

154 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Fuel Gas Supply Corporation

Docket No. CP14-70-001

ORDER DENYING REQUEST FOR REHEARING
AND DENYING REQUEST FOR STAY

(Issued March 8, 2016)

1. On March 2, 2015, the Commission issued an order authorizing National Fuel Gas Supply Corporation (National Fuel) under section 7 of the Natural Gas Act (NGA) to construct, operate, and abandon certain pipeline and compression facilities in Pennsylvania (West Side Expansion and Modernization Project).¹ On March 17, 2015, Allegheny Defense Project (Allegheny) filed a timely request for rehearing and, in a separate filing, a motion for stay of the March 2 Order.² As discussed below, this order denies the requests for rehearing and stay.

¹ *National Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162 (2015) (March 2 Order).

² In addition to its request for rehearing in this proceeding, Allegheny's March 17, 2015 pleading also requests rehearing of the Commission's orders in *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160 (2015) (Niagara Expansion and Northern Access 2015 Projects) and *Empire Pipeline, Inc.*, 150 FERC ¶ 61,181 (2015) (Tuscarora Lateral Project). However, these proceedings have not been consolidated. Therefore, the Commission will treat Allegheny's requests for rehearing as if filed separately in each proceeding. The Commission has issued an order on rehearing in *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379 (2015), and, contemporaneously with this order, an order on rehearing in *Tennessee Gas Pipeline Co., L.L.C.*

I. Background

2. The March 2 Order authorized National Fuel to abandon virtually all of its existing 23-mile-long, 20-inch-diameter, Line N pipeline in Washington, Allegheny, and Beaver Counties, Pennsylvania,³ and replace it with an equivalent length of 24-inch-diameter pipeline, as well as increase the maximum allowable operating pressure of the new Line N segments from 787 to 1,440 pounds per square inch gauge.⁴ Additionally, the March 2 Order authorized National Fuel to make enhancements to its existing Mercer Compressor Station in Mercer County, Pennsylvania, and its Buffalo Compressor Station in Washington County, Pennsylvania. The West Side Expansion and Modernization Project will enable National Fuel to provide approximately 175,000 dekatherms per day of incremental firm transportation service for Range Resources – Appalachia, LLC and Seneca Resources Corporation (Seneca Resources).

3. After review of the Environmental Assessment (EA) prepared for the proposal herein to satisfy the requirements of the National Environmental Policy Act (NEPA),⁵ the Commission concluded that with the adoption of 15 environmental conditions, approval of National Fuel’s proposed project would not constitute a major federal action significantly affecting the quality of the human environment.⁶

4. Allegheny filed a timely request for rehearing of the March 2 Order, raising issues related to the Commission’s environmental analysis in the EA and the March 2 Order. Allegheny also requested a stay of the March 2 Order.

II. Discussion

A. Request for Stay

5. On March 20, 2015, Allegheny filed a motion for stay of the March 2 Order, as well as of two other orders of the Commission authorizing projects, and also to stay “all

³ Line N was constructed in 1947.

⁴ The portion of Line N to be replaced will be abandoned in place in anticipation that the segments may have potential alternative uses.

⁵ 42 U.S.C. §§ 4321-4370h (2012). Commission staff placed the EA into the public record on December 8, 2014, and mailed it to all stakeholders on the environmental mailing list.

⁶ March 2 Order, 150 FERC ¶ 61,162 at P 58.

construction activities that the Commission has authorized” since it issued the March 2 Order.⁷ On March 26, and March 27, 2015, National Fuel and Tennessee Gas Pipeline Company, L.L.C., respectively, filed answers opposing the motion for stay.

6. Allegheny contends that a stay is appropriate because without a stay it will be left without an adequate remedy at law to address its injuries and the public will lose significant environmental resources, together amounting to irreparable injury. Allegheny asserts that on March 10, 2015, Commission staff issued a Pre-Construction Authorization for Tree Felling Activities for the West Side Expansion and Modernization Project, which demonstrates that injury to its interests from National Fuel’s construction activities is both “certain and great” and actually occurring, rather than “theoretical or merely feared as liable to occur at some indefinite time.”⁸ Allegheny claims that procedural injury arising from the Commission’s inadequate environmental analysis violating NEPA further supports a stay.⁹ Allegheny also argues that a stay will not significantly injure National Fuel, that a stay is in the public interest, and that Allegheny is likely to succeed on the merits of its pending request for rehearing.

Commission Determination

7. The Commission’s standard for granting a stay is whether justice so requires.¹⁰ The most important element of the standard is a showing that the movant will be irreparably injured without a stay.

⁷ Allegheny also requests a stay in *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160 (2015) (Niagara Expansion and Northern Access 2015 Projects) and *Empire Pipeline, Inc.*, 150 FERC ¶ 61,181 (2015) (Tuscarora Lateral Project). We denied the request for stay of the Tuscarora Lateral Project in *Empire Pipeline, Inc.*, 153 FERC ¶ 61,379 (2015). This order addresses the request for stay only with regard to the West Side Expansion and Modernization Project.

⁸ Allegheny March 20 Motion for Stay at 8-9.

⁹ *Id.* at 10, 12.

¹⁰ 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 Cty.*, 113 FERC ¶ 61,166, at P 6 (2005).

