

155 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP15-89-000

ORDER ISSUING CERTIFICATE

(Issued April 7, 2016)

1. On February 18, 2015, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity authorizing it to construct and operate certain facilities in Burlington and Mercer Counties, New Jersey (Garden State Expansion Project).

2. For the reasons discussed below, the Commission will authorize Transco's proposal, subject to certain conditions.

I. Background and Proposal

3. Transco is a natural gas company engaged in the transportation of natural gas in interstate commerce, subject to the Commission's NGA jurisdiction. Transco's transmission system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

4. Transco proposes to construct and operate its Garden State Expansion Project to provide 180,000 dekatherms (Dth) per day of incremental firm transportation service, in two phases, from Transco's Station 210 Zone 6 Pool in Mercer County, New Jersey, to a new delivery point with New Jersey Natural Gas Company on Transco's Trenton

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2015).

Woodbury Lateral in Burlington County, New Jersey. Phase 1 will provide 20,000 Dth per day by a target in-service date of November 1, 2016; Phase 2 will provide an additional 160,000 Dth per day by a target in-service date of August 2017.

5. Specifically, in Phase I, Transco proposes to:

- construct and operate a new meter and regulating station near milepost (MP) 15.2 on Transco's Trenton Woodbury Lateral in Burlington County (Chesterfield Meter Station);
- uprate an existing electric motor drive to 25,000 horsepower (hp) and modify the associated compressor unit (Unit 3) at Compressor Station 205 in Mercer County; and
- construct and operate related appurtenant underground and above ground facilities.

6. In Phase II, Transco proposes to:

- construct and operate a new 30,500 hp, electric motor-driven compressor station and associated electrical substation near MP 15.2 on Transco's Trenton Woodbury Lateral in Burlington County (Compressor Station 203);
- uprate two existing electric motor drives to 16,000 hp each and rewheel the associated compressor units (Units 1 and 2) at Compressor Station 205³ in Mercer County; and
- construct and operate related appurtenant underground and above ground facilities.

7. The estimated cost of the Garden State Expansion Project is approximately \$116,021,614.

8. Transco states that it executed a binding precedent agreement with New Jersey Natural Gas for 100 percent of the incremental firm transportation capacity of the project. The precedent agreement requires New Jersey Natural Gas and Transco to execute a long-term firm transportation service agreement under Rate Schedule FT within 30 days after Transco's receipt and acceptance of the authorizations requested herein. The Rate Schedule FT agreement between Transco and New Jersey Natural Gas will have a primary term of 15 years.

³ In its December 4, 2015 comments and clarifications to the environmental assessment, Transco states that these units are being rewheeled, rather than replaced, as originally stated in its application.

9. Following Transco's execution of the precedent agreement with New Jersey Natural Gas, Transco states that it held an open season from June 12 through July 14, 2014, during which it offered firm transportation service under the proposed project to other potential shippers. Transco states that it did not receive any other requests for firm transportation service.

10. As initial recourse rates for project service, Transco proposes to establish an incremental firm daily reservation charge of \$0.77804 per Dth in Phase 1, and reduce the charge to \$0.37655 per Dth in Phase 2. Transco also proposes to assess its applicable maximum system-wide fuel retention percentage and all other system-wide firm transportation service surcharges. In lieu of the incremental recourse rate, Transco and New Jersey Natural Gas have agreed to a fixed negotiated firm reservation rate.

II. Notice, Interventions, Comments, and Protests

11. Notice of Transco's application was published in the *Federal Register* on March 13, 2015 (80 Fed. Reg. 13,361). The notice established March 25, 2015, as the deadline for filing comments and interventions. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁴

12. In addition, a substantial number of individuals and entities filed late, unopposed motions to intervene. The granting of these untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Accordingly, consistent with our practice in natural gas proceedings, we will permit the late, unopposed motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.⁵

13. We also received a large number of comments or protests raising concerns that are addressed in the Environmental Assessment (EA) for the Garden State Expansion Project and, as appropriate, in the environmental section of this order.

III. Discussion

14. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

⁴ 18 C.F.R. § 385.214(c) (2015).

⁵ 18 C.F.R. § 385.214(d) (2015).

A. Certificate Policy Statement

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁶ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that when a pipeline proposes an incremental rate for proposed expansion capacity that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.⁷ Transco proposes an incremental recourse rate for service using the Garden State Expansion Project's capacity that is designed to

⁶ *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).

⁷ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

recover the full cost of the expansion and exceeds the existing system rate for service. Thus, we find that existing shippers will not subsidize the proposed project.

2. Existing Pipelines and Other Pipelines and Their Customers

18. We find that the proposal will not degrade service to Transco's existing customers. In addition, there will be no adverse impact on other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. Also, no pipeline company or their captive customers have protested Transco's application.

3. Landowners and Communities

19. With the exception of one parcel of real estate, all construction will occur on land owned or leased by Transco.⁸ Transco recognizes in its application that there will be some temporary impacts to landowners and communities during the construction process. However, Transco states it is committed to working cooperatively with landowners and expects to negotiate mutually agreeable settlements with all affected landowners. We find that Transco has made an effort to minimize impacts on landowners and communities.

4. Conclusion

20. Several parties question the need for the proposed project and claim that the benefits to be achieved do not support the conclusion that the Garden State Expansion project is required by the public convenience and necessity. At least two commenters assert that the project will not serve the impacted communities.

21. In determining whether a project is required by the public convenience and necessity, the Commission balances the evidence of public benefits to be achieved against potential adverse effects. As examples of benefits the Certificate Policy Statement includes "meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnections that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives."⁹ As such, it is clear that these benefits are not directed

⁸ Block 204 Lot 3.02 is parkland owned by the Bordentown Township, and the township has indicated that it is not willing to voluntarily grant Transco the temporary or permanent easement needed for the project. This is further discussed in the Environmental discussion, *infra*.

⁹ Certificate Policy Statement, 88 FERC at 61,748.

specifically towards the communities that may be impacted, but rather the larger consumer public.

22. Here, we find a strong showing of public benefit based on the fact that there is a binding precedent agreement with New Jersey Natural Gas for 100 percent of the incremental firm transportation service created by the project. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Transco's proposal, subject to the conditions discussed below.

B. Rates

23. Transco proposes an incremental daily recourse reservation charge under its existing Rate Schedule FT of \$0.77804 per Dth for Phase 1, and a reduced charge applicable to all project capacity of \$0.37655 per Dth for Phase 2. Transco submitted incremental cost-of-service and rate design studies showing the derivation of the project's recourse rates based on a first year cost-of-service of \$5,679,707 and billing determinants of 20,000 Dth per day for Phase 1, and a total (Phase 1, plus Phase 2) cost-of-service of \$24,739,501 and billing determinants of 180,000 Dth per day for Phase 2.

24. In a data response, Transco provided a breakdown of operation and maintenance (O&M) expenses by FERC account number and between labor and non-labor costs.¹⁰ Transco's response identified a total of \$84,312 and \$388,775 in non-labor O&M costs for FERC account numbers 853 and 864 for Phases 1 and 2, respectively. Consistent with the Commission's regulation requiring the use of a straight fixed-variable (SFV) rate design,¹¹ these costs are classified as variable costs and should not be recovered through the reservation charge.

25. Consistent with an SFV rate design, Transco calculated revised incremental daily reservation charges which recover only the fixed costs of the project.¹² Based on the fixed project costs of \$5,595,395 for Phase 1 and \$24,266,414 for Phase II, Transco calculated incremental daily recourse reservation charges of \$0.76649 per Dth and \$0.36935 per Dth, respectively. Accordingly, when it files actual tariff records, we direct

¹⁰ Transco April 28, 2015 Response to Staff's April 22, 2015 Data Request (April 28 Response), Question 1.

¹¹ 18 C.F.R. § 284.7(e) (2015).

¹² See April 28 Response, Question 2.

Transco to classify its costs consistent with an SFV rate design and to recalculate its incremental recourse reservation charges to recover only fixed costs.

26. Transco's revised incremental recourse reservation charges for the project are higher than the system recourse charge for firm transportation service contained in Transco's tariff.¹³ Therefore, we will approve Transco's revised incremental recourse reservation charges as the initial recourse rates for firm service using the incremental capacity created by the project.

