court found that the EIS focused primarily on assessing impacts associated with the region proximate to each lease block, and thereby failed to capture potential inter-regional cumulative impacts on migratory species if exploration and production were to take place simultaneously on several lease blocks within the species' migratory range. *Hodel* considered a plan for resource-development leasing over a vast geographic area (including the North Atlantic, North Aleutian Basin, Straits of Florida, Eastern Gulf of Mexico, and waters off California, Oregon, and Washington). In contrast, the 'plan' before us involves construction of approximately 37 miles of pipeline and related facilities in New York, Connecticut, and Massachusetts, and the addition of a compression at six existing compressor stations. Because we find the proposal will have no reasonably foreseeable impacts on shale development, we find no reason to adopt a geographic scope for reviewing cumulative impacts that would include, as Allegheny urges, all the "the Marcellus and Utica shale gas extraction."[202]

142. Interior's leasing of large tracts in federal waters in *Hodel* is also dissimilar from the Commission's case-by-case review of individual and independent infrastructure projects. Whereas mineral leases, especially those that cover extensive and contiguous areas, establish the location and time frame for future development, the Commission does not permit, and indeed has no jurisdiction over, activities upstream of the point of interconnection with an interstate pipeline, e.g., leasing, exploration, production, processing, and gathering. To the extent the court in *Hodel* 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,"[203] 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.

[202] Allegheny April 1, 2015 Rehearing Request at 24.

[203] *Hodel*, 865 F.2d at 297 (citing *Kleppe*, 427 U.S. at 410) (emphasis added).

b. Other Cumulative Effects

143. Rehearing applicants claim that the final EIS did not adequately analyze the cumulative effects of the AIM Project when added to the Atlantic Bridge Project; the Access Northeast Project; the Champlain Hudson Power Express Project – a proposed 330-mile 1,000 MW subterranean transmission line from Quebec, Canada, to Astoria, New York; and the West Point Transmission Project – a 1,000-megawatt underwater power cable proposed by West Point Partners to bring untapped power from northern and western New York State to the New York City area. Further, Mr. Harckham states that the final EIS inappropriately found that the cumulative effects of the AIM Project when added to the Atlantic Bridge Project would be mitigated based on conditions imposed by state permitting authorities.

144. We disagree and affirm the final EIS's cumulative effects analysis. The final EIS considered the cumulative effects of the Atlantic Bridge Project using the preliminary details available at the time, provided by Algonquin.[204] The final EIS found that if the Atlantic Bridge Project moved forward based on the preliminary details, it would impact resources in many of the same areas as the AIM Project and the levels of impact would be similar to those of the AIM Project. The final EIS explained, however, that these impacts would not occur at the same time. The AIM Project would be constructed in 2015 and 2016, and the areas disturbed by the AIM Project would be restored before construction would start on the Atlantic Bridge Project, which at its earliest would be in 2017. As stated above, however, since the issuance of the final EIS, Algonquin has reduced the size, and thus minimized the impacts, of the Atlantic Bridge Project. Therefore, the final EIS's cumulative effects analysis of the Atlantic Bridge Project is cautiously inclusive as many impacts would no longer occur.

145. The final EIS also properly considered the cumulative impacts of the Access Northeast Project. As required by CEQ regulations,[205] the final EIS explained that project details regarding the Access Northeast Project were unknown. The only information available on the Access Northeast Project was the preliminary information on Spectra's website, which merely indicated that the project would be located in the New England region.[206] Without more detail on project facilities or locations, Commission staff could

[204] *See* final EIS at 5-18.

[205] 40 C.F.R. § 1502.22 (2015) ("When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.").

[206] *See* final EIS at 4-290.

not determine whether the Access Northeast Project would result in cumulative impacts within the same project area or geographic scope as the AIM Project.[207] In any event, Algonquin's pre-filing request for the Access Northeast Project indicates that the construction of the AIM Project and the Access Northeast Project will not overlap in time. Algonquin intends to begin constructing the Access Northeast Project in March 2018[208] whereas it plans to complete construction of the AIM Project in 2016. Should Algonquin file an application for the Access Northeast Project, Commission staff will then evaluate the cumulative impacts of the project when added to the existing environment, including impacts from the AIM Project.

146. We also find that the final EIS adequately analyzed the added effects of the Champlain Hudson Power Express Project. The final EIS identified potential overlap in construction timing of the Champlain Hudson Power Express Project and the AIM Project, which could result in increased traffic and noise impacts. The final EIS also noted that there would be no cumulative impact on the Hudson River, as Algonquin would utilize the HDD method for crossing the Hudson River to avoid in-water work.[209] Further, the Champlain Hudson Power Express and AIM Projects have been designed to utilize existing rights-of-way to the extent practical in the area near the Hudson River to avoid additional impacts. The final EIS acknowledged that while cumulative impacts would result, the AIM Project impacts would be temporary.

147. Lastly, the final EIS adequately analyzed the cumulative effects of the AIM Project when added to the West Point Transmission Project. The final EIS stated that West Point Partners modified the alignment of the transmission line to closely parallel the AIM Project to reduce impacts on residential areas and shorten construction timing.[210] The final EIS also evaluated the safety concerns of electrical arcing between the West Point Transmission Project and the AIM Project, concluding that safety issues would not occur.[211] The cumulative impacts assessed, however, will likely not transpire. The West Point Transmission Project application with the New York Public Service Commission has been suspended until West Point Partners files an application amendment that identifies

[207] *See id*. at 4-283 (defining the geographic region considered for each resource where cumulative impacts could occur).

[208] Algonquin's November 3, 2015 Request for Approval to Use the Pre-Filing Process for the Access Northeast Project at Attachment 5, page 12.

[209] *See* final EIS at 4-150.

[210] *See id*. at 4-152.

[211] *See id*. at 4-276.

alternative sites for the southern converter station. Therefore, it is speculative to assume when or if the West Point Transmission Project will proceed.

5. Water Quality and Wetlands

a. Stormwater Runoff

148. Riverkeeper argues that the final EIS failed to meaningfully evaluate the impacts from increased stormwater runoff likely to be caused by the AIM Project, particularly within the watersheds that supply water to New York City, i.e. Croton, Catskill, and Delaware supply systems. Riverkeeper recommends that the final EIS contain a detailed stormwater pollution prevention plan (stormwater plan).

149. We disagree. The EIS evaluates all potential project impacts on resources, including from runoff associated with the project during storm events and trench and hydrostatic test dewatering. The EIS also identifies measures to reduce runoff-related impacts.[212] Several measures are in our *Upland Erosion Control, Revegetation, and Maintenance Plan* (*Plan*) and *Wetland and Waterbody Construction and Mitigation Procedures* (*Procedures*), which Algonquin incorporated into its Erosion and Sediment Control Plan, including temporary and permanent erosion and sediment control measures along the right-of-way and project work areas, and the inspection and maintenance of the erosion control measures daily, weekly, and within 24 hours of each 0.5 inch rainfall event.[213] Based on these and other measures identified within Algonquin's Erosion and Sediment Control Plan, Commission staff determined that the impacts associated with runoff (regardless of source) could be adequately mitigated.

150. Furthermore, impacts will be reduced by implementing additional site-specific measures stipulated in state water quality permits and stormwater plans developed in consultation with the applicable state agencies. As discussed in the final EIS,[214] Algonquin filed a stormwater plan with the New York State Department of Environmental Conservation (New York DEC) in December 2014 and has been working with the New York City Department of Environmental Protection (NYCDEP) to ensure that the stormwater plan addresses NYCDEP's requirements for constructing within a New York City watershed. The New York DEC filed comments stating that with implementation of Algonquin's protection measures, the construction and operation of the AIM Project will

[212] *See* final EIS at 4-22 to 4-25.

[213] *See* FERC, *Upland Erosion Control, Revegetation, and Maintenance Plan*, at 6 (2013), http://www.ferc.gov/industries/gas/enviro/guidelines/upland-pocket-guide.pdf.

[214] *See* final EIS at 1-9, 4-40.

not significantly impact surface water resources, including the Croton, Catskill, and Delaware water supply systems, or groundwater resources, that supply New York City.[215] On October 22, 2015, Algonquin filed a supplement to its implementation plan identifying that it had received all of its stormwater plan approvals. Thus, we find that the final EIS adequately assessed stormwater effects, and that requiring Algonquin to file a stormwater plan would be unnecessary and duplicative.

b. West Roxbury Lateral Water Crossings

151. West Roxbury Intervenors state that the Commission erroneously accepted Algonquin's statement that it will be a "faithful steward of the environment" and that the West Roxbury Lateral will not impact water bodies, wetland, or watershed protection areas in Massachusetts.[216] To counter Algonquin's statement, West Roxbury Intervenors state, without more, that the West Roxbury Lateral will cross Mother Brook Reservation and the Charles River Basin.

152. A pipeline crossing a water body does not mean that water bodies, wetlands, or watershed protection areas will be adversely affected. In this case, the final EIS states that the West Roxbury Lateral will not affect any watershed protection areas or wetlands in Massachusetts.[217] While the lateral will cross water bodies, adverse impacts to these areas will be minimized and mitigated to the extent practicable through avoidance and minimization measures.

153. For example, Algonquin must comply with all appropriate federal permits and authorizations, including the Clean Water Act, which protects water resources.[218] Environmental Condition 9 requires Algonquin to file with the Commission documentation showing that Algonquin has received all applicable authorizations required under federal law, or evidence of waiver thereof. Accordingly, the Commission will not authorize Algonquin to start construction until and unless Algonquin has received the applicable authorizations to protect water resources. Algonquin will also implement its Erosion and Sediment Control Plan that includes certain wetland protection and restoration measures. Further, Algonquin must comply with Environmental Conditions 16, 17, 18, and 19 of the March 3 Order that apply to horizontal directional drill (HDD) crossings, vernal pools, and

[215] *See id*. at ES-4; New York State Department of Environmental Conservation May 15, 2015 Response to Comments at 17.

[216] West Roxbury Intervenors April 2, 2015 Rehearing Request at 21.

[217] *See* final EIS at 4-29, 4-59.

[218] March 3 Order, 150 FERC ¶ 61,163, at P 73.

wetlands.