8. Allegheny makes no showing it will be irreparably injured. Allegheny has provided only unsupported, generalized allegations about environmental harm resulting from the project. The Commission fully considered and addressed the protest and comments of Allegheny, as well as the comments of other individuals and entities, both in the EA and in the March 2 Order's environmental discussion¹¹ and determined that, on balance, the West Side Expansion and Modernization Project, if constructed and operated in accordance with the application and supplements, and in compliance with the 15 environmental conditions appended to that order, would not significantly affect the quality of the human environment.¹²

9. Although Allegheny cites to Commission staff's March 10, 2015 letter order authorizing non-mechanized tree felling activities, the impacts from this limited authorization were carefully minimized. The EA explained that National Fuel's proposed construction methods, including conducting tree clearing outside of the migratory bird nesting season between September 1 and April 30, and between September 1 and March 30 for the Raccoon Creek Valley and State Park Important Bird Area,¹³ would not result in population-level impacts or significant measurable negative impacts on birds of conservation concern or migratory birds.¹⁴ The EA also concluded that tree clearing is not likely to adversely affect the endangered Indiana bat because it is either not present in the project area or represented in such low densities that it was not detected.¹⁵ Regarding tree felling activities' impact to the northern long-eared bats, the EA noted that National Fuel has committed to coordinate with the U.S. Fish and Wildlife Service (FWS) to determine suitable mitigation and recommended that the Commission make construction conditional on receipt of comments from FWS, which we did in Environmental Condition 13 of the March 2 Order.¹⁶ In their January 7, 2015 comments, FWS

¹¹ March 2 Order, 150 FERC ¶ 61,162 at PP 36-58 (addressing many of the same arguments that Allegheny raises here on rehearing).

¹² *Id.* P 58.

¹³ Important Bird Areas are sites designated by the Pennsylvania Ornithological Technical Committee as the most critical regions in Pennsylvania for conserving bird diversity and abundance, and are the primary focus of Audubon Pennsylvania's conservation efforts.

¹⁴ EA at 20-22.

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 24.

recommended that tree clearing occur between November 15 and March 31 in order to minimize impacts to the northern long eared bat.¹⁷ National Fuel's Implementation Plan, filed on March 6, 2015, scheduled tree-felling activities between March 6 and March 31 and acknowledged that additional consultation would be required if it needed to conduct tree felling activities after March 31, 2015.¹⁸

10. Both the Commission and the courts have denied stays in circumstances similar to those presented here. For example, in *Millennium Pipeline Company, L.L.C.*, the Commission denied a request for stay that was based on claims that tree cutting would cause irreparable harm to local residents, including injury to endangered species and reduced property values.¹⁹ Similarly, in *Ruby Pipeline, L.L.C.*, the Commission found that allegations of environmental and cultural harm did not support grant of a stay.²⁰ The courts denied requests for judicial stay in these and other pipeline construction cases.²¹

11. For these reasons, the Commission finds that Allegheny has not demonstrated that it will suffer irreparable harm, and Allegheny's request for stay is denied.

¹⁷ FWS January 7 comments at 2.

¹⁸ National Fuel March 6, 2015 Implementation Plan at 18 and Exhibit G.

¹⁹ *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022 (2012).

²⁰ *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,020 (2011); *Ruby Pipeline, L.L.C.*, 134 FERC ¶ 61,103 (2011).

²¹ See *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, No. 12-1481, Order Den. Mot. for Stay (D.C. Cir. Mar. 5, 2013); *In re Minisink Residents for Env'tl. Pres. and Safety*, No. 12-1390, Order Den. Pet. for Stay (D.C. Cir. Oct. 11, 2012); *Defenders of Wildlife v. FERC*, No. 10-1407, Order Den. Mot. for Stay (D.C. Cir. Feb. 22, 2011); *Summit Lake Paiute Indian Tribe v. FERC*, No. 10-1389, Order Den. Mot. for Stay (D.C. Cir. Jan. 28, 2011). See also *Feighner v. FERC*, No. 13-1016, Order Den. Mot. for Stay (D.C. Cir. Feb. 8, 2013); *Del. Riverkeeper Network v. FERC*, No. 13-1015, Order Den. Mot. for Stay (D.C. Cir. Feb. 6, 2013) (*Delaware Riverkeeper*); *Coal. for Responsible Growth and Res. Conservation v. FERC*, No. 12-566, Order Den. Mot. for Stay (2d. Cir. Feb. 28, 2012).

B. Environmental Analysis

1. Programmatic Environmental Impact Statement

12. The Council on Environmental Quality's (CEQ) regulations do not require broad or "programmatic" NEPA reviews. CEQ has stated, however, that such a review may be appropriate where an agency is: (1) adopting official policy; (2) adopting a formal plan; (3) adopting an agency program; or (4) proceeding with multiple projects that are temporally and spatially connected.²² 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,²³ and the United States Court of Appeals for the Fourth Circuit has concluded that there is no requirement for a programmatic environmental impact statement (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.²⁴

13. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.²⁵ 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."²⁶ 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

²² See Memorandum from CEQ to Heads of Federal Departments and Agencies, *Effective Use of Programmatic NEPA Reviews* 13-15 (Dec. 18, 2014) (citing 40 C.F.R. § 1508.18(b)), https://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf. We refer to the memorandum as the 2014 Programmatic Guidance.

²³ *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (Kleppe) (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

²⁴ See *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 316-17 (4th Cir. 2009).

²⁵ See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (*Texas Eastern*); *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014).