27. Transco also calculated incremental commodity charges of \$0.01155 per Dth and \$0.00128 per Dth for Phase 1 and Phase 2, based on the variable project costs of \$84,312 and \$473,087, respectively.¹⁴ However, Transco proposed to assess its existing system Rate Schedule FT commodity charge for the project's capacity, which is currently \$0.00486 per Dth.¹⁵ Consistent with the Commission's regulations, pipelines are required to base their minimum rates on the variable costs which are properly allocated to the service.¹⁶ Since the incremental recourse commodity charges for Phase 1 would be greater than the currently effective system-wide Rate Schedule FT commodity charge, we will require Transco to charge the calculated initial, incremental recourse commodity charge. For Phase 2, we will approve Transco's proposal to charge its currently effective Zone 6 to Zone 6 commodity charge.

28. Transco did not indicate what transportation rate it would apply for interruptible service provided on the Garden State Expansion Project capacity. Transco should use its system interruptible transportation rates.¹⁷

¹³ Effective April 1, 2015, Transco's daily reservation rate for Zone 6 to Zone 6 service under Rate Schedule FT is \$0.12984 per Dth. Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [Section 1.1.1, FT - Non-Incremental Rates, 14.0.0](#).

¹⁴ See April 28 Response, Question 2.

¹⁵ See Page 6 of 7, "6 – 6". Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [Section 1.1.1, FT - Non-Incremental Rates, 14.0.0](#).

¹⁶ 18 C.F.R. § 284.10(c)(4)(ii) (2015).

¹⁷ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160, at PP 27-28 (2008) (directing Transco to charge its current system-wide rates for interruptible service rendered on additional capacity made available as a result of an expansion built onto existing facilities on an integrated basis).

29. To ensure that costs are properly allocated between Transco's existing shippers and the incremental services proposed in this proceeding, we will direct Transco to keep separate books and accounting of costs attributable to the Garden State Expansion Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.¹⁸ This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.¹⁹

30. As stated above, Transco has executed a precedent agreement with New Jersey Natural Gas at negotiated rates. Transco must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in accordance with the Alternative Rate Policy Statement²⁰ and the Commission's negotiated rate policies.²¹ Such a filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.²²

C. Fuel Retention and Other Transportation Rates

31. Transco proposes to charge its generally applicable system-wide fuel retention percentage and electric power charges under Rate Schedule FT. Based on a study designed to determine the impact of fuel consumption, Transco determined that the operation of the project facilities would result in a reduction of approximately 4.48 percent in system fuel consumption attributable to existing customers.²³ Due to these net

¹⁸ 18 C.F.R. § 154.309 (2015).

¹⁹ *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

²⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

²¹ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²² Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

²³ *See* Transco Application, Exhibit Z-1.

fuel benefits to the overall system, we will approve Transco's proposal to charge its generally applicable system-wide fuel retention percentage and electric power charges.

D. Environmental Analysis

32. On March 26, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners within 0.5 mile of the proposed aboveground facilities.

33. We received approximately 132 comments in response to the NOI including the New Jersey Department of Environmental Protection (NJDEP), the U.S. Fish and Wildlife Service (USFWS), Delaware Riverkeeper Network (Delaware Riverkeeper), the Stockbridge-Munsee Tribal Historic Preservation, the Pretty Brook Tennis Club, the New Jersey Sierra Club (Sierra Club), and multiple citizens. The primary issues raised concern New Jersey Natural Gas's Southern Reliability Link Project; segmentation; public safety; property values; and impacts on noise, cultural resources, air quality, wildlife, soils, and water quality. All commenters that provided their addresses were added to the environmental mailing list.

34. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an EA for Transco's proposal. The EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

35. The EA was issued for a 30-day comment period and placed into the public record on November 4, 2015. The Commission received comments on the EA from Hopewell Township Citizens Against the PennEast Pipeline Inc., USFWS, the Township of Hopewell, the Township of Bordentown, Sierra Club, Friends of Hopewell Valley Open Space, the Township of Chesterfield, James Cann (the mayor of Bordentown Township), Stony Brook Millstone Watershed Association, New Jersey Conservation Foundation, NJDEP, concerned citizens, and Transco. The majority of comments received were from citizens opposing the project.

36. The commenters raise concern about the project need; induced production as a result of the project; mailing list concerns; segmentation; the need for the Commission to issue a programmatic environmental impact statement (EIS) to address multiple projects in the region; indirect impacts; timing of the Commission approval; soil impacts; water resource impacts; wildlife, fisheries, and vegetation; cultural resources; land use and socioeconomics; air emission and noise impacts; reliability and safety; cumulative impacts; and alternatives. In addition, Transco provided project clarifications in response to the EA.

1. Procedural and Process Concerns

37. We received a number of comments that Transco did not properly notify all landowners about the project. In her comments, Belinda Blazic noted five affected property owners who reside within 0.5 mile of the Compressor Station 203 project area that did not receive the Commission's NOI. Our regulations require companies to make a "good faith effort" to notify in writing each affected landowner, as noted in the most recent county/city tax records, within 0.5 mile of the proposed compressor station upgrades.²⁴ Commission staff then inspects the lists, and adds the names and addresses to its environmental mailing list for the project.

38. Based on our review of Transco's landowner list included in its application and our environmental mailing list, of the five affected property owners identified, information regarding four was provided by Transco and they were included on the Commission's environmental mailing list for the NOI. These residents were also on the address list for the Notice of Schedule for Environmental Review, mailed on March 26, 2015. We note that the address of the fifth resident provided by Ms. Blazic was on the environmental mailing list for the NOI and Notice of Schedule for Environmental Review, but that the addressee was different than the one identified by Ms. Blazic. We conclude that Transco's filed landowner list complied with the intent of the landowner notification requirements of our regulations.

39. Several commenters, including Sierra Club, ask that the Commission refrain from acting on the Garden State Expansion Project application until other state and federal agencies issue all permits and approvals needed for the proposed project.

40. It is impractical, and sometimes impossible, to complete studies and develop plans to mitigate potential adverse aspects of a project in advance of issuing a final order. This can be because many of the post-authorization conditions require site-specific plans and surveys that cannot be completed until the applicant is able to employ eminent domain to gain access to previously inaccessible land parcels. We stress that this order's authorization is subject to the applicant's compliance with numerous, specific conditions, including the requirement to obtain favorable authorizations from other agencies that have jurisdiction over various aspects of the project. Consequently, we find no need to hold our decision in abeyance, given that our authorization is conditioned to preclude Transco from commencing construction until all other necessary federal permits and approvals are granted.

²⁴ See section 157.6 of the Commission's regulations, 18 C.F.R. §157.6 (2015).

2. EA v. EIS

41. Several commenters, including the Township of Hopewell, Sierra Club, Friends of Hopewell Valley Open Space, Stony Brook-Millstone Watershed Association, New Jersey Conservation Foundation, and several citizens contend that the project would result in significant impacts on environmental resources and that we should prepare an EIS.

42. As explained in the EA, the Commission's regulations implementing NEPA provide that "[i]f the Commission believes that a proposed action ... may not be a major federal action significantly affecting the quality of the human environment, an EA, rather than an EIS, will be prepared first. Depending on the outcome of the EA, an EIS may or may not be prepared."²⁵ Transco proposes to construct a new compressor station and a meter and regulating station, and modify an existing compressor station. The Commission's years of experience with NEPA implementation for pipeline projects indicates that such a project normally would not fall under the "major" category for which an EIS is automatically prepared.²⁶

43. CEQ regulations implementing NEPA state that one of the purposes of an EA is to assist agencies in determining whether to prepare an EIS. Here, Commission staff prepared an EA to determine whether the Garden State Expansion Project would have a significant impact, necessitating the preparation of an EIS. The EA addresses the impacts that could occur on a wide range of resources should the project be approved and constructed. As explained below, based on the EA's analysis and staff's recommended mitigation measures, the EA concludes, and we agree, that approval of the Garden State

²⁵ EA at 1-12 (citing 18 C.F.R. § 380.6(b) (2015)).

²⁶ See, e.g., *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,140 (2010) (EA issued for a project consisting of 127.4 miles of 30-inch-diameter pipeline loops in Pennsylvania and New Jersey); *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011) (EA issued for a project which included a gas storage field on 2,050-acre site and associated 61.6-mile, 36-inch-diameter pipeline in Utah); *Colorado Interstate Gas Co.*, 131 FERC ¶ 61,086 (2010) (EA issued for a project which included two new 16-inch-diameter pipeline laterals totaling 118 miles in length in Colorado); *Equitrans, L.P.*, 117 FERC ¶ 61,184 (2006) (EA issued for a project which included 68 miles of new 20-inch-diameter pipeline in Kentucky).