154. To ensure Algonquin complies with these measures and conditions, Algonquin will participate in a third-party monitoring program. This program includes an on-site compliance monitor that, at the Commission's direction, inspects Algonquin's construction activities daily and ensures compliance with Algonquin's plans and the March 3 Order certificate conditions. If Algonquin fails to comply, it is subject to the potential assessment of general and civil penalties.[219]

c. Supplemental EIS for Condition 16

155. The Commission received several comments on the draft EIS regarding what would happen in the event that the HDD method is unsuccessful for crossing the Hudson River in New York or Still River in Connecticut. In response to these comments, Commission staff proposed an environmental recommendation that would require Algonquin to file with the Commission's Secretary a site-specific plan for an alternative crossing method in the event that the HDD method is unsuccessful. The March 3 Order adopted this recommendation as Environmental Condition 16.[220]

156. Riverkeeper, Coalition, and Town of Cortlandt argue that an alternate crossing method would result in "substantial changes in the proposed action" or "significant new circumstances or information" requiring a supplemental environmental review under NEPA.[221] Because Environmental Condition 16 does not require supplemental

environmental review for an alternative crossing plan, they argue that the Commission violated NEPA.

157. The HDD method has not proven unsuccessful, and Algonquin has not proposed an alternative crossing method. Because there is no alternative crossing plan before the Commission, the Commission cannot determine whether the alternative crossing plan would substantially change the proposed action, or involve new significant circumstances or information. The claim that the Commission must mandate supplemental environmental

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[219] *See* 15 U.S.C. §§ 717t; 717t-1 (2012).

[220] *See* March 3 Order, 150 FERC ¶ 61,163, at Environmental Condition 16. Environmental Condition 16 also requires Algonquin to file its alternative crossing method plan with its application to the Corps for a Clean Water Act section 404 permit and to other applicable agencies for a permit to construct.

[221] Riverkeeper April 2, 2015 Rehearing Request at 24-25 (citing 40 C.F.R. § 1502.9(c)(1); *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989)).

review is therefore not ripe. In the event that Algonquin files an alternative crossing plan for either the Hudson or Still Rivers, staff will at that time evaluate whether it needs to conduct a supplemental EIS to comply with NEPA.

6. Blue Mountain Reservation

158. The AIM Project will replace pipeline segments (Mile Post (MP) 6.7 to 8.1 and MP 8.4 to 8.5) that pass through the Blue Mountain Reservation, a 1,538 acre county-owned park and biodiversity hub located in Westchester County, New York. Algonquin will install the new pipeline in the same trench of the existing pipeline to be removed using additional temporary work space that extends beyond its existing 75-foot maintenance easement.

159. Mr. Harckham and Coalition argue that the final EIS failed to adequately evaluate the impacts that will occur in the Blue Mountain Reservation. Coalition states that Westchester County's easement proceedings[222] and a court's eminent domain proceedings will be hindered because the final EIS did not adequately consider wetlands, biodiversity, endangered species, historical and tribal resources, and recreation within the Blue Mountain Reservation. Therefore, Coalition asserts that the Commission cannot confer eminent domain powers until it completes a full environmental review. In addition, Coalition argues that the Commission does not support its conclusion that the AIM Project will not substantially alter local wildlife populations in Reynolds Hills, a neighborhood abutting the Blue Mountain Reservation.

160. Coalition cites the report prepared by Eric Kiviat, Ph.D. (Kiviat Report), which, as discussed in the March 3 Order, describes the existing habitat and potential plants and animals of conservation concern within the Blue Mountain Reservation and the Reynolds Hills residential area.[223] Coalition argues that because the Kiviat Report identifies discrepancies regarding impacts to special status species, the Commission should conduct additional studies.

161. Mr. Harckham adds that the final EIS should have provided an adequate inventory of the flora and fauna or wetlands. Mr. Harckham also argues that the final EIS failed to evaluate whether the AIM Project requires the additional temporary workspace that extends beyond Algonquin's existing 75-foot right-of-way.

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[222] Coalition specifically references the requirement in New York State for counties to seek approval from the New York State Legislator to alienate parkland, which we discussed above in paragraph 31.

[223] *See* March 3 Order, 150 FERC ¶ 61,163, at P 138.

162. As an initial matter, we note that the Commission itself does not confer eminent domain powers. Congress gave the Commission jurisdiction to determine if the construction and operation of proposed pipeline facilities are in the public convenience and necessity. Once the Commission makes that determination, under NGA section 7(h), a certificate holder is authorized by Congress to acquire the necessary land or property to construct the approved facilities by exercising the right of eminent domain if it cannot acquire the easement by an agreement with the landowner.[224]

163. In any event, the final EIS and the March 3 Order adequately evaluated impacts that will occur within the Blue Mountain Reservation.[225] The final EIS explained that overall impacts would be minimized because the pipeline would be installed within the existing pipeline trench. Construction noise, dust, tree clearing, and traffic would temporarily impact the Blue Mountain Reservation during project construction. Visual impacts for recreational and aesthetic users, however, would be largely screened by the surrounding woodlands. Algonquin would inform the public before commencing construction activities. Although long-term impacts associated with tree clearing would occur, they would not be permanent.

164. The final EIS identified the existing wetlands in the drainage area of Dickey Brook near Reynolds Hills and within the Blue Mountain Reservation, disclosed the potential impacts on wetlands, and analyzed mitigation measures identified during project review.[226] The final EIS explained that Algonquin would mitigate unavoidable construction-related impacts on wetlands associated with the AIM Project by implementing the wetland protection and restoration measures contained in its Erosion and Sediment Control Plan.

165. The final EIS also adequately evaluated impacts on wildlife in Blue Mountain Reservation and Reynolds Hills. The final EIS listed common wildlife species associated with the vegetative cover types found within the project area,[227] described migratory bird priority species and associated habitats,[228] and discussed common vegetative species associated with identified cover types.[229] The March 3 Order stated that Algonquin

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[224] 15 U.S.C. § 717f(h) (2012).

[225] *See* final EIS at 4-160 to 4-161.

[226] *See id*. at 4-61 to 4-74.

[227] *See id*. at Appendix N.

[228] *See id*. at Appendix O.

[229] *See id*. at section 4-75 to 4-86.

consulted with the appropriate jurisdictional agencies to identify special status species that may occur within the project area, including the New York DEC's New York Natural Heritage Program and the U.S. Fish and Wildlife Service (FWS). The March 3 Order also stated that qualified wetland scientists already conducted full wetland delineations for the project area in accordance with the Corps' wetland delineation manuals.[230]

166. A site-specific inventory of the flora and fauna within the Blue Mountain Reservation in addition to the final EIS's analysis is unwarranted. Such inventory would not produce new information that would necessitate a change in our analysis and conclusions. Nor do Dr. Kiviat's observations necessitate additional surveys within the Blue Mountain Reservation.[231] Dr. Kiviat's observations are merely conflicting views. The Supreme Court has noted that "[w]hen specialists express conflicting views an agency must have discretion to rely on the reasonable opinions of its own qualified experts . . . ."[232]

167. We also find that the final EIS adequately evaluated the need for Algonquin's additional temporary workspace in the Blue Mountain Reservation. The final EIS explained that for replacement segments of the AIM Project, Algonquin would need a 100-foot-wide construction right-of-way to safely pass equipment and materials needed to remove the existing pipeline and install the new large-diameter pipeline.[233] The final EIS explained that while the construction right-of-way would generally be reduced in wetlands to 75 feet, certain wetland locations would require additional workspace. Algonquin identified six wetland locations within Blue Mountain Reservation where additional workspace would be needed to store spoil from saturated subsoil and accommodate heavy equipment that would be used to install large diameter pipe.[234] We agree with

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[230] *See* March 3 Order, 150 FERC ¶ 61,163, at PP 140-42.

[231] *See* March 3 Order, 150 FERC ¶ 61,163, at P 139.

[232] *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989). *See also Inland Empire Pub. Lands Council v. Schultz*, 992 F.2d 977, 981 (9th Cir. 1993) ("We defer to agency expertise on questions of methodology unless the agency has completely failed to address some factor"); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1336 (9th Cir. 1992) ("although [the petitioner] has demonstrated that some scientists dispute the Service's analyses and conclusions, such a showing is not a sufficient basis for us to conclude that the Service's action was arbitrary and capricious. If it were, agencies could only act upon achieving a degree of certainty that is ultimately illusory").

[233] *See* final EIS at 2-11.

[234] *See* at table 4.4.4-1.

Commission staff's determination that Algonquin sufficiently justified the use of additional workspace in those wetland areas.

7. Traffic, Noise, and Visual Impacts

168. West Roxbury Intervenors argue that the Commission inadequately considered traffic, noise, and visual impacts. Without explanation, West Roxbury Intervenors quote sentences from the final EIS that discussed project impacts to land use and safety.

169. We deny rehearing on these issues. The final EIS addressed traffic impacts in sections 4.9.5 and 4.9.6 and Appendix G, Traffic Management Plans, finding that the impacts on traffic during construction along the West Roxbury Lateral would result in localized, unavoidable significant adverse impacts at one intersection.[235] With the implementation of Algonquin's *Updated Traffic Management Assessment and Plans for the West Roxbury Lateral*, however, impacts resulting from in-street construction would be minimized to the extent possible and impacts at all other locations along the West Roxbury Lateral would be reduced to less than significant levels.

170. The final EIS addressed noise impacts, including construction traffic noise, in section 4.11.2 of the final EIS.[236] As West Roxbury Intervenors acknowledge, the final EIS also disclosed that the West Roxbury Meter Station could result in some visual impacts,[237] which the March 3 Order required Algonquin to mitigate.[238]

8. Property Values and Homeowners Insurance

171. Coalition contends that the Commission inadequately supported its conclusion that the AIM Project will not diminish property values or increase the cost of homeowners' insurance. In support, Coalition cites *Constitution Pipeline Co., LLC* (*Constitution*)[239] where the Commission required Constitution to monitor project impacts on property insurance rates.

172. We affirm the final EIS's assessment of impacts on property values and homeowner insurance. Commission staff found that property values will not be devalued by a pipeline

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[235] *See id*. at 4-185 to 4-193, Appendix G.

[236] *See id*. at 4-245 to 4-263.

[237] *See id*. at 4-173 to 4-175.

[238] *See* March 3 Order, 150 FERC ¶ 61,163, at Environmental Condition 24.

[239] *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 (2014).

easement as the majority of the project's pipeline segments will replace existing pipeline in the same location, and will not require a new pipeline easement.[240] While the West Roxbury Lateral will require new permanent pipeline easements, the new pipeline will predominantly be located on public property or within streets that have an existing distribution pipeline, and thus, will not require a new pipeline easement on private properties. For any new easements, Algonquin will compensate the landowners for the temporary loss of land use and any damages. In addition, affected landowners who believe that their property values have been negatively impacted can appeal to local tax agencies for reappraisal and potential tax reductions.