²⁶ 15 U.S.C. § 717f(e) (2012).

analysis would “be little more than a study . . . concerning estimates of potential development and attendant environmental consequences,”²⁷ which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”²⁸ 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.²⁹

14. As they have in other proceedings, Allegheny contends that the Commission violated NEPA by failing to prepare a programmatic EIS for natural gas infrastructure projects in the Marcellus and Utica Shale formations.³⁰ Allegheny further contends that the Commission should withdraw recently issued orders and stay all current proceedings in these regions until this EIS is completed.³¹ Allegheny claims that the Commission is engaged in regional development and planning with the gas industry as demonstrated in statements from government and industry entities.³²

²⁷ *Kleppe*, 427 U.S. at 402.

²⁸ *Piedmont Env'tl. Council*, 558 F.3d at 316.

²⁹ *See, e.g.*, Environmental Assessment for the Monroe to Cornwell Project and the Utica Access Project, Docket Nos. CP15-7-000 and 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 (filed Mar. 11, 2015).

³⁰ Allegheny Request for Rehearing at 66-82.

³¹ *Id.* at 82.

³² *Id.* at 71-75. Allegheny cites recent Commission orders rejecting Allegheny's argument for the preparation of a programmatic EIS, e.g., *Texas Eastern*, 149 FERC ¶ 61,259, PP 38-47 (2014); *AES Sparrows Point LNG, LLC*, 126 FERC ¶ 61,019, at 61,097 (2009) (Wellinghoff, Comm'r, dissenting) (disfavoring LNG imports in part because “effective delivery of Marcellus shale gas could be accomplished with expansion of pipeline and storage infrastructure in the region.”); Nat'l Petroleum Council, *Prudent Development: Realizing the Potential of North America's Abundant Natural Gas and Oil Resources* (2011); the Commission's *Strategic Plan FY2014-2018* (2014) (identifying the approval of natural gas pipeline infrastructure as a specific goal); a recent document created by Commission staff identifying 45 jurisdictional projects “on the horizon;” Michael J. McGehee, Director, Division of Pipeline Certificates, Office of Energy Projects, Federal Energy Regulatory Commission, Presentation to the 8th EU-US Energy

(continued ...)

15. Further, Allegheny claims that even if future pipeline projects may be theoretical, this does not mean that the Commission “would not be able to establish parameters for subsequent analysis.”³³ Allegheny claims that a programmatic EIS may aid the Commission’s and the public’s understandings of broadly foreseeable consequences of NGA-jurisdictional projects and non-jurisdictional shale gas production. Allegheny argues that the Commission has “a unique vantage point” to be aware of, and avoid, redundant pipeline construction in the same region of Pennsylvania.³⁴

16. Allegheny also argues that CEQ’s 2014 Programmatic Guidance 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.”³⁵ In support, Allegheny points to, among other things, a table from the Energy Information Administration listing a number of projects planned, proposed, or placed in service and another publication from that agency discussing new pipeline projects to move Marcellus and/or Utica Shale production. Allegheny asserts that an agency cannot escape the existence of a comprehensive program with cumulative

Regulators Roundtable, *Natural Gas in the U.S.: Supply and Infrastructure = Security* (Berlin, Ger., Oct. 26-27, 2010) (2010 Commission EU-US Presentation) (identifying 25 projects in the Marcellus Shale region); the Commission’s proceedings related to the *Coordination Between Natural Gas and Electricity Markets* (Docket No. AD12-12-000), *Coordination of Scheduling Process of Natural Gas Pipelines and Public Utilities* (Docket No. RM14-2-000), *Order Initiating Investigation into ISO and RTO Scheduling Practices* (146 FERC ¶ 61,202 (2014)), and *Posting of Offers to Purchase Capacity* (146 FERC ¶ 61,203 (2014)); and the PJM Interconnection’s 2013 Annual Report, which discusses a Department of Energy-funded initiative to analyze natural gas infrastructure. The 2010 Commission EU-US Presentation and the PJM Interconnection’s 2013 Annual Report are reproduced in Allegheny’s attachments 5 and 24, respectively. We have previously rejected the National Petroleum Council’s 2011 report as immaterial. *See, e.g., Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,064, at PP 23, 26 (2015).

³³ Allegheny Request for Rehearing at 67-68 (citing 2014 Programmatic Guidance at 11).

³⁴ *Id.* at 82.

³⁵ *Id.* at 68 (citing 2014 Programmatic Guidance at 21).

environmental effects by “disingenuously describing it as only an amalgamation of unrelated smaller projects.”³⁶

Commission Determination

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

18. In addition, the mere fact that there are a number of approved, proposed, or planned infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not establish that the Commission is engaged in regional development or planning. Rather, this information confirms that pipeline projects to transport Marcellus and Utica Shale gas are initiated solely by a number of different companies in private industry. As we have noted previously, a programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.³⁷

19. The Commission’s siting decisions regarding pending and future natural gas pipeline facilities will be in response to proposals by private industry, and the Commission has no way to accurately predict the scale, timing, and location of projects, much less the type of facilities that will be proposed. In these circumstances, the Commission’s longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected, “should facilitate, not impede, adequate environmental assessment.”³⁸ Thus, here, the Commission’s environmental review of National Fuel’s actual proposed pipeline project in a discrete EA is appropriate under NEPA.

20. In sum, CEQ states that a programmatic EIS can “add value and efficiency to the decision-making process when they inform the scope of decisions,” “facilitate decisions on agency actions that precede site- or project-specific decisions and actions,” or

³⁶ *Id.* at 71 (citing *Churchill Cty v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)).

³⁷ *See Kleppe*, 427 U.S. at 401-02.