Expansion Project would not constitute a major federal action significantly affecting the quality of the human environment.²⁷ Thus, an EIS is not required.²⁸

3. Segmentation

44. CEQ regulations require the Commission to include “connected actions,” “cumulative actions,” and potentially, “similar actions” in its NEPA analyses.²⁹ “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.”³⁰ “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.³¹

45. In *Delaware Riverkeeper*, the D.C. Circuit emphasized that an “agency’s determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a).”³² Our environmental review here indeed followed CEQ regulations against segmentation. Courts have applied a “substantial independent utility” test in evaluating whether connected actions are improperly segmented. The test asks “whether one project will serve a significant

²⁷ EA at 4-1. Under 40 C.F.R. § 1508.18 (2015) of CEQ’s regulations, “a ‘major federal action’ includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly.” “Significantly” requires consideration of both the context and intensity of the project. *See* 40 C.F.R. § 1508.27 (2015).

²⁸ CEQ regulations state that, where an EA concludes in a finding of no significant impact, an agency may proceed without preparing an EIS. *See* 40 C.F.R. §§ 1501.4(e), 1508.13 (2015).

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

³⁰ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Delaware Riverkeeper*). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. *See, e.g., Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-1306 (9th Cir. 2003).

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

³² *Del. Riverkeeper*, 753 F.3d at 1315.

purpose even if a second related project is not built.”³³ 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. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”³⁴

46. In *Delaware Riverkeeper*, the D.C. Circuit held 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.³⁵ 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.³⁶ Subsequently, the same court has 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.³⁷ Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.³⁸

47. *Delaware Riverkeeper* suggests and many other parties and commenters assert that the Garden State Expansion Project has been unlawfully segmented to circumvent a full

³³ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); see also *O’Reilly v. 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.”).

³⁴ *Coal. on Sensible Transp.*, 826 F.2d at 69.

³⁵ *Del. Riverkeeper*, 753 F.3d at 1314, 1316.

³⁶ *Id.*

³⁷ See *Minisink Residents for Env’tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

³⁸ See *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

NEPA review.³⁹ Specifically, Delaware Riverkeeper states that Transco failed to identify three other Transco projects, namely, the Northeast Supply Link, Leidy, and Atlantic Sunrise Projects, in its Resource Report 1 for the Garden State Expansion Project, and that the Commission should review these projects to ensure that they are not functionally and operationally dependent on each other. Additionally, Delaware Riverkeeper states that the Commission must examine the extent to which the Garden State Expansion and the PennEast Pipeline Projects rely on and interact with each other.

48. Other parties and commenters focus only on the PennEast Pipeline and Southern Reliability Link Projects, insisting that these projects, together with the Garden State Expansion Project, constitute a single interdependent pipeline system, each dependent on the other two.⁴⁰ They claim that this interdependence is demonstrated by the projects' sharing a single purpose and geography and similar in-service dates and construction timetables. These parties and commenters attach particular significance to the fact that the Garden State Expansion and Southern Reliability Link Projects have an identical design capacity of 180,000 Dth per day, which corresponds with the capacity that New Jersey Natural Gas agreed to under both its precedent agreement with PennEast Pipeline Company (PennEast) for the PennEast Pipeline Project and with Transco for the Garden State Expansion Project.

49. These parties and commenters also claim that Transco, PennEast and New Jersey Natural Gas have employed a strategy developed by the gas industry over the past several years of improperly segmenting projects to avoid a thorough environmental review of the cumulative impacts of the projects. Consequently, they assert that the Commission's EA failed to comply with its obligations under NEPA to evaluate the cumulative impacts of all three projects together in a full EIS, particularly those impacts associated with residential cisterns, wells, and septic systems and emissions.

³⁹ Delaware Riverkeeper states that the proposed project here may present the same factual circumstances as presented in the *Delaware Riverkeeper* case, where a single pipeline is being upgraded piecemeal to avoid the proper environmental review.

⁴⁰ Several parties, including the Township of Hopewell and Georrgi Tolstiaikov, include the Crestwood MARC II Project as being dependent on the other projects. According to several oil and gas industry journals, in October 2014, Central New York Oil & Gas Co. LLC concluded a non-binding open season to solicit interest in a proposed project, called the Crestwood MARC II Project, to connect with PennEast Pipeline and Transco's Leidy and Atlantic Sunrise Projects. However, currently there is no application for certificate approval of such a project before the Commission (or even a request to initiate the Commission's pre-filing process). Thus, there is no a fully defined Crestwood MARC II "proposal" appropriate for the Commission's environmental review.

50. As discussed below, we conclude there is no requirement that the Commission consider any of these projects in conjunction with the proposed Garden State Expansion Project as one project in a single environmental analysis. Moreover, as explained below, we are satisfied that the EA's cumulative impacts analysis fully conforms to the Commission's obligations under NEPA.

51. Our analysis of the assertion that the Garden State Expansion Project has been unlawfully segmented to circumvent a full NEPA review begins with a description of Transco's system generally, as well as the several projects claimed to be operationally and functionally dependent on the Garden State Expansion Project.

Transco's Pipeline System

52. Transco's multi-looped mainline system, consisting of over 10,000 miles of pipeline, extends from Texas, Louisiana, and offshore of the Gulf of Mexico, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its terminus in the New York City metropolitan area. Transco's mainline facilities includes the Leidy Line, an approximately 200-mile-long, multi-looped pipeline that originates at an interconnection with Transco's mainline system at Compressor Station 505 in Hunterdon County, New Jersey, and terminates near Wharton, Pennsylvania, in Potter County.

53. Historically, Transco has transported natural gas supplies from the Gulf Coast, Mid-continent and Appalachia regions to meet its shippers' market demands in the Northeast. However, in recent years, Transco's shippers have reduced their reliance on Gulf Coast supplies in favor of northeast-market-area supplies. In response, Transco has proposed infrastructure projects in order to receive and transport these gas supplies. Delaware Riverkeeper has raised issues about three such projects, i.e., the Northeast Supply Link Project, the Leidy Project, and the Atlantic Sunrise Project. All three projects were proposed to increase incremental capacity on portions of Transco's Leidy Line and mainline system by adding pipeline looping and additional compression facilities. Each project was designed to provide firm transportation from the primary receipt points to the primary delivery points specified in Transco's contracts with the expansion shippers.

Northeast Supply Link Project

54. On December 14, 2011, Transco filed an application for authority to construct and operate its Northeast Supply Link Project to provide 250,000 Dth per day of new incremental firm transportation service from supply interconnections on its Leidy Line in western Pennsylvania to its 210 Market Pool in New Jersey and the existing Manhattan,

Central Manhattan, and Narrows delivery points in New York City. The Commission approved Transco's Northeast Supply Link Project on November 2, 2012.⁴¹

55. Transco completed the Northeast Supply Project and placed its facilities into service on November 1, 2013. The project facilities included a total of approximately 12 miles of new 42-inch pipeline looping, 16,000 horsepower of additional compression at an existing compressor station, and construction of a new 25,000 horsepower compressor station, along with other smaller modifications to Transco's existing Leidy Line. The capacity created by the Northeast Supply Project is fully subscribed by four shippers.⁴²

Leidy Project

56. On September 18, 2013, Transco filed its certificate application for the Leidy Project to increase its pipeline system's capacity in order to provide an additional 525,000 Dth per day of firm transportation service from the existing Grugan Interconnect on Transco's existing Leidy Line in Clinton County, Pennsylvania, and the existing MARC I Interconnect in Lycoming County, Pennsylvania, to various delivery points on Transco's Mainline as far south as Transco's existing Station 85 Zone 4 and 4A Pooling Points in Choctaw County, Alabama. The Leidy Project consists of approximately 29.97 miles of new pipeline loop in four segments, together with a total of 71,900 horsepower of compression at four compressor stations in Pennsylvania and New Jersey. The project's expansion capacity is fully subscribed by seven shippers⁴³ that have contracted for an in-service date of December 1, 2015. The Commission approved the Leidy Project on December 18, 2014,⁴⁴ and it was placed in full service on January 5, 2016.

Atlantic Sunrise Project

57. On March 31, 2015, Transco filed its application for a certificate to construct and operate the Atlantic Sunrise Project to provide 1,700,002 Dth per day of incremental firm transportation service from northern Pennsylvania in Transco's Zone 6 southbound to

⁴¹ *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091 (2012).

⁴² Hess Corporation; MMIGS Inc.; Anadarko Energy Services Company; and Williams Gas Marketing Inc.

⁴³ Capitol Energy Ventures Corp., Anadarko Energy Services Company, MMGS Inc., Piedmont Natural Gas Company, Public Service Company of North Carolina, Inc., South Carolina Electric & Gas Company, and Washington Gas Light Company.

⁴⁴ *Transcontinental Gas Pipe Line Co., LLC*, 149 FERC ¶ 61,258 (2014).