173. The final EIS also concluded that it is unlikely that homeowners' insurance rates would be affected by the AIM Project because insurance advisors, consulted on other natural gas pipeline projects reviewed by the Commission, indicated that pipeline infrastructure does not affect homeowner insurance rates.[241] Commission staff appropriately did not recommend that Algonquin monitor homeowner insurance complaints as it did in *Constitution*. In *Constitution* the applicant proposed an entirely greenfield pipeline affecting new landowners, and thus, staff was uncertain on how the project would affect homeowner insurance. In contrast, the majority of the AIM Project is replacement pipeline, and thus landowners' homeowners insurance would have already been affected. While the West Roxbury Lateral is a new pipeline, adjacent landowners' homeowners insurance would also likely not change because the pipeline would primarily be located on public land or within streets, not on private property subject to homeowners insurance, and their property already abuts an existing distribution pipeline.

174. Therefore, we find that the final EIS fully considered the impacts that the AIM Project will have on property values and homeowners insurance.

9. Environmental Justice

175. Coalition argues that the final EIS failed to adequately consider whether the AIM Project would cause disparate health impacts to two environmental justice communities – City of Peekskill, New York, and Town of West Roxbury, Massachusetts. Specifically, Coalition appears to contend that our environmental justice analysis did not account for existing air quality, noise, and traffic impacts affecting the environmental justice communities. Coalition adds that the Commission did not provide meaningful opportunities for these communities to participate in this proceeding.

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[240] *See* final EIS at 4-193 to 4-194.

[241] *See id*. at 4-194.

176. The final EIS's consideration of environmental justice matters is consistent with NEPA and CEQ regulations. The final EIS evaluated the impacts on environmental justice communities of Peekskill and West Roxbury by analyzing the existing environment and the cumulative impacts of the AIM Project when added to other reasonably foreseeable actions in the geographic scope of the project.[242] Based on the information gathered, the final EIS concluded that the AIM Project would not result in any disproportionately high or adverse environmental and human health impacts on minority or low-income communities, or Indian tribes. The EPA's comments on the draft EIS affirm this finding.[243] Moreover, as we stated in prior cases, the siting of linear facilities between two fixed end points is generally based on environmental and engineering factors with no regard to demographics.[244]

177. With respect to public participation, ample opportunity was provided for meaningful community involvement. All public documents, notices, and meetings were readily available to the public during our review of the AIM Project. Coalition argues that the Commission should have issued notices in Spanish during the scoping and commenting process. Notwithstanding that Coalition does not explain how it was harmed by this, it was unclear what language other than English was dominant given that the AIM Project crosses multiple ethnicities and socioeconomic backgrounds. Further, Algonquin translated several fact sheets on its website into Spanish, simplified Chinese, and Traditional Chinese.

10. Air Quality

178. Several rehearing applicants raise various arguments challenging the final EIS's analysis of air emissions and impacts generally, greenhouse gas emissions, and radon.

a. Air Emissions and Impacts

179. Mr. Harckham argues that the Commission failed to present a baseline analysis of existing emissions and public health, and should have performed a health impact

[242] *See* final EIS at 4-200.

[243] In the comments it filed on the draft EIS, EPA states, "The [draft EIS] does a good job of identifying [] impacts and construction mitigation measures to address impacts to Environmental Justice populations along the route. In general, we agree with the conclusion provided in the [draft EIS] that the impacts to low income and minority populations along the route will not be disproportionate." EPA September 29, 2014 Comments on Draft EIS at 7.

[244] *See, e.g.*, *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at P 11 (2001).

assessment for project emissions. Mr. Harckham asserts that the final EIS used conventional dispersion modeling and published emission factors that do not adequately account for sensitive populations, peak impacts, site-specific conditions, and the characteristic of Marcellus shale gas that will be transported.

180. Coalition argues that the final EIS's conclusion that the AIM Project will not adversely affect air quality is unsupported because the Southeast Compressor Station air permit allows Algonquin to emit from the compressor station more than it actually emitted in 2013. In addition, Coalition argues that the final EIS did not evaluate ozone impacts from constructing the West Roxbury Lateral.

181. We disagree. The final EIS identified the existing baseline conditions, including: ambient air quality monitoring data over a three-year period, the attainment status of all project areas for each pollutant (with emphasis on areas currently not in compliance with the National Ambient Air Quality Standards (NAAQS)), and the existing emissions from each compressor station.[245] The final EIS also presented the results of air quality modeling performed for each compressor station. This modeling was based on site-specific terrain and meteorological data for the Stony Point and Southeast Compressor Stations and worst case inputs for all other compressor stations. Further, Commission staff included both short-term (peak) and long-term (average) impacts, and compared the results with the NAAQS.

182. As stated in the March 3 Order, a health impact assessment would be redundant. The EPA developed each NAAQS to protect human health, including that of sensitive populations (e.g., asthmatics, those with cardiovascular disease, children, the elderly, etc.) to account for the latest research on health impacts. EPA has also established multiple standards for different pollutants to address both long-term chronic exposure and short-term exposures (e.g., 1-hour or 24-hour) and standards for hazardous air pollutant (HAP) emissions for specific source categories under the Clean Air Act. The final EIS explained that the AIM Project will result in continued compliance with the NAAQS.[246] We find no basis to duplicate work already performed under EPA rulemakings that were subject to public comment.

183. Moreover, Algonquin also conducted a screening analysis per the guidance in New York DEC's Policy DAR-1. This analysis showed that the model-predicted output concentrations from the two compressor stations located in New York (i.e., Southeast Compressor and Stony Point Compressor Stations) are below New York's health effect-based annual and short-term (1 hour) guideline concentrations that were established to

[245] *See* final EIS at 4-217 to 4-234.

[246] *See id*. at 4-200.

protect public health.

184. Coalition's conclusion that the Southeast Compressor Station will emit more pollutants is erroneous. The final EIS compared the maximum potential emissions of the existing compressor stations with the maximum potential emissions from these stations after modifications, and concluded that emissions would decrease for several pollutants at the Southeast and Stony Point Compressor Stations. In comparison, Coalition likens past actual emissions with the maximum potential future emissions, even though they are not directly comparable. The presented project emissions represent continuous operation (8,760 hours per year) of the emission sources at their full capacity.[247] Past actual emissions are based on the actual load conditions and operating hours, which may be notably lower than those used to estimate the potential to emit. The existing and modified facilities are permitted to operate at full capacity and 8,760 hours per year at any point in time. Therefore, we affirm the comparison that the final EIS performed. Further, the final EIS's air quality modeling results demonstrated that operating the project facilities (at their full capacity and 8,760 hours per year) would not violate the NAAQS.[248]

185. Coalition's argument regarding ozone impacts is similarly lacking. The final EIS identified that the West Roxbury Lateral will be located within an ozone nonattainment area.[249] Further, the final EIS discussed stationary equipment operating emissions and construction emissions associated with construction equipment operation, fugitive emissions, and worker commuting for ozone precursor pollutants.[250] Commission staff aggregated these emissions across all project components for the entire project and for each non-attainment or maintenance area to compare with the General Conformity thresholds.[251] Table 4.11.1-5 of the final EIS showed that the construction and operating

[247] *See id*. at tables 4.11.1-7 to 4.11.1-11.

[248] *See id*. at table 4.11.1-14.

[249] *See id*. at table 4.11.1-3.

[250] *See id*. at tables 4.11.1-5, 4.111.1-6.

[251] General Conformity thresholds are found in section 93.1531(b)(1) of the Environmental Protection Agency's (EPA) regulations. 40 C.F.R. § 93.153(b)(1) (2015). They are minimum thresholds for various criteria pollutants in nonattainment areas for which a General Conformity Determination must be performed. General Conformity Determinations stem from section 176(c) of the Clean Air Act, which requires a federal agency to demonstrate that a proposed action conforms to the applicable State Implementation Plan, a state's plan to attain the NAAQS for nonattainment pollutants. 42 U.S.C. § 7506(c) (2012).

emissions for all project components would not exceed the General Conformity thresholds. The final EIS also explained that operating emissions which are subject to major or minor New Source Review, are already deemed to conform through the state permitting process. Therefore, the final EIS appropriately concluded that air quality impacts, including ozone impacts, from construction would be temporary, localized, and insignificant.[252]

b. Greenhouse Gas Emissions

186. Coalition, Mr. Harckham, and West Roxbury Intervenors argue that the Commission did not examine methane emissions from blowdown events or fugitive sources released when operating the AIM Project's pipeline segments. Coalition and West Roxbury Intervenors state that the final EIS should have evaluated methane emissions using the Boston Methane Emissions Study described above.[253] West Roxbury Intervenors also state that the Commission should have addressed methane's carcinogenic effects along the existing distribution pipelines in Boston. To mitigate methane emissions, Coalition states that the Commission should have required Algonquin to monitor any emissions and to comply with any EPA guidelines or requirements concerning methane leaks that are issued during the AIM Project's life.

187. Coalition also contests the final EIS's use of a global warming potential (GWP)[254] of 25 for methane over a 100-year period to analyze greenhouse gas (GHG) emissions associated with the AIM Project. Coalition argues that the GWP of 25 is "outdated" and that the final EIS should have based the methane carbon dioxide equivalent (CO2-eq) emissions on GWPs published by the Intergovernmental Panel on Climate Change (IPCC) in its Fifth Assessment Report.[255] IPCC Fifth Assessment Report estimates the value for methane to be 34 over a 100-year period, and 86 over a 20-year period.[256]

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[252] *See* final EIS at 4-236.

[253] *See supra* P 38.

[254] The global warming potential is a ratio relative to carbon dioxide that is based on the properties of greenhouse gases' ability to absorb solar radiation as well as the residence time within the atmosphere.

[255] Coalition April 2, 2015 Rehearing Request at 41.

[256] IPCC, *Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013), http://www.ipcc.ch/report/ar5/wg1/.

188. Coalition adds that the final EIS failed to evaluate the environmental impact of GHG emissions released from upstream natural gas production as required by CEQ's 2014 Draft Greenhouse Gas Guidance (2014 Draft GHG Guidance). Coalition argues that greenhouse gases are reasonably foreseeable because the AIM Project will provide a market for gas, and without a market, the gas would otherwise remain in the ground.

189. The final EIS identified the GHG emissions (including methane) from fugitive sources and blowdown events for the compressor stations, meter stations, and pipeline components.[257] Using the information available, the final EIS compared the incremental GHG emissions from the proposed AIM Project facilities to the GHG emissions in the New England region to conclude that emissions were only 0.18 percent of the region. Notwithstanding that the Boston Methane Emissions Study was not yet available when the final EIS was issued, the final EIS's review of emissions in the New England region included GHG emissions in Boston. Even so, the Boston Methane Emissions Study is inapposite as it studied leakage from existing distribution pipelines and, as noted below in our safety discussion, is unrelated to transmission pipelines.