³⁸ *Id.*

“provide information and analyses that can be incorporated by reference in future NEPA reviews.” The Commission does not believe these benefits can be realized by a programmatic review of natural gas infrastructure projects in the Marcellus and Utica Shale formations because the projects subject to our jurisdiction do not share sufficient elements in common to narrow future alternatives or expedite the current detailed assessment of each particular project.

2. Indirect Effects of Natural Gas Production

21. CEQ’s regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.³⁹ 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.”⁴⁰ 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.

22. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”⁴¹ in order “to make an agency responsible for a particular effect under NEPA.”⁴² As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”⁴³ 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.⁴⁴ Further, the Court has stated that “where an agency has no ability to prevent

³⁹ 40 C.F.R. § 1508.25(c) (2015).

⁴⁰ *Id.* § 1508.8(b).

⁴¹ *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 at 774 (1983).

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.”⁴⁵

23. 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.”⁴⁶ NEPA requires “reasonable forecasting,” but an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁴⁷

24. Allegheny asserts that the Commission’s environmental analysis of the West Side Expansion and Modernization Project violated NEPA by failing to consider the indirect effects of gas drilling in the Marcellus and/or Utica Shale formations.⁴⁸

25. 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, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the Environmental Protection Agency under the Safe Drinking Water Act. The Environmental Protection Agency also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

26. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations.⁴⁹ A causal relationship sufficient to warrant

⁴⁵ *Pub. Citizen*, 541 U.S. at 770.

⁴⁶ *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).

⁴⁷ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

⁴⁸ Allegheny Request for Rehearing at 14-36.

⁴⁹ *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), *pet. for*

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 such production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).⁵⁰ To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed pipeline as best suited for moving their gas to market.

27. 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 per 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

review dismissed sub nom. Coal. for Responsible Growth v. FERC, 485 Fed. App’x 472, 474-75 (2012) (unpublished opinion).

⁵⁰ Cf. *Sylvester v. Army Corps of Eng’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. Fed. Aviation Admin.*, 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. Dep’t 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).

environmental analysis of the impacts related to a proposed interstate natural gas pipeline.⁵¹

28. 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.⁵² The Environmental Protection Agency has reached a similar conclusion.⁵³ With respect to air quality, the Department of Energy found that natural gas development leads to both short- and long-term increases in local and regional air emissions.⁵⁴ 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.⁵⁵

⁵¹ *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with specific specificity to make their consideration meaningful need not be included in the environmental analysis).

⁵² U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From The United States* 19 (Aug. 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

⁵³ See U.S. Environmental Protection Agency, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* at ES-6 (June 2015) (external review draft), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539 (finding the number of identified instances of impacts on drinking water resources to be small compared to the number of hydraulically fractured wells). See also *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands*, 80 Fed. Reg. 16,128, 16,130 (2015) (Bureau of Land Management promulgated 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”).

⁵⁴ DOE Addendum at 32.

⁵⁵ *Id.* at 44.

29. Allegheny argues that the proposed project and regional shale gas extraction are “two links of a single chain” as allegedly shown by multiple industry and government sources, as well as common sense.⁵⁶ Allegheny argues that Seneca Resources, a subsidiary of National Fuel, and another producer have stated that firm transportation contracts “de-risk production growth” by ensuring takeaway capacity, that portions of Seneca Resources’ drilling locations have been de-risked, and that the development of other portions of Seneca Resources’ drilling locations will be “limited” until firm transportation capacity becomes available.⁵⁷ Allegheny also cites a recent article explaining that shale wells sharply decline in volume after the first few years, which Allegheny claims makes new production more likely.⁵⁸ Allegheny also contends that additional natural gas production in the Marcellus and Utica Shale regions is not uncertain, as demonstrated in statements and reports from industry and government entities.⁵⁹

30. Allegheny contends that like the rejected indirect impact analysis in *Colorado River Indian Tribes v. Marsh (Colorado River)*,⁶⁰ the Commission assessed the project with “tunnel vision” that was “tantamount to limiting its assessment to primary impacts.”⁶¹ Allegheny further asserts that the Commission’s claim that the causal connection between gas drilling and the project is insufficient because natural gas

⁵⁶ *Id.* at 15-17 (quoting *Sylvester*, 884 F.2d at 400), 19-24. Allegheny cites the National Petroleum Council, *Prudent Development: Realizing the Potential of North America’s Abundant Natural Gas and Oil Resources* 51-52 (2011), Rice Energy, Presentation to Barclays CEO Energy-Power Conference 31 (Sept. 2, 2014), National Fuel Investor Presentation 6, 18, 41-52 (Jan. 2015), and the 2010 Commission EU-US Presentation at 28-33 (*supra* note 32). These sources are reproduced in Allegheny’s attachments 1, 3, 4, and 5, respectively.

⁵⁷ Allegheny Request for Rehearing at 19-20.

⁵⁸ *Id.* at 25, Attachment 6 (James Ladlee, Marcellus Center for Outreach & Research, Pennsylvania State University, *Appalachian Basin Decline Curve and Royalty Estimation* (July 17, 2014), <http://extension.psu.edu/natural-resources/natural-gas/news/2014/07/appalachian-basin-decline-curve-and-royalty-estimation-part-1>).

⁵⁹ Allegheny Request for Rehearing at 29-34.

⁶⁰ 605 F.Supp. 1425 (C.D. Cal. 1985).