Transco's Station 85 in Alabama. The Atlantic Sunrise Project would include deliveries to markets along Transco's pipeline system in Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and interconnects with existing pipelines serving the Florida market. The proposed project would include the construction of 57.3 miles of new 30-inch-diameter greenfield pipeline (the "Central Penn Line North") and 125.2 miles of new 42-inch-diameter greenfield pipeline (the "Central Penn Line South"), incremental facilities on Transco's existing natural gas transmission system, and modifications to Transco's existing natural gas transmission system to enable north-to-south flow. The Atlantic Sunrise Project is fully subscribed by nine shippers,⁴⁵ with a requested July 1, 2017 in-service date. This application is pending before the Commission.

PennEast Pipeline Project

58. On September 25, 2015, PennEast filed an application for authorization to construct and operate the PennEast Pipeline Project, a new greenfield pipeline originating in Luzerne County, Pennsylvania, traversing Luzerne, Carbon, Northampton, and Bucks Counties in Pennsylvania, and Hunterdon and Mercer Counties in New Jersey, and terminating at a delivery point with Transco in Mercer County, New Jersey.⁴⁶ As proposed, the project will consist of approximately 114 miles of 36-inch-diameter mainline pipeline, along with three laterals, that will provide up to 1,107,000 Dth per day of new natural gas transmission capacity. According to its application, the PennEast Pipeline Project, with its various receipt points in the eastern Marcellus region⁴⁷ and numerous delivery⁴⁸ points, is designed to satisfy growing natural gas transportation

⁴⁵ Anadarko Energy Services Company, Cabot Oil & Gas Corporation, Chief Oil & Gas LLC, Inflection Energy LLC, MMGS, Inc, Seneca Resources Corporation, Southern Company Services, Inc., Southwest Energy Services Company, and WGL Midstream, Inc.

⁴⁶ The project will also include three laterals: (1) an approximately 2.1-mile, 24-inch diameter Hellertown lateral in Northampton County, Pennsylvania; (2) an approximately 0.6-mile, 12-inch diameter Gilbert Lateral in Hunterdon County, New Jersey; and (3) an approximately 1.4-mile, 36-inch diameter Lambertville lateral in Hunterdon County, New Jersey.

⁴⁷ The receipt points include interconnections with Transco and gathering systems operated by UGI Energy Services, LLC, Williams Partners L.P., and Energy Transfer partners L.P., all in Luzerne County, Pennsylvania.

⁴⁸ The delivery points include interconnections with UGI Central Penn Gas, Inc. in Carbon County, Pennsylvania, UGI Utilities, Inc. and Columbia Gas Transmission, LLC in Northampton County, Pennsylvania, and Elizabeth Gas, NRG REMA, LLC, Texas

(continued...)

capacity needs of local distribution companies, electric generators, and end users in eastern and southeastern Pennsylvania, New Jersey, New York, and surrounding states. As stated in the application, the project is approximately 90 percent subscribed by 12 shippers⁴⁹ for a total subscribed capacity of 990,000 Dth per day and PennEast has a requested in-service date of November 1, 2017. New Jersey Natural Gas is one of the project's seven anchor shippers, having executed a precedent agreement with PennEast for 180,000 Dth per day of the project's capacity for delivery to the Transco and PennEast interconnect south of Transco's Station 210 Zone 6 Pool.⁵⁰

Southern Reliability Link Project

59. New Jersey Natural Gas, as part of its non-jurisdictional Southern Reliability Link Project, proposes to construct a new intrastate 28-mile-long pipeline lateral from its existing distribution system to the new delivery point on Transco's Trenton-Woodbury Lateral. The Southern Reliability Link Project would begin at the supply point of Transco's interstate pipeline in Chesterfield Township, Burlington County, and continue through North Hanover, Upper Freehold, and Plumsted Townships to connect with New Jersey Natural Gas's system in Manchester Township. Construction is expected to begin in March 2016 and last approximately one year. New Jersey Natural Gas has filed petitions with the New Jersey Board of Public Utilities to permit these facilities.

Commission Response

60. In *Transcontinental Gas Pipe Line Co., LLC (Leidy)*⁵¹ the Commission addressed and dismissed Delaware Riverkeeper's assertion that Transco improperly segmented its environmental review of its Leidy Project from several of its other projects, including the

Eastern Transmission, LP, Algonquin Gas Transmission, LLC in Hunterdon County, New Jersey, and terminating at a delivery point with Transco's mainline in Mercer County, New Jersey.

⁴⁹ PennEast's shippers include New Jersey Natural Gas; PSEG Power LLC; Texas Eastern Transmission, LP; South Jersey Gas Company; Consolidated Edison Company of New York, Inc.; Pivotal Utility Holdings, Inc., (D/B/A Elizabethtown Gas); UGI Energy Services, LLC; Cabot Oil & Gas Corporation; Talen Energy Marketing, LLC; Enerplus Resources (USA) Corporation; Warren Resources, Inc.; and NRG Rema LLC.

⁵⁰ See PennEast Pipeline Company, Docket No. CP15-558-000, Appendix A USGS Topographic Maps (Page 16) and Garden State Expansion Project, Docket No. CP15-89-000, Volume 4 – Mapping and Figures Appendix 4-B(Page 3).

⁵¹ 149 FERC ¶ 61,258 (2014), *reh'g denied*, 154 FERC ¶ 61,166 (2016).

Northeast Supply Link and Atlantic Sunrise Projects.⁵² There, the Commission explained for various reasons that these projects were neither “connected,” “cumulative,” nor “similar” to each other, and therefore were not required to be analyzed in a single EIS.

61. In *Leidy*, we found that the Northeast Supply Link and the Leidy Projects are not “connected” actions as they each had a “substantial independent utility.” Placed into service on November 1, 2013, the Northeast Supply Link Project transports gas produced in western Pennsylvania to New Jersey and New York City, whereas the Leidy Project, approved in December 2014, will transport gas from western Pennsylvania southbound to different east coast markets and southward to Alabama. We also found that the Northeast Supply Link Project was built independently of the Leidy Project, and it had utility independent from the Leidy Project that “serve[s] a significant purpose.”⁵³ Likewise, we concluded that the Leidy Project does not rely on the Northeast Supply Link Project for its operation and would have been built even if the Northeast Supply Link Project had not been constructed.

62. The Commission also found in *Leidy* that the Atlantic Sunrise Project was not a connected action, but for a different reason. Since no application for the Atlantic Sunrise Project had been filed at any time during the period that the Leidy Project was receiving consideration, the Commission determined that the Atlantic Sunrise Project was not a fully defined “proposal” and was not improperly segmented from the Commission’s environmental review of the Leidy Project under NEPA.⁵⁴

63. Here, Transco filed its application for the Garden State Expansion Project on February 18, 2015, which was over 15 months after the Northeast Supply Link Project was placed into service and two months after the Commission approved the Leidy Project.⁵⁵ As detailed above, the Garden State Expansion Project facilities consist of the

⁵² The other project identified by Delaware Riverkeeper was Transco’s Diamond East Project.

⁵³ *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”).

⁵⁴ *Minisink Residents for Env’tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

⁵⁵ The Garden State Expansion Project, like the Atlantic Sunrise Project, was not a fully defined “proposal” at any time during the periods when either the Northeast Supply Link Project or the Leidy Project were receiving consideration by the Commission and

(continued...)

uprate of existing electric motor drives at Transco's Compressor Station 205, located in Mercer County, New Jersey, and the construction of a new Compressor Station 203, located in Burlington County, New Jersey. These facilities will provide incremental new capacity of 180,000 Dth per day, allowing one shipper, New Jersey Natural Gas, to access natural gas supplies from Transco's Station 210, Zone 6 Pool, near Princeton, New Jersey, for transportation to the new Compressor Station 203. The Garden State Expansion Project facilities are not directly connected to any other existing or proposed interstate pipeline project.

64. The Northeast Supply Link Project, having been constructed and in service for over two years and serving four different shippers, is demonstratively independent from the proposed Garden State Expansion Project, both operationally and financially. While the Leidy Project's anticipated December 1, 2015 in-service date was delayed until January 5, 2016, it, too, is operationally and financially independent from the Garden State Expansion Project.⁵⁶ Moreover, whereas the Garden State Expansion Project's transportation path is entirely within New Jersey, the Leidy Project will transport natural gas from western Pennsylvania to various east coast markets and southward to Alabama for seven different shippers.⁵⁷ Unlike the Leidy Project, the Garden State Expansion Project involves transportation on Transco's Woodbury Lateral, dispelling any notion that these two projects are one "linear and physically interdependent" pipeline.