190. It would be inappropriate for us to require Algonquin to monitor and record methane emissions to comply with EPA's future regulations. The EPA, not the Commission, is responsible for identifying applicable facilities and enforcing any existing or future air quality regulations.

191. We also find that the final EIS's use of 25 GWP appropriate. The final EIS explained that we selected a methane GWP of 25 over a 100-year period over other published GWPs for other timeframes because the EPA uses a GWP of 25 for reporting GHG emissions and air permitting requirements. By using the same GWP, Commission staff can compare the project emissions with EPA's regulatory requirements.[258]

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[257] *See* final EIS at tables 4.11.1-7 to 4.11.1-11, 4.11.1-13. The final EIS also stated that methane, the primary component of a blowdown or fugitive emission, is not considered toxic and is not listed under any regulation or database as carcinogenic. *See* EPA, Integrated Risk Information System, A-Z List of Substances, http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showSubstanceList; Centers for Disease Control and Prevention, Carcinogen List, http://www.cdc.gov/niosh/topics/cancer/npotocca.html; American Cancer Society, Known and Probable Human Carcinogens, http://www.cancer.org/cancer/cancercauses/othercarcinogens/generalinformationaboutcarcinogens/known-and-probable-human-carcinogens.

[258] *See* final EIS at 4-221 n. 9. *See also* final EIS at Volume II, at CO32-3 (explaining that EPA's final rulemaking adopted the Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report values over the IPCC's Fifth Assessment *(continued ...)*

192. Coalition's reliance on the 2014 Draft GHG Guidance is also misplaced. Putting aside that the guidance is a draft, and therefore not final, we note that the 2014 Draft GHG Guidance states that agencies should take into account upstream emissions if they have a "reasonably close causal relationship."[259] As we explain above, impacts from future natural gas production are neither causally related to the AIM Project nor reasonably foreseeable. In any event, Commission staff recognized the 2014 Draft GHG Guidance in the final EIS and built the concepts of that guidance into its final EIS to the extent practicable.[260] Commission staff presented the GHG emissions associated with the AIM Project, the potential impacts of GHG emissions, and the mitigation proposed by Algonquin to minimize GHG emissions associated with the AIM Project.[261]

c. Radon

193. Coalition challenges the Commission's finding that the risk of radon exposure is insignificant. Coalition argues that radon from transported Marcellus shale gas will be higher than both the average indoor and outdoor radon levels. Coalition relies on a Pennsylvania Department of Environmental Protection (Pennsylvania DEP) report, published the week before the final EIS's issuance, finding that the median radon value at the well was 43.6 picocuries per liter (pCi/L), and the maximum value was 148 pCi/L.

194. As an initial matter, as we state above, we do not know whether the transported natural gas will originate in the Marcellus shale or elsewhere. Even so, we affirm the final EIS's finding that the risk of exposure to radon is not significant.[262]

195. Coalition mischaracterizes the Pennsylvania DEP report to conclude that there are higher levels of radon in the home. Rather than presenting values taken from a natural gas transmission pipeline, Coalition cites measurements taken at the wellhead – i.e., gas that is

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values).

[259] CEQ, *Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts*, at n.4 (December 2014), https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf (CEQ 2014 Draft GHG Guidance).

[260] *Id.* at 4 ("Agencies should apply this guidance to the NEPA review of new proposed agency actions moving forward and, to the extent practicable, to build its concept into on-going reviews.")

[261] *See* final EIS at 4-303.

[262] *See id*. at 4-245.

not processed, not in transport, and not subject to influx rate or air exchange. In contrast, the final EIS incorporated reviews of six studies on natural gas radon levels, including one study that took samples from a natural gas transmission pipeline (i.e., downstream from the wells and post processing).

196. Further, the Pennsylvania DEP report calculates indoor concentrations that are similar to those identified in the final EIS. The Pennsylvania DEP report estimated indoor radon levels to equal a median of 0.04 pCi/L and a maximum of 0.13 pCi/L. Similarly, the final EIS estimates in-home concentrations estimated at 0.0042 to 0.0109 pCi/L. Both the Pennsylvania DEP report and final EIS demonstrate that indoor concentrations of radon transported in natural gas is less than average indoor and outdoor concentrations, which are 1.3 pCi/L and 0.4 pCi/L, respectively.[263]

11. Safety

a. Indian Point Energy Center

197. Indian Point Energy Center (Indian Point) is a nuclear powered generating facility owned and operated by Entergy Nuclear Operations, Inc. (Entergy) in the Village of Buchanan, New York. Approximately 2,159 feet of the AIM Project, part of the Stony Point to Yorktown Take-Up and Relay segment, will run through Indian Point's property. The segment will be located 0.5 miles south of Algonquin's existing right-of-way, over 1,600 feet from the power plant structures, and 2,370 feet from the facility's protected security barrier around the main facility sites.

198. U.S. Nuclear Regulatory Commission (NRC) regulations require that nuclear power plant structures, systems, and components important to safety be appropriately protected against dynamic effects resulting from equipment failures and other events and conditions that may occur outside a nuclear power plant, such as the effects of explosions of natural gas carried near the nuclear facility.[264] Entergy provided to the NRC an evaluation on the safety of the pipeline segment near Indian Point in compliance with NRC regulations,[265] and concluded that the AIM Project, as proposed and incorporating certain safety mitigation measures, would not pose increased risks to Indian Point or reduce the margin of safety.[266] The NRC reviewed Entergy's safety analysis and performed its own independent confirmatory analysis. Similarly, the NRC concluded that the AIM Project

[263] *See id*. at 4-244.

[264] Entergy April 8, 2014 Motion to Intervene at 3.

[265] 10 C.F.R. § 50.59 (2015).

[266] Entergy September 29, 2015 Comments on the draft EIS at 8.

would not adversely impact the safe operation of Indian Point.[267] Based on Entergy's and NRC's analyses, the March 3 Order, and the final EIS, found that the AIM Project will not result in increased safety impacts at Indian Point.[268]

199. Coalition and Mr. Harckham contend that the Commission did not adequately support its conclusion that installing a pipeline segment near Indian Point will not increase safety impacts. Coalition and Mr. Harckham state that the Commission failed to consider expert testimony filed by Mr. Kuprewicz and Paul Blanch on Entergy's and the NRC's analyses. Mr. Kuprewicz and Mr. Blanch's comments challenge Entergy's assumptions and NRC's methodology to evaluate project safety. Coalition also notes that during a hearing held by the U.S. House of Representative's Appropriations Committee on March 24, 2015, representatives questioned NRC Commissioners about their safety review of the AIM Project. Coalition argues that based on the challenges and congressional attention, the Commission should not have relied on NRC's report. Coalition compares the Commission's safety analysis to that in *Washington Gas Light Co. v. FERC* (*Washington Gas Light*).[269] Coalition also cites *Bangor Hydro-Electric Co. v. FERC* (*Bangor*)[270] to argue that the Commission cannot rely on NRC's findings to satisfy the Commission's review.

200. Further, Mr. Harckham contends that the final EIS does not discuss the impact that constructing the pipeline segment may have on the Indian Point Radiological Evacuation Plan or evaluate any alternatives that might promote public safety.

201. We disagree and affirm the final's EIS finding that the AIM Project can safely operate near Indian Point. As an initial matter, we maintain that the NRC is the expert authority and enforcing agency for evaluating and ensuring the safe operation of nuclear facilities, including risks associated with external factors. The experts referenced by intervenors, Mr. Blanch and Mr. Kuprewicz, filed similar petitions with the NRC noting the same concerns raised here to which the NRC prepared extensive formal responses. The NRC continues to conclude that a potential rupture of the proposed pipeline poses no threat to the safe operation of the plant or safe shutdown of the plant and that the analysis it performed was reasonable and acceptable. We find no basis to duplicate or contradict work performed by an agency with special expertise regarding nuclear power plant

[267] FERC December 3, 2014 Meeting Summary dated October 17, 2014, between FERC and NRC.

[268] *See* March 3 Order, 150 FERC ¶ 61,163, at P 107; final EIS at 4-276 to 4-278.

[269] *Washington Gas Light Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008).

[270] *Bangor Hydro-Elec. Co. v. FERC*, 78 F.3d 659 (D.C. Cir. 1996) (*Bangor*).

facilities.

202. Coalition misconstrues the case *Bangor* as requiring otherwise. At issue in *Bangor* was the Secretary of the Interior's (Secretary) fishway prescription at a hydroelectric project. The court did not impose any obligation on the Commission to independently review the Secretary's prescription. In fact, the *Bangor* court stated that it is the court's role, not the Commission's, to review Interior's fishway prescriptions at Commission licensed hydropower projects: "a reviewing court must determine whether Interior's prescription is 'consistent with law' or 'reasonably related to [its] goal.'"[271]

203. In any event, the Commission is entitled to rely on an agency's expertise.[272] The Commission's capability to assess different types of environmental impacts, while extensive, is not infinite. Accordingly, we routinely rely on the expertise of other agencies to evaluate the environmental or safety impacts of proposed projects, provided we are satisfied as to their competence and the validity of their basic data and analysis. Here, the Commission appropriately relied on the NRC.

204. Further, the safety review in *Washington Gas Light* is inapposite to Commission staff's review here. In *Washington Gas Light*, the Commission dismissed Washington Gas Light's (WGL) safety concern that authorizing the Cove Point Expansion Project would cause WGL's system to leak, finding that there would be no leakage because WGL could repair its system before the expansion project's proposed in-service date. In support, the Commission noted that WGL had fixed leaks on a portion of its system by replacing damaged couplings and reducing operating pressure. The D.C. Circuit, however, found that the fact that WGL fixed a portion of its system does not suggest that WGL could fix its entire system before expansion began. Thus, the D.C. Circuit held that the Commission's finding was not supported by substantial evidence

[271] *Id.* at 663 (citing *Escondido Mutual Water Co. v. La Jolla et al.*, 466 U.S. 765, 778 (1984).

[272] *See e.g.*, *EMR Network v. Fed. Commc'n Comm'n*, 391 F.3d 269, 273 (D.C. Cir. 2004) (holding that the FCC did not improperly delegate its duties under NEPA by crediting outside expert standard-setting organizations and other government agencies with a specific expertise).