⁶¹ *Id.* at 1433.

development will continue and is indeed continuing with or without the project is similar to the argument rejected in *Mid States Coalition for Progress v. Surface Transportation Board (Mid States)*.⁶²

31. In the March 2 Order, we explained that no party had presented or referenced any accepted, detailed information that quantifies the environmental impacts of producing natural gas in the various areas from which the proposed project might be supplied.⁶³ Allegheny contends that by “requir[ing] the public to ascertain the cumulative effects of the proposed action,” the Commission abdicated its primary duty to comply with NEPA and failed to satisfy NEPA’s aim to inform the public that the agency has considered environmental concerns in its decision making.⁶⁴

Commission Determination

32. The record in this proceeding, including the reports and statements cited by Allegheny, does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the West Side Expansion and Modernization Project to would necessitate further analysis. The fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market is not in dispute. However, this does not mean that the Commission’s action of approving this particular pipeline project will cause or induce the effect of additional or further shale gas production. Rather, as we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.⁶⁵ If the West Side Expansion and

⁶² Allegheny Request for Rehearing at 24-25 (citing *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*)).

⁶³ March 2 Order, 150 FERC ¶ 61,162 at P 46.

⁶⁴ Allegheny Request for Rehearing at 27.

⁶⁵ See, e.g., *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. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed’n v. Goldschmidt*, 506 F.Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

Modernization Project were not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.⁶⁶ Again, any such production would take place pursuant to the regulatory authority of state and local governments.

33. Moreover, future gas development in any particular region is not an essential predicate for the West Side Expansion and Modernization Project. Rather, National Fuel operates transmission and storage facilities in multiple states,⁶⁷ and interconnects with other pipelines. Therefore, project shippers can source their gas from various supply regions. Whether or how much gas from any specific source will travel through the project cannot be known.⁶⁸ Allegheny fails to identify any production specifically associated with the West Side Expansion and Modernization Project.

34. Similarly, we find *Colorado River* distinguishable. In *Colorado River*, a district court held that the Corps violated NEPA by not preparing a final environmental impact statement (EIS) for a permit authorizing a developer to place riprap along a riverbank. The court stated that without the permit, the developer could not have received local government approval for its proposed residential and commercial development project along the riverbank.⁶⁹ The Corps originally prepared a draft EIS because the proposed development along the banks would cause significant environmental impacts.⁷⁰ Before completing a final EIS, however, the Corps retracted its draft EIS because the Corps

⁶⁶ *Rockies Express*, 150 FERC ¶ 61,161 at P 39. National Fuel's 2015 presentation to investors cited by Allegheny suggests that Seneca Resources, a producing subsidiary of National Fuel, may have plans to use a number of pipelines to transport its production. See Allegheny Request for Rehearing, Attachment 4 at 26-27 (table showing that Seneca Resources' natural gas marketing portfolio relies in part on long-term firm transportation on Tennessee Gas Pipeline Company's Northeast Supply Diversification Project and Transcontinental Pipe Line Company's pending Atlantic Sunrise Project); *id.* at 45 (map depicting "multiple outlets to high-value markets" from Seneca Resources' acreage along several existing interstate pipelines in addition to National Fuel's systems).

⁶⁷ March 2 Order, 150 FERC ¶ 61,162 at P 1.

⁶⁸ *Id.* at 51.

⁶⁹ 605 F. Supp. 1425, 1428.

⁷⁰ *Id.*

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.⁷¹

35. 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, by contrast, Commission staff analyzed the indirect and cumulative effects of the project. Commission staff did not analyze the effects of induced natural gas production because, unlike in *Colorado River*, there is no sufficient causal link between our authorization of the project and any additional production. Natural gas development will likely continue with or without the West Side Expansion Project.

36. Moreover, even if a causal relationship between our action here and additional production were presumed, the scope of the impacts from any induced production is not reasonably foreseeable. The offered evidence does not alter the fact that the location, scale, and timing of any additional wells are matters of speculation, particularly with respect to their relationship to the proposed project. In addition, the reports and articles cited by Allegheny are broad generic reports that do not show where or when additional development will occur if the proposed project is approved.⁷² As we have previously

⁷¹ *Id.*

⁷² See, e.g., Morningstar, Energy Observer, *Shale Shock: How the Marcellus Shale Transformed the Domestic Natural Gas Landscape and What it means for Supply in the Years Ahead* at 12 n.1 (Feb. 14, 2014) (“[w]ith so much inherent uncertainty, projections for Marcellus production beyond the next few years are essentially meaningless, in our opinion.”); National Fuel Investor Presentation at 2 (Jan. 2015) (listing twenty factors that could cause the company’s forward-looking statements to differ materially from actual results – e.g., geology; lease availability; title disputes; weather conditions; shortages, delays or unavailability of equipment and services required in drilling operations; insufficient gathering, processing and transportation capacity; the need to obtain governmental approvals and permits; and compliance with environmental laws and regulations); National Fuel Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended September 30, 2014, Form 10-K, U.S. Securities and Exchange Commission 21-22 (filed Nov. 21, 2014) (listing similar factors and adding that shifting federal and state legislative and regulatory initiatives that affect all aspects of well construction, operation, and abandonment could lead to operational delays or restrictions); Range Resources Corporation Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended September 30, 2014, Form 10-K, U.S. Securities and Exchange Commission 22-23 (filed Feb. 24, 2015) (“Because of these [nineteen] uncertain factors, we do not

(continued ...)

explained, a broad analysis based on generalized assumptions rather than reasonably specific information of this type will not yield information that would provide meaningful assistance to the Commission in its decision making, e.g., evaluating potential alternatives to the specific proposal before us.⁷³