65. While the Atlantic Sunrise and Garden State Expansion Projects share common timing, with applications being filed less than two months apart and requested in-service dates for fully completed projects only three months apart, all similarities end there. Like the Leidy Project, the Atlantic Sunrise Project will transport natural gas from western Pennsylvania to various east coast markets and southward to Alabama and will not involve transportation on Transco's Woodbury Lateral. Given the large amount of the Atlantic Sunrise Project's available and subscribed capacity, the broad geographic area it is designed to serve, the various receipt and delivery points, and large number of

therefore, the Garden State Expansion Project was not segmented from the NEPA review of either of those projects.

⁵⁶ In an October 22, 2015 data response, Transco explained that the incremental horsepower needed for Phase 2 of the Garden State Expansion Project could be accomplished regardless of whether the Leidy Project was constructed merely by increasing the up-rating of Units 1 and 2 at Compressor Station 205.

⁵⁷ The Leidy Project shippers include Anadarko Energy Services Company, Capitol Energy Ventures Corp., MMGS Inc., Piedmont Natural Gas Company, Public Service Company of North Carolina, Inc., South Carolina Gas & Electric Company, and Washington Gas Light Company.

shippers, it is clear that the Atlantic Sunrise Project has “a substantial independent utility,” and that it is not financially dependent on the Garden State Expansion Project. It is also clear, based on the description of the Atlantic Sunrise Project above, that the two projects are not one “linear and physically interdependent” pipeline.

66. PennEast’s application for the PennEast Pipeline was filed seven months after the Garden State Expansion Project application, with a requested in-service date only three months apart from that for Garden State Expansion Project’s Phase 2. Nonetheless, the PennEast Pipeline Project is neither financially nor operationally dependent on the Garden State Expansion Project, notwithstanding the fact that New Jersey Natural Gas has a precedent agreement with PennEast for 180,000 Dth per day of new natural gas transportation service for delivery at the Transco and PennEast interconnect south of Transco’s Station 210, Zone 6 Pool, and a precedent agreement with Transco for the same amount of service for delivery to Transco’s interconnect with Southern Reliability Link.⁵⁸ Even if New Jersey Natural Gas’s service on the Garden State Expansion Project were dependent on delivery of its 180,000 Dth per day of gas from PennEast, which, as we describe below, it is not, should the Garden State Expansion Project not go forward, the PennEast Pipeline Project would still be supported by eleven other shippers, including six other anchor shippers. The large amount of the PennEast Pipeline Project’s available and subscribed capacity, the broad geographic area it is designed to service, the various receipt and delivery points and large number of shippers are clear evidence of PennEast Pipeline Project’s “substantial independent utility” from the Garden State Expansion Project.

67. Conversely, the Garden State Expansion Project also has “substantial independent utility,” and is not financially or operationally dependent on the PennEast Pipeline Project. The fact that New Jersey Natural Gas is the sole shipper on Transco’s Garden State Expansion Project should not obscure the fact that the Garden State Expansion Project is not dependent on the PennEast Pipeline Project. As solely a transporter of natural gas, Transco plays no role in where shippers on its system might choose to source their supply. This is made clear by Transco’s precedent agreement with New Jersey Natural Gas, which makes no reference to the PennEast Pipeline Project and places responsibility on New Jersey Natural Gas for contracting directly with natural gas suppliers and arranging for deliveries of natural gas supplies to be transported from Transco’s Station 210 Zone 6 Pool. Transco’s Station 210 Zone 6 Pooling Point is

⁵⁸ In *Delaware Riverkeepers*, the court found that reliance on the contracts was “insufficient because the contracts do not show that the project was driven by independent financial considerations apart from the other projects.” *Del. Riverkeeper*, 753 F.3d at 1316. There, unlike the present case, the rates were calculated using costs and design capacities of other projects.

located at the junction of Transco's existing mainline systems and its Leidy Line. It is a multi-directional pooling point whereby, depending on market conditions, gas either moves from the northeast south on the Leidy Line or north from the Gulf of Mexico on Transco's mainline. In the event the PennEast Pipeline Project is not approved or developed, New Jersey Natural Gas could still contract for other deliveries from numerous other sources of supply at Transco's Station 210 Zone 6 Pool in accord with the terms of New Jersey Natural Gas's service on Transco. New Jersey Natural Gas is responsible for contracting directly with suppliers of natural gas and arranging for deliveries of gas supplies to be transported from Transco's Station 210 Zone 6 Pool to New Jersey Natural Gas's new delivery point on Transco's Trenton Woodbury Lateral located at the Chesterfield Meter Station. Moreover, with an anticipated August 1, 2016 in-service date for Phase 1, New Jersey Natural Gas will be taking service on the Garden State Expansion Project more than a year before PennEast's anticipated in-service date.

68. The fact that the PennEast Pipeline Project connects to Transco and that New Jersey Natural Gas has precedent agreements for the same amount of capacity on each project over the same terms does not require that the projects be jointly considered in a single environmental analysis. Every natural gas pipeline project before the Commission can be found to be interconnected with another by virtue of the fact that the entire interstate pipeline grid is a highly integrated transportation network. Every part of the system must be designed to receive and deliver natural gas from the pipeline network, which includes over 306,000 miles of pipeline that links production areas to markets across the country and nearly every major metropolitan area in the nation. Connectedness is inherent to the design of any major infrastructure network; however, this fact by itself does not equate to interdependence. Likewise, we agree that the projects are similar in the sense that every natural gas project before the Commission is narrowed in its characteristics by the jurisdiction defined by the NGA. Therefore, "similarity" and "connectivity" in a generic sense are not sufficient to demonstrate interdependency. If this were the case, no project in the interstate pipeline grid could be independently proposed, evaluated, or constructed. Each project can proceed on its own. Consequently, we do not believe the projects' location and timing merit viewing them as similar or connected.

69. As stated above, New Jersey Natural Gas's proposed Southern Reliability Link Project is an intrastate pipeline for which New Jersey Natural Gas has filed petitions, currently under review, with the New Jersey Public Utilities Commission (NJPU), the lead state agency, to permit these facilities. Nonetheless, many commenters state that the Commission should perform an environmental analysis of the Southern Reliability Link Project as part of its review of the Garden State Expansion (and PennEast Pipeline) Projects.

70. Under NEPA, federal agencies are required to consider the environmental consequences of “major Federal actions significantly affecting the quality of the human environment.”⁵⁹ Improper segmentation arises when a federal project, i.e., a major Federal action, has been segmented into separate projects to avoid compliance with NEPA.⁶⁰

71. The term “major Federal action” is not defined in NEPA, but the CEQ has defined “major Federal action” to include “actions with effects that may be major and which are potentially subject to Federal control and responsibility.”⁶¹

72. Under the test developed by the U.S. Corps of Engineers, the following four factors are considered in order to determine whether there is sufficient federal control over a non-jurisdictional project to warrant inclusion of the project in the agency’s environmental analysis: (i) whether or not the regulated activity comprises “merely a link” in a corridor type project (e.g., a transportation or utility transmission project); (ii) whether there are aspects of the non-jurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity; (iii) the extent to which the entire project will be within the Commission’s jurisdiction; and (iv) the extent of cumulative federal control and responsibility.⁶²

⁵⁹ 42 U.S.C. § 4332(2)(C) (2012).

⁶⁰ See, e.g., *Save Barton Creek Ass’n v. Federal Highway Administration*, 950 F.2d 1129 (5th Cir. 1992); *Coalition on Sensible Transportation, Inc. v. Dole*, 826 F.2d 60 (D.C. Cir. 1987).

⁶¹40 C.F.R. § 1508.18 (2015).

⁶² See *Algonquin Gas Transmission Co.*, 59 FERC ¶ 61,255, at 61,934 (1992) (*Algonquin*). Some parties in the *Algonquin* proceeding opposed the construction of a new electric generation plant that would be served by Algonquin’s proposed pipeline facilities. The Commission acknowledged that, in light of the courts’ holdings in *Henry v. FPC*, 513 F.2d 395 (D.C. Cir. 1975) and *Winnebago Tribes of Nebraska v. Ray*, 621 F.2d 269, 272 (8th Cir.), cert. denied, 449 U.S. 836 (1980) (*Winnebago*), there may be situations where there is sufficient nexus between proposed jurisdictional facilities and planned non-jurisdictional facilities and sufficient Federal control and responsibility over all the facilities that the projects should be viewed as one Federal action for environmental purposes, requiring the Commission to give some environmental consideration to the non-jurisdictional facilities. *Algonquin*, 59 FERC ¶ 61,255 at 61,935-36. Therefore, in *Algonquin*, the Commission applied the four-prong test that was developed by the U. S. Corps of Engineers following the *Winnebago* decision and upheld

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73. As to the first factor, the Garden State Expansion Project does not physically connect the PennEast Pipeline and Southern Reliability Link Projects. Nevertheless, additional gas delivered from PennEast into Transco could utilize the capacity added to Transco's system by the Garden State Expansion Project to reach the Southern Reliability Link Project. However, as noted above, the precedent agreement between New Jersey Natural Gas and Transco is not reliant on the existence of the PennEast Pipeline Project; New Jersey Natural Gas could contract for deliveries from numerous other sources of supply at Transco's Station 210 Zone 6 Pool that Transco would then deliver to New Jersey Natural Gas utilizing the capacity added by the Garden State Expansion Project on Transco's Trenton Woodbury Lateral in Burlington County, New Jersey. This factor, therefore, does not support a need to include an analysis of the Southern Reliability Link Project as part of the Commission's action in the EA of the Garden State Expansion Project.