205. Here, the Commission based its conclusion that the AIM Project can safely operate near Indian Point on substantial evidence.[273] Entergy and NRC performed safety evaluations and concluded that the AIM Project poses no increased risks to Indian Point. NRC's analysis assumed catastrophic pipeline failure, not taking account additional pipeline design measures that Entergy identified and Algonquin committed to use. The NRC's review covered everything inside the outermost fenced area of the facility, including the area with the spent fuel rods. Moreover, we received no comments regarding NRC's report from the U.S. Department of Transportation, which was a cooperating agency to the EIS and has regulatory oversight of pipeline safety once natural gas pipeline facilities are constructed and operating.

206. We also reject Mr. Harckham's assertion that the final EIS should have discussed the impact that constructing the pipeline segment may have on the Indian Point Radiological Evacuation Plan or evaluate any alternatives that might promote public safety. As discussed in the March 3 Order, Mr. Bernard Vaughey raised that issue after Commission staff issued the final EIS. Even so, the March 3 Order explained that emergency vehicle access will be maintained as Algonquin will keep steel plates on site during construction at all open-cut road crossings. Thus, the March 3 Order concluded that project construction will not impact the emergency response and evacuation plans associated with the Indian Point Emergency Planning Zone.[274]

b. West Roxbury Lateral and West Roxbury Meter Station

207. The West Roxbury Lateral and West Roxbury Meter Station will be adjacent to the West Roxbury Crushed Stone Quarry (West Roxbury Quarry). We received many comments concerning the impact that blasting from the active quarry will have on the pipeline and meter station. After careful environmental review, the final EIS concluded that the blasting will not damage either the pipeline or meter station.[275] The final EIS based its finding on a report conducted by the third party consultant, GZA GeoEnvironmental, Inc., (GZA Report) and Algonquin's proposed mitigation measures to protect the pipeline from blasting impacts. The GZA Report concluded that the proposed West Roxbury Lateral pipeline will be subject to vibrations well within pipeline design parameters and that the vibrations from blasting at the quarry will not be disruptive or damaging to the meter station. Several rehearing applicants argue that our conclusion is unsupported by substantial evidence.

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[273] *See* final EIS at 4-276 to 4-278.

[274] *See* March 3 Order, 150 FERC ¶ 61,163 at PP 146-147.

[275] *See* final EIS at 4-5 to 4-6.

208. Boston Delegation and West Roxbury Intervenors argue that the Commission's reliance on the GZA Report is arbitrary and capricious. Boston Delegation asserts that the Commission misinterpreted the GZA Report as concluding that the quarry will not damage the meter station or the lateral, when in fact, the GZA Report stated that such damage is "not anticipated."[276] In addition, Boston Delegation and West Roxbury Intervenors state that the GZA Report does not provide any facts or opinions regarding the effect that blasting at the quarry has had on the condition of the existing water lines and gas line. Instead, Boston Delegation states that the GZA Report conceded that the "age, condition, depth, and material of the existing utilities are not known."[277] Boston Delegation adds that the GZA Report failed to analyze the cumulative effect of blasting operations on the pipeline or meter station over multiple years.

209. Further, Boston Delegation and Town of Dedham note that the majority of the West Roxbury Lateral is located within a High Consequence Area (HCA).[278] Town of Dedham states that the Commission inadequately considered the use of more rigorous safety measures in the high consequence areas to minimize risks of an incident, and urges the Commission to require post-construction assessment and monitoring of pipeline operation. West Roxbury Intervenors and Town of Dedham add that the final EIS failed to address the likelihood and consequences of an incident.

210. West Roxbury Intervenors also argue that the final EIS ignored Massachusetts Energy Facility Siting Board's comments regarding safety, including that the proposed operating pressure of the pipeline is too high, that shut-off times are too long, that a ten-mile separation between shut-off valves is too great, that pipeline weld inspections are too infrequent, that operating a pipeline under a street with heavy truck traffic is unsafe, and that surrounding residences would be affected in the event of an incident. West Roxbury Intervenors state that the Commission's dismissal of the Siting Board's concerns ignores the provisions of section 192.317 of the U.S. Department of Transportation's regulations.[279]

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[276] Boston Delegation April 2, 2015 Rehearing Request at 14.

[277] *Id.* at 16.

[278] An HCA is a location that is defined in the pipeline safety regulations as an area where pipeline releases would have greater consequences to the health, safety or environment. *See* 49 C.F.R. § 192.903 (2015).

[279] West Roxbury Intervenors April 2, 2015 Rehearing Request at 14.

211. In addition, West Roxbury Intervenors allege that the Commission dismissed the legal effect of the new Massachusetts law that prohibits any blasting or use of explosive materials within 500 feet of a natural gas pipeline or meter station, and that the Commission failed to address terrorism.

212. The Commission considers pipeline safety as an important and serious matter. Here, Commission staff vigilantly assessed the impacts that the West Roxbury Lateral and West Roxbury Meter Station will have on public safety. The final EIS and the March 3 Order appropriately concluded that the fact that the existing non-jurisdictional gas distribution pipeline has not been damaged corroborates that blasting at the active quarry will not damage the West Roxbury Lateral. The existing distribution pipeline owner is required to comply with the U.S. Department of Transportation's safety regulations for pipeline inspections. Thus, any damage to the existing pipeline would be found through routine inspections. We have no evidence to suggest, nor have the parties demonstrated, that this pipeline is damaged.

213. More important, the GZA Report concluded that vibrations from quarry blasting under the most conservative assumptions are one-tenth of what the proposed pipeline could safely sustain (regardless of the condition of the existing pipeline)[280] and presented research of blast induced vibration on pipelines.[281] We also note that it is not unusual to site a transmission pipeline near a quarry.[282] Therefore, we affirm our finding that quarry blasting would not damage the West Roxbury Lateral or the West Roxbury Meter Station.

214. As the March 3 Order and the final EIS explained, any Commission-regulated pipeline must meet the current pipeline safety standards as set forth in U.S. Department of Transportation regulations.[283] High pressure natural gas pipelines routinely operate in densely populated areas. West Roxbury Intervenors submit no evidence to support their

[280] Algonquin's March 31, 2014 Analysis of West Roxbury Crushed Stone Operations on Construction and Operation of the West Roxbury Lateral at Attachment A, p. 4.

[281] *Id*. p. 12.

[282] *See, e.g.*, *Alliance Pipeline L.P.*, 84 FERC, ¶ 61,239, at 62,217 (1998) (stating pipeline construction right-of-way will be located 1,000 feet from an active sandstone quarry); *Maritimes and Northeast Pipeline, L.L.C. et al.*, 80 FERC ¶ 61,136, at 61,480 (1997) (stating pipeline will cross one planned quarry).

[283] *See* final EIS at 4-264.

broad claim that the West Roxbury Lateral's proposed operating pressure of 750 pounds per square inch gauge is too high for a populated area. The U.S. Department of Transportation will require the AIM Project to comply with the applicable safety standards, including more stringent pipeline design and inspection measures required in more densely populated areas (e.g., HCAs), such as a shorter separation between shut-off valves (i.e., 4 miles in class 3 areas and 2.5 miles in class 4 areas) and increased pipeline burial depths under roads and railroads. Further, the U.S. Department of Transportation's regulations require post-construction testing of the pipeline and ongoing operational inspections, including the requirements for weld testing. Thus, U.S. Department of Transportation's regulations already impose post-construction assessment and operational monitoring measures. Accordingly, rehearing applicants' concerns with respect to these types of the safety measures are more appropriately directed to the U.S. Department of Transportation.

215. The final EIS also discussed *transmission* pipeline accident data nationwide and in each state the project will operate within. The data demonstrated the very low likelihood of an incident.[284] The final EIS further explained that, unlike the AIM Project's replacement and new pipelines, older pipelines have a higher frequency of incident because they lack external protective coating and a cathodic protection system, their location may be less well known and less well marked than newer lines, and they are more easily crushed or broken by mechanical equipment or earth movement. Similarly, the final EIS distinguished transmission pipelines from *distribution* pipelines, noting that distribution pipelines represent the majority of pipeline fatalities, are more susceptible to damage because they have smaller diameters, may be plastic, and often have unclear location markings.

216. The final EIS discussed the impact of the project on public safety using the U.S. Department of Transportation's methodology to identify the potential impact radius of an incident. While we recognize that the potential impact radius extends beyond the landowners or abutters affected by project construction, the final EIS identified this distance and the likelihood for an incident to occur. Weighing both consequence and likelihood of an explosion, the final EIS concluded that the West Roxbury Lateral represents a slight increase in risk to the nearby public.[285]

217. The March 3 Order also did not dismiss the legal effect that the new Massachusetts law would have on the West Roxbury Quarry, which prohibits blasting within 500 feet of a natural gas pipeline. As West Roxbury Intervenors acknowledge, the March 3 Order explained that because there is already an existing natural gas distribution pipeline located

[284] *See id*. at 4-272 to 4-281.

[285] *See id*. at 4-281.

between the quarry and the proposed route, the new Massachusetts law would apply to the quarry even without the construction of the West Roxbury Lateral.[286]

218. In addition, the final EIS adequately addressed terrorism concerns in section 4.12.4.[287] The final EIS concluded that the likelihood of terrorism is unpredictable and the continuing need to construct facilities to support future natural gas pipeline infrastructure is not diminished from the threat of any such future acts. The final EIS also discussed Algonquin's collaboration with the U.S. Department of Homeland Security's Transportation Security Administration - Pipeline Security Division.

12. Delegated Review

219. Coalition maintains that the final EIS violates NEPA because the final EIS prematurely assumed that Algonquin will comply with not yet issued state air and water quality permits when it concluded that most of the AIM Project's adverse air quality and wetland impacts would be reduced to less-than-significant levels.[288] Coalition argues the Commission's assumption was an unlawful delegation of NEPA responsibilities to state agencies. In support, Coalition cites *State of Idaho By and Through Idaho Public Utilities Commission v. Interstate Commerce Commission* (*Idaho Public*).[289]

220. Coalition's argument is supported by neither law nor fact. In *Idaho Public*, the court found that the Interstate Commerce Commission violated NEPA when it declined to prepare an EIS for a project proposal, opting to require the regulated party to consult with other federal and state agencies. Here, Commission staff prepared an EIS, which evaluated air quality and wetland impacts, among other things.

221. Coalition appears to argue that the Commission delegated to New York DEC its NEPA review of air emissions from the new meter station and upgrades to existing meter stations in New York. Coalition is mistaken. The draft and final EIS identified the proposed capacity rating of the new heaters for the meter stations and the associated

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[286] March 3 Order, 150 FERC ¶ 61,163 at P 66.

[287] *See* final EIS at 4-281- to 4-282.