37. The Commission did not abdicate its information-gathering responsibility under NEPA. NEPA's obligation to take a "hard look" at environmental consequences does not require agencies to develop every bit of information that may pertain to environmental impacts prior to acting. To the contrary, the data collected for and analyzed in the EA was adequate to inform the public and to allow us to fully consider the proposed project's impacts on environmental resources and to reasonably and responsibly take action on the proposal. Commission staff participated in an open house; published a notice soliciting environmental comments, which was mailed directly to interested parties including government entities with environmental expertise, environmental and public interest groups, and others; and conducted a public scoping meeting. In response to Allegheny's protest during scoping, the EA explained that direct and indirect impacts were addressed throughout its analysis and that Commission staff looked at numerous projects in the general project area to determine the cumulative impacts on environmental resources.⁷⁴ The March 2 Order provided a thorough explanation why Allegheny's arguments about indirect and cumulative impacts failed for lack of a causal link to the proposed project and lack of reasonable foreseeability.⁷⁵

know if numerous drilling locations we have identified will ever be drilled.""). These sources appear in Allegheny's attachments 8, 4, 9, and 10, respectively. The cited 2013 USGS report provides only a retrospective analysis of land use and land cover changes in Pennsylvania, based only on aerial images, due to natural gas production between 2004 and 2010. Milheim et al., U.S. Geological Survey, *Landscape Consequences of Natural Gas Extraction in Armstrong and Indiana Counties, Pennsylvania, 2004-2010*, Open-File Report 2013-1263 at 6-7 (2013) (USGS Report), <http://pubs.usgs.gov/of/2013/1263>. The cited 2011 Nature Conservancy report relied on assumptions to calculate a wide range of development and land impacts – e.g., finding 360,000 to 900,000 acres of forest edge affected by 2030. The Nature Conservancy, *Marcellus Gas Well & Pipeline Projections* at 21 (Dec. 16, 2011), <http://extension.psu.edu/natural-resources/forests/private/training-and-workshops/2012-goddard-forum-oil-and-gas-impacts-on-forest-ecosystems/marcellus-gas-well-and-pipeline-projections>.

⁷³ E.g., *Rockies Express*, 150 FERC ¶ 61,161 at P 40.

⁷⁴ EA at 2.

⁷⁵ March 2 Order, 150 FERC ¶ 61,162 at PP 14-19.

38. 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.⁷⁶ 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.⁷⁷

39. Here, Allegheny asserts that construction of the West Side Expansion and Modernization Project would increase *production*, rather than end use as was conceded in *Mid States*. 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 West Side Expansion and Modernization Project. Thus, we find speculative not merely the extent of production-related impacts, as at issue in *Mid States*, but also whether the project at issue will have any such impacts.

3. Cumulative Impacts Analysis

40. 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”⁷⁸ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

41. 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.”⁷⁹ CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the

⁷⁶ *Mid States*, 345 F.3d at 550.

⁷⁷ *Id.*

⁷⁸ 40 C.F.R. § 1508.7 (2015).

⁷⁹ *Kleppe*, 427 U.S. at 413.

list of environmental effects must focus on those that are truly meaningful.”⁸⁰ 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.”⁸¹ 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.⁸²

42. As we have explained, consistent with CEQ’s 1997 Cumulative Effects Guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.⁸³ While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.⁸⁴

43. Allegheny argues that the cumulative impact analysis in the EA did not adequately consider the environmental harms associated with natural gas development activities in the Marcellus Shale formation.⁸⁵ Allegheny complains that the EA only considered present gas well drilling in southwestern Pennsylvania – i.e., in Allegheny, Beaver, and Washington Counties – within 0.5 miles of the proposed facilities, when one of the shippers also conducts drilling activities in northern Pennsylvania. Allegheny explains that the 31 permitted wells in this 0.5-mile region of influence represent 2 percent of

⁸⁰ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (Jan. 1997) (1997 Cumulative Effects Guidance).

⁸¹ *Id.*

⁸² See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005).

⁸³ See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁸⁴ *Id.* P 120.

⁸⁵ Allegheny Request for Rehearing at 36-53.

the 1,362 or more wells drilled in Allegheny, Beaver, and Washington Counties between 2009 and 2014.⁸⁶ Allegheny argues that the Commission ignored the vast majority of the cumulative impacts of shale gas drilling in these counties.

44. Allegheny also asserts that the Commission misreads the 1997 Cumulative Effects Guidance in determining the project's region of influence, citing a portion of the guidance that contrasts between a project-specific analysis, for which it often suffices to analyze effects within the immediate area of the proposed action, and an analysis of the proposed action's contribution to cumulative effects, for which "the geographic boundaries of the analysis almost always should be expanded."⁸⁷ Allegheny argues that the Commission has a regular practice of arbitrarily narrowing the geographic scope of review to ignore substantial and long-term cumulative effects from Marcellus and Utica Shale gas drilling on various environmental resources.⁸⁸ Allegheny likens the restrictive geographic scope to the one found insufficient in *LaFlamme v. FERC (LaFlamme)*.⁸⁹

45. Allegheny cites *Natural Resources Defense Council v. Hodel (Hodel)*⁹⁰ to bolster its claim that the Commission is required to consider the "inter-regional" impacts of Marcellus and Utica Shale development activities. Allegheny also asserts that recent research 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 much broader scale.⁹¹

⁸⁶ *Id.* at 39, Attachment 13 (figures from Pennsylvania Department of Environmental Protection).