74. As to the second factor, PennEast's pipeline needs only to interconnect with Transco's existing mainline facility at a hydraulically feasible point south of the Station 205 compression facilities. Similarly, the Southern Reliability Link needs only to interconnect with Transco's existing lateral at a hydraulically feasible point at, or downstream of, the proposed new Compressor Station 203. While both PennEast and New Jersey Natural Gas had an incentive to propose the most direct feasible route to connect to Transco's facilities in order to minimize expense, overall pipeline length, and ground disturbance, they each had considerable flexibility in designing the route of their own facilities. As noted above, the PennEast pipeline does not physically interconnect with the Zone 210 Pool or the Trenton Woodbury Lateral. Thus, this factor does not support a need to include an analysis of the Southern Reliability Link Project as part of the Commission's action in the EA of the Garden State Expansion Project.

75. With respect to the third factor, again, the PennEast Pipeline Project does not physically link with the Garden State Expansion Project. In addition, even if the Southern Reliability Link Project and the Garden State Expansion Project are viewed as one project, the Southern Reliability Link Project, over which the Commission has no authority over the permitting, licensing, funding, construction, or operation, is significantly the larger of the two in terms of facilities. Consequently, the Commission's jurisdiction over New Jersey Natural Gas's proposed intrastate pipeline is not sufficient to "federalize" it.

by the court in *Sylvester v. Corps of Engineers*, which found that the Corps' procedures "strike an acceptable balance between the needs of NEPA and the Corps' jurisdictional limitation." 884 F.2d 394 (9th Cir. 1989). The Commission concluded in *Algonquin* that it did not have sufficient control and responsibility to cause the construction of the private electric generation power plant to become a Federal action.

76. Finally, with respect to the fourth factor, federal control is determined by the amount of federal financing, assistance, direction, regulation, or approval inherent in a project.⁶³ Here, while the Commission has authority over the PennEast Pipeline Project and the Garden State Expansion Project, there is limited federal control and responsibility over the Southern Reliability Link Project. The project facilities will be owned by New Jersey Natural Gas with no federal financial involvement. While New Jersey Natural Gas must obtain any necessary federal permits, the siting, construction and operation of intrastate pipeline facilities fall under the jurisdiction of the New Jersey Board of Public Utilities and other state and local agencies, including the NJDEP.

77. In view of the above considerations, on balance, we are not compelled to consider the Southern Reliability Link Project as part of our action of authorizing the Garden State Expansion Project for purposes of NEPA. Moreover, as discussed below, the cumulative, indirect, and secondary environmental impacts of New Jersey Natural Gas's Southern Reliability Link Project are comprehensively evaluated in the EA⁶⁴ and we find that this analysis was sufficient to satisfy our NEPA responsibility.

78. Cumulative" actions include actions that "when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."⁶⁵ To address Delaware Riverkeeper's concerns, Commission staff specifically considered the Northeast Supply Link, Leidy, PennEast Pipeline, and Southern Reliability Link Projects in its cumulative impacts analysis for the Garden State Expansion Project.⁶⁶ The EA for the project explains that for its cumulative impacts analysis, the main region of influence for each project component was 0.25 miles. Because Northeast Supply Link's facilities and Atlantic Sunrise's proposed facilities are far outside Garden State Expansion Project's 0.25-mile region of influence, those two projects were not considered further in the cumulative impacts analysis.⁶⁷ The Leidy

⁶³ *Algonquin*, 59 FERC at 61,935.

⁶⁴ See EA at 46-47 (describing projects), 48-50 (discussing cumulative impacts on water resources), 50-51 (discussing cumulative impacts on vegetation and wildlife), 51-52 (discussing cumulative impacts on cultural resources), 52-53 (discussing cumulative impacts on land use and visual resources); 53-54 (discussing cumulative impacts on socioeconomics) 54-55 discussing cumulative impacts on air quality and noise), and 55-56 (discussing cumulative impacts on climate change).

⁶⁵ 40 C.F.R. § 1508.25(a)(2) (2015).

⁶⁶ EA at 47.

⁶⁷ *Id.* The EA also noted that Northeast Supply Link's compressor station was electric drive, hence would not contribute to air emissions.

Project, PennEast Pipeline Project, and Southern Reliability Link facilities located within Mercer County, New Jersey, even though outside of the 0.25-mile region of influence, were included in the EA's cumulative analysis.⁶⁸

79. The EA describes the facilities associated with the Leidy, PennEast Pipeline, and Southern Reliability Link Projects, discusses the impacts of those projects, and assessed the potential for cumulative impacts of the Garden State Expansion Project and each of these other projects by resource type.⁶⁹ Specific comments regarding the cumulative impacts analysis are discussed below.

80. "Similar" actions include actions that, "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."⁷⁰ CEQ regulations state that "[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."⁷¹

81. In *Leidy*, we found that the Northeast Supply Link, Atlantic Sunrise, and Leidy Projects were not "similar" actions. As explained above, the Commission has appropriately conducted a comprehensive environmental review of the Garden State Expansion Project, including an analysis of the potential cumulative impacts of the Leidy and PennEast Pipeline Projects. Of course, before either the Atlantic Sunrise or Penn East Pipeline Projects can be constructed, each will be subject to full Commission scrutiny, including NEPA analysis. Under these circumstances, the Commission finds

⁶⁸ EA at 47.

⁶⁹ See EA at 46-47 (describing projects), 48-50 (discussing cumulative impacts on water resources), 50-51 (discussing cumulative impacts on vegetation and wildlife), 51-52 (discussing cumulative impacts on cultural resources), 52-53 (discussing cumulative impacts on land use and visual resources); 53-54 (discussing cumulative impacts on socioeconomics) 54-55 (discussing cumulative impacts on air quality and noise), and 55-56 (discussing cumulative impacts on climate change).

⁷⁰ 40 C.F.R. § 1508.25(a)(3) (2015).

⁷¹ *Id.* (emphasis added); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 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).

that a single environmental analysis is neither required nor the best way to assess these proposals.

4. Cumulative Impacts

82. Cumulative impacts are defined by the Council on Environmental Quality (CEQ) as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁷² A cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur *in the project area or region of influence of the project being analyzed*.⁷³ But, as CEQ states, “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.”⁷⁴ An agency is only required to include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”

83. The extent of the region of influence is project specific, varying as a consequence of differences in proposed facilities, location of the facilities, and resources potentially affected. The inclusion of other actions and projects within the project area to be considered in the cumulative impacts analysis is based on commonalities of impacts from other actions to potential impacts that would result from the project.⁷⁵ The scope of each cumulative analysis is based on the specific project scope and impacts on environmental resources.⁷⁶

84. We received comments from the Township of Hopewell, Hopewell Township Citizens Against the PennEast Pipeline Inc., Sierra Club, Friends of Hopewell Valley Open Space, Stony Brook-Millstone Watershed Association, New Jersey Conservation Foundation, and concerned citizens about the cumulative impacts of the Leidy, PennEast

⁷² 40 C.F.R. § 1508.7 (2015).

⁷³ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act* (January 1997).

⁷⁴ *Id.* at 8.

⁷⁵ EA at 179.

⁷⁶ In *Kleppe v. Sierra Club*, the Court emphasized that agencies may properly limit the scope of their cumulative impacts analysis based on practical considerations. 427 U.S. 390, 413-414 (1976).

Pipeline, Southern Reliability Link, Crestwood Marc II, Dalton Expansion, and Northeast Supply Link Projects. These comments contend that these projects would lead to cumulative impacts on resources when combined with the proposed Garden State Expansion Project.