[288] In its rehearing request, Coalition states the final EIS's conclusion is a finding of no significant impact. We assume Coalition refers to our conclusion that the project would result in adverse environmental impacts, but that most impacts would be reduced to less-than-significant levels.

[289] *State of Idaho By and Through Idaho Pub. Utils. Comm'n v. Interstate Commerce Comm'n*, 35 F.3d 585 (D.C. Cir. 1994).

operating emissions of the new and modified meter stations.[290] While the draft EIS did request that Algonquin provide an update on air permitting requirements associated with the new and existing meter stations, Algonquin's update did not affect the operation or our environmental review of the meter stations.

222. As for wetlands, the final EIS identified the existing wetlands in the project area, disclosed the potential project impacts on wetlands, analyzed the mitigation measures identified during project review, and responded to public comments on the draft EIS regarding wetland impacts.[291] The final EIS based its conclusions regarding wetland impacts on Algonquin's proposed avoidance and mitigation measures, including those measures in its Erosion and Sediment Control Plan. The final EIS did acknowledge that state agencies may require additional mitigation measures; however, the final EIS did so to explain that such additional permitting measures would further offset any adverse impacts on wetlands, above-and-beyond what was already proposed and analyzed in the final EIS.[292]

13. Alternatives

223. Section 102(C)(iii) of NEPA requires an agency to discuss alternatives to the proposed action in an environmental document.[293] All reasonable alternatives must be evaluated, including alternatives not within the lead agency's jurisdiction and no-action alternatives.[294] An agency's environmental document must also include a brief statement of the purpose and need of the proposed action.[295] Agencies use the purpose and need statement to define the objectives of a proposed action and then to identify and consider legitimate alternatives.[296] In determining which alternatives to consider, agencies must

[290] *See* draft and final EIS at tables 4.11.1-12, 4.11.1-13.

[291] *See* final EIS at 4-61 to 4-74 and at Volume II, "Response to Comments on the Draft Environmental Impact Statement."

[292] *See id.* at 4-65.

[293] 42 U.S.C. § 4332(C)(iii) (2012). Section 102(E) of NEPA also requires agencies "to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id*. § 4332(E).

[294] *See* 40 C.F.R. § 1502.14 (2015).

[295] *See* 40 C.F.R. § 1502.13 (2015).

[296] *See Col. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

adopt a rule of reason.[297] Only feasible alternatives need to be considered.[298] Alternatives that are remote, conjectural, or do not meet the purpose or need of the proposed action may be eliminated so long as the agency briefly discusses the reasons for the elimination.[299]

224. NEPA only requires that appropriate alternatives be considered.[300] NEPA does not mandate any particular alternative.[301] Nor does NEPA require an agency to select the environmentally preferred alternative, or to weigh environmental considerations more heavily than other factors. The Supreme Court stated in *Robertson v. Methow Valley Citizens Council*:

> If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by [NEPA] from deciding that other values outweigh the environmental costs.[302]

225. Below, we discuss the rehearing applicants' challenges to the final EIS's alternatives analysis for the AIM Project as a whole and to the West Roxbury Lateral and West Roxbury Meter Station.

a. Alternatives to the AIM Project as a Whole

226. Mr. Harckham asserts that the final EIS did not support the rejection of renewable

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[297] *See Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 834, 837 (D.C. Cir. 1972).

[298] CEQ, *Guidance Regarding NEPA Regulations*, at 9 (1983), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-GuidanceRegulations.pdf. *See also* CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* at 4 (1981), http://energy.gov/nepa/downloads/forty-most -asked-questions-concerning-ceqs-national-environmetnal-policy-act ("Reasonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense.").

[299] *See* 40 C.F.R. § 1502.14(a) (2015).

[300] 42 U.S.C. § 4332(2)(E) (2012).

[301] *See Limerick Ecology Action, Inc. v. Nuclear Regulatory Comm'n*, 869 F.2d 719, 730 n. 9 (3d Cir. 1989) (stating NEPA imposes procedural requirements, not substantive outcomes).

[302] 490 U.S. 332, 350 (1989).

energy alternatives, pointing out that the final EIS dismissed renewable energy alternatives based on power generation even though the AIM Project will not supply electric generators. Mr. Harckham also contends that the final EIS did not thoroughly examine certain alternatives, including energy conservation, Kinder Morgan's Northeast Energy Direct Project,[303] gas exchanges among transmission providers, LNG storage, or LNG import facilities. Mr. Harckham argues that the Commission narrowly defined the project's purpose to reject these alternatives. In addition, Town of Dedham argues that the Commission should have evaluated the Atlantic Bridge and Access Northeast Projects as system alternatives.[304]

227. We disagree. Commission staff did not narrowly define the purpose and need for the project so as to preclude consideration of other alternatives. While an agency may not narrowly define the proposed action's purpose and need, the alternative discussion need not be exhaustive.[305] When the purpose of the project is to accomplish one thing, "it makes no sense to consider the alternative ways to which another thing might be achieved."[306]

228. Here, the final EIS stated that the project purposes are to deliver up to 342,000 Dth per day of natural gas transportation to the Connecticut, Rhode Island, and Massachusetts markets; to eliminate capacity constraints on existing pipeline systems in New York State and southern New England; and to provide access to growing gas supply areas in the Northeast region to increase competition and reduce volatility in natural gas pricing in southern New England. The final EIS set forth the criteria that staff employed to evaluate potential alternatives to the proposed project: whether the alternatives were technically and economically feasible, whether the alternatives offered significant environmental advantage over the proposed project or segments of it, and whether the alternatives met project objectives. The final EIS identified and evaluated alternatives to the project, including the no-action alternative, energy alternatives, system alternatives, and alternative

[303] Commission staff is considering the Northeast Energy Direct Project in Docket No. CP16-21-000.

[304] It is unclear whether Town of Dedham argues that the Commission should have considered the Atlantic Bridge Project and the Access Northeast Project as alternatives or that the Commission improperly segmented them from staff's environmental review of the AIM Project. To the extent that Town of Dedham is arguing segmentation, we address improper segmentation above in paragraphs 46-86.

[305] *See State of N.C. v. FPC*, 533 F.2d 702, 707 (D.C. Cir. 1976).

[306] *City of Angoon et al. v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986).

sites and pipeline routes.[307]

229. The final EIS rejected renewable energy alternatives[308] based on their inability to meet the project purposes and objectives. As stated in the final EIS, renewable energy is not completely interchangeable with natural gas and could not provide additional natural gas supplies for direct residential and commercial uses, including heating and cooking, without extensive conversion of existing systems to electric-based systems. In addition, the final EIS considered Kinder Morgan's Northeast Energy Direct Project as a system alternative but found that project's scope would need to be significantly increased to reach the delivery points of the AIM Project Shippers, which would not provide a significant environmental advantage over the AIM Project.[309]

230. The final EIS did not consider LNG storage, import facilities, or gas exchanges as system alternatives to the AIM Project because they were not reasonable alternatives. In order to access supplies at LNG import and storage facilities, Project Shippers would have to transport the regasified LNG by pipeline. Algonquin's system has capacity restraints in this region, and as a result, additional facilities would still be necessary to transport gas to and from LNG import and storage alternatives. Similarly, gas exchanges among transmission providers would require the AIM Project to deliver the gas to the Project Shippers' city gates. Other than Algonquin's system, no other pipeline system serves the Project Shippers' delivery points.

231. The final EIS also appropriately did not evaluate Algonquin's Atlantic Bridge and Access Northeast Projects as system alternatives. In order to accommodate the additional capacity and deliveries for the AIM Project, the Atlantic Bridge and Access Northeast Projects would need to include the AIM Project facilities. Therefore, those projects would not provide significant environmental advantage over the AIM Project and are not reasonable alternatives.

b. Alternatives to West Roxbury Lateral and West Roxbury Meter Station

232. The final EIS evaluated three alternatives to the West Roxbury Lateral, including the West Roxbury Lateral Alternative Route and the West Roxbury Lateral South End Alternative; both of which would not run adjacent to the West Roxbury Crushed Stony Quarry. In addition, the final EIS evaluated one alternative to the West Roxbury Meter

[307] *See* final EIS at 3-12.

[308] *See id*. at 3-4 to 3-9.

[309] *See id.* at 3-12.

Station, which would be located on residential land that would not abut the quarry.[310]

233. Boston Delegation and Town of Dedham challenge the final EIS's alternatives analysis for the West Roxbury Lateral and West Roxbury Meter Station, arguing that it was arbitrary and capricious and unsupported by substantial evidence. They assert that the Commission must choose a different pipeline lateral route and meter station site because of the proximity of the project facilities to the West Roxbury Crushed Stone Quarry.

234. Town of Dedham argues that the final EIS failed to evaluate alternatives to the West Roxbury Lateral located outside of West Roxbury. Town of Dedham states that because Algonquin's system can connect with Boston Gas Company's (Boston Gas) system elsewhere, Commission should have evaluated other lateral route alternatives to the West Roxbury Lateral in the Greater Boston Area. Instead, Town of Dedham alleges, Commission staff limited the alternatives reviewed based on the contractual obligation between Boston Gas and Algonquin, rather than NEPA requirements.

235. In addition, Town of Dedham and Boston Delegation argue that the final EIS arbitrarily rejected the alternatives to the West Roxbury Lateral and West Roxbury Meter Station. Town of Dedham argues it was inappropriate to dismiss the West Roxbury Lateral South End Alternative based on a Massachusetts Department of Transportation (MassDOT) policy. Because Commission approval preempts both state and municipal regulations, Town of Dedham argues that Commission staff cannot find that overriding a municipality's preferences on where to locate a pipeline is more feasible than setting aside a state agency policy.

236. Boston Delegation argues that Commission staff arbitrarily relied on the GZA Report to reject the West Roxbury Lateral Alternative Route and the alternative meter station site. Boston Delegation also challenges the final EIS's finding that the alternative meter site is technically infeasible and not environmentally preferable because its location would require Algonquin to purchase and demolish an existing residence and the site has potential traffic impacts. Boston Delegation argues that Algonquin can afford to purchase the house and that traffic impacts should not be a factor because the proposed West Roxbury Lateral route will also impact traffic.