⁸⁷ *Id.* at 40 (citing 1997 Cumulative Effects Guidance at 12).

⁸⁸ *Id.* at 40-41. Allegheny cites the environmental assessments for seven unrelated projects, which varied in geographic scope from the vague "area affected" to a 5-mile radius. *Id.* at 41-42. The Commission considers projects on a case-by-case basis, and these seven proceedings have no bearing in the instant case.

⁸⁹ 852 F.2d 389 (9th Cir. 1988).

⁹⁰ 865 F.2d 288 (D.C. Cir. 1988).

⁹¹ Allegheny Request for Rehearing at 50 (citing M.C. Brittingham, *et al.*, *Ecological Risks of Shale Oil and Gas Development to Wildlife, Aquatic Resources, and their Habitats*, Environmental Science & Technology 11035-37 (Sept. 4, 2014)).

46. Allegheny asserts that because speculation is implicit in NEPA the Commission needs to forecast reasonably foreseeable future actions even if they are not specific proposals.⁹²

Commission Determination

47. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.⁹³ The agency should then establish the geographic scope for analysis.⁹⁴ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.⁹⁵ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁹⁶ 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.⁹⁷

48. The cumulative effects analysis in the EA took precisely the approach the CEQ guidance advises.⁹⁸ Based on the small scale of the project and the lack of significant direct and indirect impacts on resources, Commission staff concluded that a 0.5-mile radius for cumulative impacts analysis was sufficient for all resource areas except air impacts, including geology, soils, groundwater, surface water, vegetation and wildlife, fisheries, special status species, land use, and visual resources.⁹⁹ Commission staff concluded that nearly all West Side Expansion and Modernization Project construction impacts would be contained within the right-of-way and alternative temporary

⁹² *Id.* at 35 (citing *N. Plains Res. Council*, 668 F.3d at 1079).

⁹³ 1997 Cumulative Effects Guidance at 11.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2 (June 24, 2005).

⁹⁸ We note that the 1997 Cumulative Effects Guidance at 15 states that the “applicable geographic scope needs to be defined case-by-case.”

⁹⁹ EA at 45, 47-48.

workspaces, would be temporary and localized, and would not be expected to contribute to regional cumulative impacts.¹⁰⁰ Staff acknowledged that stream turbidity, air emissions, and noise may migrate outside of these work areas.

49. For water resources and fisheries, the region of influence for analyzing cumulative effects is generally within a watershed, either local or regional. However, because National Fuel's construction through waterbodies would avoid or minimize impacts by implementing measures identified in its Erosion and Sediment Control and Agricultural Management Plan, by utilizing dry flume and dam-and-pump crossing methods in waterbodies with regular flow, and by crossing the Saint Patrick Run via horizontal directional drill,¹⁰¹ staff concluded that the project's impacts could not result in a significant cumulative impact on these resources.¹⁰² The scope of staff's analysis was appropriately reflective of the specific characteristics of the West Side Expansion and Modernization Project.

50. For the air quality resource, the EA acknowledged that cumulative air quality impacts would occur as a result of construction using heavy equipment.¹⁰³ The EA explained that with the exception of greenhouse gases, the West Side Expansion and Modernization Project's direct impacts would be localized, confined primarily to the project's airshed, and minimized because construction would move regularly over a large geographical area.¹⁰⁴ The EA concluded that the project would not have a significant long-term adverse impact on air quality and would not add significantly to the long term cumulative impact of other projects.

51. For noise, the EA acknowledged that the proposed project could contribute to cumulative noise impacts.¹⁰⁵ The EA noted, however, that noise impacts are highly localized and attenuate quickly as one moves away from the source. The EA also concluded that long term noise impacts at the Mercer Compressor Station would be

¹⁰⁰ *Id.* at 45.

¹⁰¹ *Id.* at 16.

¹⁰² *Id.* at 47.

¹⁰³ *Id.* at 48.

¹⁰⁴ EA at 48.

¹⁰⁵ *Id.*

minor. Therefore, the EA anticipated only temporary and insignificant cumulative impacts on noise.

52. Using the 0.5-mile region of influence, the EA identified no specific past, present, or reasonably foreseeable future actions that might contribute to a cumulative impact.¹⁰⁶ The EA identified and considered 31 natural gas and oil production wells, two planned interstate gas transmission pipeline projects, and other extraction/mining activities in the region but, with limited exceptions, they were not included in the cumulative impacts analysis because their impacts would occur outside the region of influence. The EA explained that the construction footprints at natural gas well sites are variable and that environmental resources within those footprints are unknowable.¹⁰⁷ The EA responded to this uncertainty by discussing, where applicable, the wells' potential cumulative impacts in general qualitative terms. The EA concluded that due to the minor scope of the project and National Fuel's mitigation and restoration measures, the West Side Expansion and Modernization Project would not result in significant long-term cumulative effects.

53. For these reasons, we find that the EA identified the appropriate geographic scope for considering cumulative effects and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus and Utica Shale formations. Such impacts will occur far outside the 0.5-mile region of influence of the West Side Expansion and Modernization Project. Further, given the large geographic scope of the Marcellus Shale formations, the magnitude of the type of analysis requested by Allegheny bears no relationship to the limited magnitude of National Fuel's instant proposal, which involves temporary construction impacts on 154.8 acres and permanent impacts to 136.7 acres of land within a mixed use area of mostly agricultural, residential, and commercial land uses.¹⁰⁸ Moreover, for the reasons discussed above and in the March 2 Order,¹⁰⁹ even if the Commission were to vastly expand the geographic scope of

¹⁰⁶ *Id.*

¹⁰⁷ By their own admission, statements from National Fuel's recent report to the Securities and Exchange Commission about Seneca Resources' activities are not credible evidence of future operations. *Supra* note 72.