85. The cumulative analysis in the EA includes a discussion of the Leidy, PennEast Pipeline, Southern Reliability Link, and Northeast Supply Link Projects.⁷⁷ The EA states that the recently constructed Northeast Supply Link Project does not occur within the same region of influence as the project herein. The Northeast Supply Link Project activities occurred greater than 0.25 mile away and not in Mercer County, but in Essex, Passaic, Bergen, Hudson, Somerset, and Hunterdon Counties, New Jersey. It was also constructed and placed in service in 2012 and 2013 and the disturbed areas are currently fully revegetated. Construction of the vast majority of the facilities proposed for the Dalton Expansion Project (Docket No. CP15-117-000) would occur in Georgia. The minor facilities that would not be located in Georgia, primarily mainline regulator facilities, are so small and localized that they would not contribute to the cumulative impacts review for this project. The Crestwood Marc II Project (for which no application has been filed with the Commission) is reportedly contemplated to involve construction of facilities in Pennsylvania⁷⁸ and would not be in the region of influence for the analysis of cumulative impacts for the project.

86. Commenters state that Leidy, Northeast Supply Link, and Garden State Expansion Projects occur within the same watershed. However, as stated in the EA, the project will not impact any waterbodies or add to the cumulative waterbody impacts of projects in the region.⁷⁹ In addition, impacts on wetlands will be minimized via a mitigation plan approved by NJDEP in its permitting process, and Transco's adherence to measures contained in all relevant permits, the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures), and Environmental Condition 12 of the order requiring that Transco file a revised plan that would avoid permanent wetland impacts. Transco will provide further justification if it is unable to avoid locating aboveground structures within wetlands. Transco will also consult with the NJDEP regarding its plan to further mitigate these permanent wetland impacts. Given that Transco will minimize

⁷⁷ See EA, section C at 45-57.

⁷⁸ According to industry press reports, in October 2014, Crestwood Midstream Partners announced a successful non-binding open season for their MARC II Pipeline to be located in Luzerne County, Pennsylvania, however, nothing has been filed at the Commission.

⁷⁹ EA at 9.

wetland impacts, cumulative impacts on wetlands are not expected when combined with those of the above stated projects.

87. Sierra Club states that the Southern Reliability Link Project could impact Pinelands National Reserve, the Bomarc Superfund Site, the federally threatened swamp pink,⁸⁰ as well as drinking water for thousands of people, and that these impacts should be disclosed and discussed in more detail. We acknowledge that these resources may be affected by the proposed Southern Reliability Link Project; however, a detailed analysis of these impacts is not within the scope of our environmental analysis for the Garden State Expansion Project, as stated in the EA and explained above. The EA reviews the permitting process required for the project.⁸¹ New Jersey Natural Gas has obtained one of two permits necessary from the New Jersey Board of Public Utilities for the Southern Reliability Link Project, and the Pinelands Commission has provided a Certificate of Filing⁸² for the project. Ongoing consultations are occurring with NJDEP but are not yet complete.

88. One commenter believes that the project will contribute to climate change. The EA recognizes that construction and operation of the project would emit greenhouse gases, which contribute to climate change, and quantifies these greenhouse gas emissions.⁸³ Further, the EA identifies the environmental impacts in the project region attributed to climate change, and notes that by selecting electric-driven compressor units, Transco has significantly minimized the majority of greenhouse gases emissions associated with compressor stations and the project's contribution to climate change.⁸⁴

89. Commenters state that the EA's cumulative analysis is out of date and requires updates to the environmental analysis or timetables, as new information has been provided by the applicants since the issue date of this EA. Our requirements under NEPA require a cumulative analysis, but NEPA does not require an exact quantitative impact assessment, only an estimated analysis of impacts. Our staff identified the area of impact within each resource, yet analyzed impacts beyond the area of impact where

⁸⁰ The swamp pink is a perennial member of the lily family.

⁸¹ EA at 4- 5.

⁸² The Pinelands Commission is an independent state agency established under the Pinelands Protection Act to preserve the Pinelands National Preserve and other designated pineland areas in New Jersey.

⁸³ See EA at tables 11 and 13.

⁸⁴ EA at 55-56.

information was readily available. The EA was written with the best available information at the time. Further, we do not consider that any of the new information that has come to light would alter any conclusions of impacts contained within the EA.

90. Based on the above, we find that the EA correctly states that cumulative impacts would be minimized with the implementation of the conditions associated with all applicable permits and approvals, and Transco's specific project plans (Soil Erosion and Sedimentation Control Plans; Construction Spill Plan; Waste Management Procedures; Commission Wetland and Waterbody Construction and Mitigation Procedures; Commission Upland Erosion Control, Revegetation, and Maintenance Plan; and Unanticipated Discovery of Contamination Plan).

5. Induced Production/Fracking

91. Several parties, including Bordentown Township, Susan Serenise, and Sierra Club assert, without elaborating, that this project, and Compressor Station 203 in particular, will promote fracking of gas in the Marcellus Shale region, which will, in turn, result in adverse environmental consequences. The Commission has, in a number of cases, addressed claims that it must consider the indirect and cumulative effects of past, present, and reasonably foreseeable actions, including induced conventional and unconventional gas production in the Marcellus and Utica Shale regions, and the effects that production has on wildlife habitat, water and air quality, and recreation.⁸⁵

92. Indirect impacts are "caused by the proposed action" and occur later in time or farther removed in distance than direct impacts but are still "reasonably foreseeable."⁸⁶ Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern or land use, population density or growth rate, and related effects on air and water.⁸⁷ For an agency to consider an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related.

⁸⁵ See, e.g., *Dominion Transmission, LLC*, 152 FERC ¶ 61,138, at PP 42 – 45 (2015); *Empire Pipeline, Inc. and National Fuel Gas Supply Corp.*, 153 FERC ¶ 61,379, at PP 60 – 75 (2015); *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 denied sub nom. Coal. For Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

⁸⁶ 40 C.F.R. § 1508.8(b) (2015).

⁸⁷ *Id.*

93. The potential environmental effects associated with additional natural gas production are not sufficiently causally related to the Garden State Expansion Project to warrant a detailed analysis.⁸⁸ Moreover, while the capacity created by the Garden State Expansion Project may be used to transport conventional or unconventional gas production in the Marcellus Shale regions, the project's purpose is to enable the provision of 180,000 Dth per day of incremental firm transportation service for New Jersey Natural Gas from Transco's Station 210 Zone 6 Pool in Mercer County, New Jersey to a new delivery point with New Jersey Natural Gas on Transco's Trenton Woodbury Lateral in Burlington County, New Jersey, regardless of where the gas is produced;⁸⁹ the project purpose is not to facilitate additional natural gas production in any particular region, which may occur for reasons unrelated to the project and over which the Commission has no jurisdiction. In any event, unconventional production will likely continue regardless of whether the Garden State Expansion Project is approved because multiple existing and proposed transportation alternatives are available for regional production.

6. Programmatic EIS

94. A number of parties and commenters, including Sierra Club, Hopewell Township Citizens Against the PennEast Pipeline Inc., the Township of Hopewell, Friends of Hopewell Valley Open Space, the Stony Brook-Millstone Watershed Association, New Jersey Conservation Foundation, and several citizens assert that a programmatic EIS should be completed for the Garden State Expansion Project, incorporating the Leidy, PennEast Pipeline, Northeast Supply Link, and Dalton Expansion Projects, together with the non-jurisdictional Southern Reliability Link Project. They assert that the Commission should review the region's natural gas needs and resulting direct, indirect, and cumulative

⁸⁸ 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 denied, sub nom. Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2d Cir. 2012) (upholding the Commission's analysis of the development of Marcellus shale natural gas reserves where the Commission reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

⁸⁹ As stated above, under its precedent agreement with Transco, New Jersey Natural Gas is responsible for contracting directly with suppliers of natural gas and arranging for deliveries of natural gas supplies to Station 210 Zone 6 Pool for transportation on the Garden State Expansion Project, and this pooling point is multi-directional whereby depending on market conditions gas either moves from the northeast down the Leidy Line or up from the Gulf on Transco's mainline.

impacts from previous and future projects that are in the same geographic area and relatively close in time.

95. We disagree with the assertion. CEQ's NEPA regulations state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program."⁹⁰ The question of whether to prepare a programmatic EIS is initially that of the federal agency.⁹¹ The D.C. Circuit Court has explained that in making this determination an agency should consider whether a programmatic EIS will contribute to the decision-maker's basic planning of the overall program, and whether segmenting the overall program will unreasonably constrict the scope of environmental consideration.⁹²

96. The Commission has no program, policy, or plan to promote development of pipeline facilities in any particular region. It is private industry, not the Commission, that proposes and develops interstate natural gas infrastructure, as reflected in the applications filed with the Commission by natural gas companies. The Commission considers individual proposed pipeline infrastructure projects on their own merits pursuant to its statutory obligation under NGA section 7(c).⁹³ The Commission will issue a certificate to authorize a proposed pipeline project if it finds in accordance with section 7(e) of the NGA that the construction and operation of the proposed facilities "is or will be required by the present or future public convenience and necessity."⁹⁴ The Commission processes these applications and evaluates them based on the individual facts and circumstances involved to assess the need for the proposed facilities.