237. We disagree and affirm the final EIS's alternatives analysis. Town of Dedham requests that we evaluate other alternative sites to interconnect Algonquin's and Boston Gas's systems in the Greater Boston Area, but does not identify any locations where the systems could be interconnected. As the D.C. Circuit stated in *Minisink*, "[the Commission's obligation to consider alternatives in Section 7 proceedings is not boundless . . . [the Commission] need not 'undertake exhausting inquiries, probing for every possible

[310] *See* final EIS at 3-25 to 3-29, 3-34 to 3-35, 3-55.

alternative, if no viable alternatives have been suggested by the parties, or suggest themselves to the agency.'"[311]

238. The final EIS found that neither the West Roxbury Lateral Alternative Route nor the West Roxbury Lateral South End Alternative were preferable or had an environmental advantage over the proposed West Roxbury Lateral route.[312] The final EIS found that the West Roxbury Lateral Alternative Route would cross through the backyards of houses (requiring long-term easements on homeowners' property), impact residential streets, and disrupt the surrounding neighborhoods, including requiring the complete closure of streets within these areas. In comparison, although the proposed route would pass near more residences, the final EIS explained that the proposed route would primarily be constructed along and within more roadways and in parking lots of commercial and industrial properties (not requiring homeowner easements). Although some impacts would be lessened by use of the West Roxbury Lateral Alternative Route, there is not a significant environmental advantage to recommending it over the proposed route.

239. Similarly, the West Roxbury Lateral South End Alternative would not provide a significant environmental advantage over the proposed route. The West Roxbury Lateral South End Alternative would run adjacently parallel to Interstate 95. Such location would result in limited construction workspace, would require the temporary removal of existing sound abatement walls along the highway and cause highway traffic noise impacts until the wall could be replaced, would require the permanent removal of trees that protect residences from highway traffic noise, and would result in additional traffic impacts on a local shopping area.

240. Moreover, the location of the West Roxbury Lateral South End Alterative would conflict with MassDOT's "Policy on the Accommodation of Utilities Longitudinally, Along Controlled-Access Highways." This MassDOT policy precludes placing utility infrastructure parallel to the interstate highway system absent extenuating circumstances. Commission staff considered requesting a waiver of MassDOT policy to reduce local impacts in West Roxbury; however, Commission staff ultimately concluded that the AIM Project, including the West Roxbury Lateral, as proposed with Algonquin's mitigation measures, would not result in significant impacts, and therefore, requesting a waiver was unwarranted. Hence, we find no basis to preempt a state's policy to satisfy a municipality's preference.

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[311] *Minisink Residents for Environmental Preservation & Safety v. FERC*, 762 F.3d 97, 111 (D.C. Cir. 2014) (citing *Citizens for Allegan Cnty.*, 414 F.2d 1125, 1133 (D.C. Cir. 1969)).

[312] *See* final EIS at 3-25 to 3-29.

241. The final EIS also found that the alternative to the West Roxbury Meter Station would not be preferable to or provide a significant environmental advantage over Algonquin's proposed meter station site.[313] The final EIS evaluated the alternative meter site and found that the alternative site would require the purchase and demolition of an existing residence, which is not currently for sale, to provide sufficient workspace for the meter station. Because the availability of that site is unknown, coupled with the Commission's policy to encourage applicants to negotiate for the use of a right-of-way or workspace over the use of eminent domain, the final EIS concluded that the alternative meter site was less feasible than the proposed site. Further, construction at the alternative site would cause greater traffic impacts than the proposed site because the alternative site had limited space available for construction.

242. Commission staff also found no basis for selecting an alternative route or site to alleviate concerns about locating the project facilities near an active quarry, which the GZA Report demonstrates are unwarranted. As noted above in our safety discussion, Commission staff appropriately relied on the GZA Report to support its conclusion that the West Roxbury Lateral and the West Roxbury Meter Station could safely operate near the quarry.

243. Accordingly, we find that the final EIS's alternatives analysis fulfilled NEPA requirements, and deny rehearing on these matters.

G. Conformity with the Natural Gas Act

244. Mr. Harckham contends that the March 3 Order erred in its determination of whether the AIM Project should be authorized under the Natural Gas Act, as implemented through the Certificate Policy Statement, because the order failed to appropriately balance public benefits against potential adverse environmental impacts. Mr. Harckham repeats his contentions that the March 3 Order failed to adequately consider the AIM Project's impacts on water quality, forest habitats, species, and air quality; the indirect and cumulative impacts of upstream production; and the AIM Project's contribution to climate change. Similarly, Boston Delegation and West Roxbury Intervenors argue that the Commission violated the Certificate Policy Statement by concluding that Algonquin minimized adverse safety impacts on landowners and surrounding communities.

245. We disagree and affirm our finding in the March 3 Order that authorizing the AIM Project is in the public convenience and necessity. 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

[313] *See id*. at 3-55.

customers; and (3) landowners and communities affected by the construction (i.e., eminent domain 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.[314]

246. The March 3 Order concluded that the AIM Project will have no adverse economic impacts on either Algonquin's existing customers or on other existing pipelines or their captive customers.[315] Further, the Commission found that the AIM Project will minimize the impacts to affected landowners as the majority of all construction activities and project facilities will be located on Algonquin's existing right-of-way and fenced facilities.[316] The March 3 Order also noted that Algonquin executed binding precedent agreements with its Project Shippers for firm service utilizing all of the project's design capacity.[317] 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 adjacent landowners, the Commission found and continues to find that, the AIM 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.[318]

247. The March 3 Order then turned to analyze the project's environmental impacts to complete the NGA analysis and comply with NEPA. The Commission fully addressed the environmental and safety issues raised by the rehearing applicants in the final EIS, the March 3 Order, and this order. As discussed above, the Commission need not analyze the impacts of upstream production for the purposes of our environmental analysis for this project, and the Commission substantially supported its final EIS's conclusion that, although the project would result in adverse environmental impacts, most impacts would be reduced to less-than-significant levels.

248. Thus, we affirm the March 3 Order's application of the Certificate Policy Statement.

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

[315] March 3 Order, 150 FERC ¶ 61,163 at P 20.

[316] *Id.* P 21.

[317] *Id.* P 23.

[318] *Id.* P 26.

H. Items Raised for the First Time on Rehearing

249. Rehearing applicants raise three arguments for the first time on rehearing: (i) that the Commission violated the NGA by segmenting the AIM Project and the Atlantic Bridge Project, (ii) that the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (*Plan*) and *Wetland and Waterbody Construction and Mitigation Procedures* (*Procedures*) inadequately mitigate project impacts, and (iii) that the Final Survey Results should have been made publicly available.

250. As a rule, we reject novel arguments raised on rehearing, unless we find that the argument 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.[319] We do so because our regulations preclude other parties from responding to a request for rehearing[320] and "such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision."[321]

251. Rehearing applicants do not explain why they or any of their joining members could not have raised these new arguments earlier, and we find no reason that these arguments could not have been raised before we issued our March 3 Order. Therefore, we will not entertain these new arguments. In any event, as discussed below, we would nevertheless deny rehearing of the new arguments.

1. Economic Segmentation

252. Several rehearing applicants argue that the Commission violated section 7 of the NGA and the Certificate Policy Statement by excluding the Atlantic Bridge Project from the Commission's analysis of the AIM Project. Coalition argues that such exclusion ignores that developing both projects may be more costly, less efficient, or duplicative, and therefore inconsistent with the public convenience and necessity. West Roxbury Intervenors state that without evaluating the project on national scale, the Commission

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[319] 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).

[320] *Id.* (d).

[321] *Texas Eastern Transmission, LP et al.*, 141 FERC ¶ 61,043, at 19 (2012) (citing *Westar Energy, Inc.*, 134 FERC ¶ 61,176 (2011)), *appeal dismissed*, *NO Gas Pipeline v. FERC*, 756 F.3d 764 (D.C. Cir. 2014).

cannot find that the AIM Project is required by the public convenience and necessity. In support, Coalition and West Roxbury Intervenors cite *City of Pittsburgh v. FPC* (*City of Pittsburgh*).[322]

253. The rehearing applicants are mistaken. There is no inconsistency between the Commission's actions in this proceeding and *City of Pittsburgh*. At issue in *City of Pittsburgh* was the Commission's order authorizing Texas Eastern Transmission Corporation (Texas Eastern) to abandon service on one of its pipelines and to transfer the load to another pipeline that did not operate at full capacity. Protesters contested the Commission's order, arguing that because the pipeline would be abandoned, the pipeline would not be available for future expansion and, as a result, Texas Eastern would have to install more capacity and increase rates. The *City of Pittsburgh* court set aside the order largely on what it deemed the Commission's failure to consider the impact of future expansion.

254. Here, Algonquin does not propose to abandon existing capacity that would have to be replaced to accommodate future expansion. Instead, the AIM Project and the Atlantic Bridge Project are expansion projects. The AIM Project costs will be recovered through negotiated rates paid by Project Shippers and will not be rolled-into Algonquin's existing shippers' rates. Therefore, existing customers will not subsidize service on the AIM Project. The AIM Project and Atlantic Bridge Project are also not duplicative. The Project Shippers have subscribed to full capacity made available on the AIM Project and the seven project shippers of the Atlantic Bridge Project have subscribed to its additional expansion capacity. The Certificate Policy Statement found that long-term transportation service agreements constitute strong evidence of project need.

255. Regarding West Roxbury Intervenors' request to evaluate the project on a national scale, as we noted above, section 7(e) of the NGA requires the Commission to assess each project individually.[323] Therefore, the March 3 Order did not violate section 7 or the Certificate Policy Statement by evaluating the economic impacts of the AIM Project on its own.

2. Mitigation Measures

256. Allegheny argues that the Commission has not provided substantial evidence that the Commission's *Plan* and *Procedures* are sufficient to avoid and minimize any potential impacts. In support, Allegheny cites a settlement agreement between the Pennsylvania Department of Environmental Protection and Tennessee Gas Pipeline Company, L.L.C. for

[322] 237 F.2d 741 (D.C. Cir. 1955).

[323] *See* our discussion in paragraphs 40 of this order.

multiple violations of state law, including the discharge of sediment pollution, during the construction of the 300 Line Project in 2011 and 2012.

257. We disagree. Before constructing the take-up and relay portions of the project, Algonquin must file a revised project-specific Erosion and Sediment Control Plan, which incorporated the Commission's *Plan* and *Procedures*.[324] The Commission's *Plan* and *Procedures*, both updated in 2013, are based on Commission staff's experience inspecting pipeline construction and include industry best management practices designed to minimize the extent and duration of disturbance on wetlands and waterbodies during the construction of Commission-jurisdictional natural gas projects. During the 2013 update, Commission staff revised the *Plan* and *Procedures* with input from the federal, state, and local agencies; environmental consultants; inspectors and construction contractors; the natural gas industry; and nongovernmental organizations and other interested parties with special expertise on natural gas facility construction projects. The construction and mitigation measures in the *Plan* and *Procedures* are proven to protect wetlands and waterbodies. One isolated project of thousands of projects and 200,000 miles of transmission pipeline under our jurisdiction fails to indicate widespread ineffectiveness of the *Plan* and *Procedures*.