¹⁰⁸ EA at 6.

¹⁰⁹ March 2 Order, 150 FERC ¶ 61,162 at PP 44-51.

the cumulative effects analysis, the impacts from such development are not reasonably foreseeable.¹¹⁰

54. In our view, Allegheny's arguments with respect to the geographic scope of the analysis are based on their erroneous claim that the Commission must conduct a regional programmatic NEPA review of natural gas development and production in the Marcellus and Utica Shale formations, an area that covers potentially thousands of square miles. We decline to do so. As the Commission explained in the March 2 Order¹¹¹ and herein, there is no Commission program or policy to promote additional natural gas development and production in shale formations.

55. Allegheny's reliance on *LaFlamme* is misplaced, as the opinion in fact supports the Commission's use of a region of influence and an analysis of cumulative impacts limited to those impacts occurring in the area of the project at issue. In *LaFlamme*, the Ninth Circuit criticized the Commission's environmental review of the Sayles Flat Project, a hydroelectric project on the American River, because the Commission relied on the "narrow analysis" of another hydroelectric project's EIS, the Upper Mountain Project, as a substitute for a cumulative impact analysis of actual area projects on area resources. The relied-upon Upper Mountain Project EIS had not examined potential cumulative impacts from other projects on the segment of the American River Basin relevant to the Sayles Flat Project.¹¹² By contrast, the West Side Expansion and Modernization Project EA looked at other projects within the immediate landscape, watershed, and airshed relevant to the project's limited direct and indirect impacts. If anything, *LaFlamme* supports the importance of identifying a "region of influence" appropriately connected to the location of the project under review.

56. Allegheny's reliance on *Hodel* is also misplaced. In *Hodel* the court considered the U.S. Department of the Interior's EIS composed in conjunction with its plan to award

¹¹⁰ The 2014 study published by M.C. Brittingham and other authors, *supra* note 91, offers only general conclusions about the potential qualitative impacts on terrestrial and aquatic ecosystems from shale development. It provides no specifics regarding those impacts, much less specific details with respect to the West Side Expansion and Modernization Project.

¹¹¹ March 2 Order, 150 FERC ¶ 61,162 at P 55.

¹¹² 852 F.2d at 401-02. The court stated, "[a]t 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," i.e., the Sayles Flat Project section. *Id.* at 401 (emphasis added).

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. However, *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). By contrast, the "plan" before the Commission involves the construction of approximately 23 miles of pipeline in Pennsylvania, the abandonment into idled status of the same length of vintage pipeline, and enhancements to two existing compressor stations. Because we find the proposal will have no reasonably foreseeable impacts on shale development, we find no reason to adopt a region of influence for reviewing cumulative impacts that would include, as Allegheny urges, all the "states in and surrounding the Marcellus and Utica shale formations."¹¹³

57. The Department of the Interior's leasing of large tracts in federal waters in *Hodel* is 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,"¹¹⁴ production and gathering activities in the Marcellus and Utica Shale formations 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. Accordingly, we find *Hodel* unavailing.

¹¹³ Allegheny Request for Rehearing at 36, 43-47, 50.

¹¹⁴ *Hodel*, 865 F.2d at 297 (citing *Kleppe*, 427 U.S. at 410) (emphasis added).

C. Natural Gas Act

58. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction to determine whether there is a need for a proposed project and whether the proposed project will serve the public interest.¹¹⁵ Allegheny argues that the Commission applies the Certificate Policy Statement unfairly by emphasizing access to new gas supplies in the Marcellus and Utica Shale regions while downplaying or failing to weight the countervailing environmental impacts of that access. Thus, Allegheny contends that the Commission fails the explicit goal to "avoid[] unnecessary disruption of the environment" and also heavily favors the issuance of certificates.¹¹⁶

59. Allegheny's argument under the Certificate Policy Statement is merely an extension of its arguments under NEPA that we rejected in the EA, the March 2 Order, and herein. The Commission does not participate in any program to authorize or facilitate Marcellus and Utica Shale gas production. The Commission does not favor any one source of natural gas over any other; sourcing of gas is a market decision. The March 2 Order's discussion of the Certificate Policy Statement addressed the West Side Expansion and Modernization Project's potential disruption of the environment, finding the impacts to be minimized.¹¹⁷ Based on the record in this proceeding, the Commission continues to find that on balance, pursuant to the criteria set forth in the Certificate Policy Statement, the West Side Expansion and Modernization Project is required by the public convenience and necessity.¹¹⁸ We affirm our conclusion that our approval of the projects, if constructed and operated in accordance with National Fuel's applications, as supplemented, and in compliance with the environmental conditions to the March 2 Order, does not constitute a major federal action significantly affecting the quality of the human environment.¹¹⁹

¹¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹¹⁶ Allegheny Request for Rehearing at 90-91 (quoting Certificate Policy Statement, 88 FERC at 61,736).

¹¹⁷ March 2 Order, 150 FERC ¶ 61,162 at P 17.

¹¹⁸ *Id.* PP 7-8.

¹¹⁹ *Id.* P 20.

The Commission orders:

(A) Allegheny Defense Project's rehearing is denied, as discussed in the body of this order.

(B) Allegheny Defense Project's request for stay is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.