258. In addition, Algonquin will implement an environmental inspection program, which will consist of trained individuals to ensure that Algonquin implements the appropriate mitigation measures and complies with federal, state, and local permit stipulations. Algonquin has also agreed to fund a third-party environmental monitoring program that will include full-time personnel working under our direction.[325] The third-party personnel will monitor project construction and conduct regular field inspections. Given the Commission's extensive experience with the *Plan* and *Procedures*, the consultation conducted to revise the *Plan* and *Procedures*, and the monitoring programs, we find that Commission staff provided substantial evidence indicating that the *Plan* and *Procedures* sufficiently mitigate project impacts.

259. Moreover, the Commission takes matters of non-compliance seriously. We impose penalties for non-compliance on a case-by-case basis, which are tailored to the specific facts presented, e.g., degree of non-compliance and resulting impacts. If Algonquin fails to comply with the conditions of the order, it will be subject to potential general and civil penalties.[326]

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[324] *See* March 3 Order, 150 FERC ¶ 61,163, at Environmental Condition 19.

[325] *See* final EIS at 2-40 to 2-41.

[326] *See* 15 U.S.C. §§ 717t; 717t-1 (2012).

3. Final Survey Reports

260. Coalition argues that because Algonquin filed its Final Survey Reports for federally-listed species as privileged, Coalition could not meaningfully evaluate the Commission's analysis of endangered species within Blue Mountain Reservation and Reynolds Hills in Westchester County, New York. Persons interested in viewing

privileged information could have requested them pursuant to section 388.112 of the Commission's regulations.[327]

IV. Request for Stay

261. On rehearing, Coalition urges the Commission to stay the certificate or Algonquin's ability to commence tree removal or ground-breaking activity or invoke eminent domain until a resolution has been reached on rehearing and judicial review. The Town of Cortlandt on rehearing also states that the Commission should stay the commencement of the AIM Project, but provides no explanation for its assertion. In its April 17, 2015, Answer, Algonquin filed comments opposing Coalition's and Town of Cortlandt's requests for stay.

262. On June 23, 2015, U.S. Congressman Stephen Lynch, Massachusetts State Senator Michael F. Rush, Massachusetts State Representative Edward F. Coppinger, and Boston City Councilor Matt O'Malley (collectively, Local Officials) requested an emergency stay of construction of the West Roxbury Lateral pending rehearing.[328] On July 7, 2015, Algonquin filed an answer opposing Local Officials' request for stay. On July 9, 2015, Project Shippers Yankee Gas Services, Inc. and NSTAR Gas Company filed an answer supporting Algonquin's July 7 Answer and opposing Local Officials' request for stay.

263. Coalition argues that a stay of the order is necessary to prevent irreparable injury to landowners from Algonquin's acquisition of property rights through eminent domain. Coalition states that eminent domain proceedings will cause landowners and municipal governments to incur legal fees to defend against the taking of property for a project that may be vacated on rehearing or modified by yet-to-be-issued water quality certifications. Coalition adds that if property rights are restored to landowners, it is unlikely that the landowners will recover their attorney fees. Coalition also asserts that a stay of the order is necessary to prevent irreparable injury to the environment from construction activities.

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[327] 18 C.F.R. § 388.112 (2015).

[328] On April 23, 2015, New York State Assembly Member Sandy Galef filed comments requesting that the Commission stay any construction, or preliminary set-up for construction, before the New York DEC issues its air and water permits.

Coalition maintains that the construction of the pipeline will cause irreversible environmental impacts, such as the loss of trees, wetland areas, and wildlife habitat.

264. Local Officials argue that a stay of the order is necessary to prevent irreparable injury to landowners from the operation of the West Roxbury Lateral and West Roxbury

Meter Station. Local Officials reiterate the concerns regarding the lateral and meter station operating within a populated area and near an active quarry.

265. The Commission's standard for granting a stay is whether justice so requires.[329] The most important element is a showing that the movant will be irreparably injured without a stay. To ensure definiteness and finality in our proceedings, our general policy is to refrain from granting a stay.[330] For the reasons discussed below, we will deny Coalition's request.

266. Coalition has not shown that absent a stay there will be irreparable injury to them as a result of the incurrence of potentially unnecessary costs during eminent domain proceedings. In *Wisconsin Gas Co. v. FERC,*[331] the court developed several principles to determine if the requirement of irreparable harm has been met for a judicial stay:

> First, the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief "will not be granted against something merely feared as liable to occur at some indefinite time." It is also well settled that economic loss does not, in and of itself, constitute irreparable harm . . . . Implicit in each of these principles is the further requirement that the movant substantiate the claim that irreparable injury is "likely' to occur. Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur.[332]

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[329] 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).

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

[331] 758 F.2d 669 (D.C. Cir. 1985).

[332] *Id.* at 674.

267. Coalition has not met these principles of showing irreparable harm. We do not vacate the AIM Project here nor has any issued water quality certification modified the pipeline route. Thus, any *unnecessary* legal costs which might be incurred by landowners that may have their land restored are speculative at best. Moreover, regardless of the fact that Algonquin may have commenced eminent domain proceedings, it is still possible for individual landowners to work with Algonquin to accommodate some of their needs. Further, any economic loss, by itself, is not sufficient to constitute irreparable harm.

268. Coalition also has not shown that absent a stay there will be irreparable injury to the environment. The Commission determined in the March 3 Order, after a thorough environmental review, that if the proposed AIM Project facilities are constructed and operated in accordance with the recommended and proposed environmental mitigation measures, it would constitute an environmentally acceptable action.[333] As detailed above, the Commission also rejects Coalition's rehearing arguments that there will be irreparable injury involving the loss of wetlands and wildlife habitat.

269. Similarly, Local Officials have also not shown that absent a stay there will be irreparable injury to their constituents' safety. The Commission determined in the March 3 Order that blasting at the active quarry will not damage the West Roxbury Lateral or West Roxbury Meter Station,[334] and that natural gas transmission lines continue to be a safe, reliable means of transportation.[335] Further, as detailed above, we reject the rehearing arguments that the project cannot operate safely near the active quarry or in a populated area.

270. Both the Commission and the courts have denied stays in circumstances similar to those presented here. For example, in *Midwestern Gas Transmission Company*, the Commission denied a request for stay that was based on claims that construction and eminent domain proceedings would cause irreparable harm to the environment and local landowners.[336] Similarly, in *Transcontinental Gas Pipe Line Corporation*, the Commission found that allegations of environmental harm and pipeline safety did not support grant of a stay.[337] The courts have also denied requests for judicial stay in similar

[333] March 3 Order, 150 FERC ¶ 61,163, at P 150.

[334] *Id.* PP 61-63.

[335] *Id.* P 105.

[336] 116 FERC ¶ 61,182 (2006).

[337] 98 FERC ¶ 61,086 (2002).

pipeline construction cases.[338]

271. For these reasons, the Commission finds that Coalition and Local Officials have not demonstrated that they will suffer irreparable harm, and thus, their requests for stay are denied.

The Commission orders:

(A) The requests for rehearing of the March 3 Order are denied, and the requests for stay of the March 3 Order are dismissed, as discussed in the body of this order.

(B) Mr. Huston's Request for Rehearing is dismissed for the reasons given in the body of this order.

(C) Late motions to intervene are denied and the late movants' requests for rehearing are dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[338] *See, e.g., Minisink Residents for Envtl. Pres. and Safety v. FERC*, No. 12-1481, Order Denying Motion for Stay (D.C. Cir. Mar. 5, 2013)*; In re Minisink Residents for Envtl. Pres. and Safety*, No. 12-1390, Order Denying Petition for Stay (D.C. Cir. Oct. 11, 2012)*;Defenders of Wildlife v. FERC*, No. 10-1407, Order Denying Motion for Stay (D.C. Cir. Feb. 22, 2011); *Summit Lake Paiute Indian Tribe v. FERC*, No. 10-1389 Order Denying Motion for Stay (D.C. Cir. Jan. 28, 2011). *See also Feighner v. FERC*, No. 13-1016, Order Denying Motion for Stay (D.C. Cir. Feb. 8, 2013); *Del. Riverkeeper Network v. FERC*, No. 13-1015, Order Denying Motion for Stay (D.C. Cir. Feb. 6, 2013); *Coal. for Responsible Growth and Res. Conservation v. FERC*, No. 12-566, Order Denying Motion for Stay (2d. Cir. Feb. 28, 2012).

Appendix A
Parties Requesting Rehearing

Parties Joining the City of Boston Delegation Request for Rehearing

- United States Congressman Stephen F. Lynch
- Mayor of The City of Boston Martin J. Walsh
- Boston City Councilor Matt O'Malley
- Boston City Councilor Michelle Wu
- Boston City Councilor Michael Flaherty
- Boston City Councilor Ayanna Pressley
- Boston City Councilor Stephen J. Murphy
- Massachusetts State Representative Edward F. Coppinger
- Massachusetts State Senator Michael Rush

Parties Joining the Coalition Request for Rehearing

- The Community Watersheds Clean Water Coalition
- Jessica Porter
- Sierra Club Lower Hudson Chapter
- Food & Water Watch
- Stop the Algonquin Pipeline Expansion
- Better Future Project
- Capitalism versus the Climate
- Fossil Free Rhode Island
- Phil Barden
- Eunice Carlas
- Paul Dunn
- Margaret Sheehan
- Paul McIrney
- Marla Rivera
- Jan White
- Mary McMahon
- Robert and Audrey Brait
- Dan McCann
- William and Robin Cullinane
- Linder Sweeney
- Walter Partridge[339]

[339] We note that the March 3 Order granted late motion to intervene of the *(continued ...)*

- Reynolds Hill, Inc.
- Keep Yorktown Safe New York
- City of Peekskill, New York
- Pramilla Malick
- Rickie Harvey (West Roxbury Saves Energy)

Parties Joining the West Roxbury Intervenors Request for Rehearing

- Matthew Butler
- Charles River Spring Valley Neighborhood Association
- Conservation Law Foundation;
- Rickie Harvey
- West Roxbury Saves Energy
- Virginia Hickey
- Mary McMahon
- Alexandra Shumway[340]

Direct Abutters and Private Citizens of West Roxbury and Dedham (Direct Abutters). Appendix A of the March 3 Order, however, mistakenly did not include Walter Partridge as member of the Direct Abutters as requested in the Direct Abutter's late motion to intervene.

[340] Appendix A of the March 3 Order incorrectly spells Ms. Shumway's last name as "Schumay."