97. What is required by NEPA, and what the Commission provides, is a thorough examination of the potential impacts of specific projects. In the circumstances of the Commission's actions, a broad, regional analysis would "be little more than a study . . .

⁹⁰ 40 C.F.R. § 1508.18(b)(3) (2015).

⁹¹ See *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (*Kleppe*). Indeed, even where an EIS considers "one of a series of closely related proposals, the decision whether to prepare a programmatic impact statement is committed to the agency's discretion." *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 374 n.73 (D.C. Cir. 1981).

⁹² See *National Wildlife Federation v. Appalachian Regional Commission*, 677 F.2d 883, 888 (D.C. Cir. 1981).

⁹³ 15 U.S.C. § 717f(c) (2012).

⁹⁴ 15 U.S.C. § 717f (e) (2012).

concerning estimates of potential development and attendant environmental consequences,”⁹⁵ which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”⁹⁶ 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.⁹⁷ Because the listed projects were filed with different in-service requirements, Commission staff does not find it efficient or necessary to address these projects together in one NEPA document. Projects within the same geographic area, however, were addressed in the EA cumulative impact section. Thus here, the Commission’s environmental review of Transco’s actual proposed project in a discrete EA is appropriate under NEPA.

7. Soils

98. Commenters, including Sierra Club and other concerned citizens, raise concerns about the project’s impact on soils, including leaking underground heating oil and storage tanks and asbestos in the vicinity of Compressor Station 203. The EA concludes that Transco’s proposed Compressor Station 203 will not result in any significant contamination impacts on soils. The EA identifies sites within 0.25 miles of construction work spaces that contained hazardous waste. These sites were at distances that will likely not pose risks during construction. Further, Transco will follow its Waste Management Procedures and Unanticipated Discovery of Contamination Plan, which provide steps Transco will take should contamination be discovered during construction. As indicated in the EA, the Unanticipated Discovery of Contamination Plan includes measures that Transco must follow to halt work in the areas of discovered contamination, mobilize emergency response personnel, and coordinate with the U.S. Environmental Protection Agency (EPA) and/or state and local agencies as appropriate.⁹⁸ The EA correctly concludes that these measures will adequately protect soil resources from potential contamination.

⁹⁵ *Kleppe*, 427 U.S. at 402.

⁹⁶ *Piedmont Env'tl. Council*, 558 F.3d at 316.

⁹⁷ *See, e.g.*, Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Project Nos. 1888-030, 2355-018, and 405-106 (2015).

⁹⁸ EA at 12-17.

8. Water Resources

99. We received comments from The Township of Bordentown, Sierra Club, the Township of Chesterfield, New Jersey Conservation Foundation, and several citizens regarding the impact of the Compressor Station 203/Chesterfield Meter Station portion of the project on aquifers, groundwater, wells, seeps, cisterns, septic systems, the Stony Brook-Millstone Watershed, and springs. Commenters indicate that residents on Bordentown-Chesterfield Road (Route 528) in the vicinity of the proposed Compressor Station 203 site have private wells and that additional wells are present within 150 feet that were not identified in the EA. Transco also clarifies in its comments that an additional well is located at 21 Bordentown-Chesterfield Road.⁹⁹

100. The EA states that minor, temporary impacts on groundwater infiltration could occur as a result of the limited tree, herbaceous vegetation, or scrub-shrub vegetation clearing. However, following completion of construction activities, Transco will restore and revegetate cleared areas to pre-construction conditions to the maximum extent practicable.¹⁰⁰ Transco will adhere to the Commission's FERC's Plan and Procedures regarding any dewatering should groundwater be encountered during construction, which include measures for preventing siltation and erosion.¹⁰¹ Transco also will implement a Construction Spill Plan and Waste Management Procedures that detail preventative measures that it will follow to avoid hazardous waste spills, as well as mitigation measures that it will follow immediately contain and clean up a spill, should one occur. Transco's use of its Soil Erosion and Sediment Control Plan, which incorporates measures in our Plan and Procedures, also will adequately minimize the discharge of sediment off the project site.

101. In the process of consulting with NJDEP, no public or private high capacity wells within one-quarter mile from the four corners of the Compressor Station 203 project site were initially identified. Private wells were not originally identified in Transco's application, and no monitoring of wells was proposed.¹⁰² As stated in the EA, however, Transco did propose to minimize and remediate any damage to these systems if any ground water resource (including cisterns, septic systems, wells, seeps, or springs) is

⁹⁹ Section 10, Transco's Project filing in response to the EA, accession number 20151204-5269.

¹⁰⁰ EA at 17-18.

¹⁰¹ EA at 18.

¹⁰² EA at 17.

identified during or prior to construction.¹⁰³ Transco will implement its Unanticipated Discovery of Contamination Plan if construction hazards, such as cisterns, are encountered during construction in the construction workspace. If the project impacts a public or private supply well, system quality, or yield within 150 feet of the workspace, Transco proposes to provide alternative water sources or other compensation to the well owner(s). If permanent impacts on a well or spring occur as a result of construction activities, Transco proposes to repair, replace, or provide alternative sources of potable water.¹⁰⁴

102. In its comments on the EA, Transco provides additional information regarding groundwater supply wells or springs within 150 feet of proposed construction areas, based on additional consultation from NJDEP. One well was identified approximately 0.5 mile from the southeast corner of the project area. One private well was also identified at 21 Bordentown-Chesterfield Road across from proposed Compressor Station 203. The block and lot limit are within 60 feet of the project, and a residential home is approximately 150 feet from the proposed project. In addition, potentially affected landowners have also filed the locations of additional wells within 150 feet of the construction workspace of Compressor Station 203 and the Chesterfield Meter Station.

103. To ensure that private wells are adequately monitored due to construction activities, we have included Environmental Condition 14 in this order, requiring that before construction, Transco shall file the location of all private wells within 150 feet of Compressor Station 203 and the Chesterfield Meter Station activities and that Transco will conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. We will also require Transco to file a report discussing whether it received any complaints concerning well yield or water quality and how each was resolved.

104. The Township of Bordentown, Sierra Club, New Jersey Conservation Foundation, and some citizens are concerned about Transco's proposed placement of permanent structures within wetlands. Transco's project will impact two wetlands, one palustrine emergent, and one palustrine forested wetland at the Compressor Station 203 site. The Procedures direct applicants to not place permanent aboveground facilities in wetlands, except where placing them elsewhere would prohibit compliance with the U.S. Department of Transportation regulations.¹⁰⁵ As discussed and recommended in the EA,

¹⁰³ EA at 18.

¹⁰⁴ Transco response to April 7, 2015 data request at 9.

¹⁰⁵ Procedures Section VI.A.6,
<http://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

Environmental Condition 12 of this order requires that prior to construction, Transco shall file a revised plot plan for all aboveground structures at Compressor Station 203 to avoid permanent wetland impacts. If Transco is unable to avoid permanent aboveground facility impacts on wetlands at Compressor Station 203, Transco will provide further justification as to why it is unable to avoid locating aboveground structures within wetlands and information about its consultation with NJDEP regarding its plans to further mitigate any permanent wetland impacts. Transco's adherence to the Commission's Plan and Procedures, its Soil Erosion and Sediment Control Plan, and its Construction Spill Plan, during construction, will minimize impacts on these and adjacent wetlands. The Procedures specify the minimum protective measures to reduce impacts on wetlands and waterbodies. Transco will also work with NJDEP to mitigate permanent and temporary impacts on wetlands through credits, contribution, or further mitigation measures.

105. No surface water impacts would occur during construction of the proposed facilities, and offsite sediment transport will be minimized by Transco's adherence to the measures contained in the Commission's Plan and Procedures, its Construction Spill Plan and Soil Erosion and Sediment Control Plan, and all required permits. The EA correctly concludes that watershed and groundwater impacts are not expected.¹⁰⁶

106. NJDEP states that review of the freshwater wetlands and flood hazard individual permit applications for disturbance of approximately five acres of wetland are presently ongoing to ensure the project complies with New Jersey's regulations. NJDEP received an agreement from Transco for the purchase of 3.3 wetland mitigation credits from Marsh Bog Brook Mitigation Bank. Transco is also responsible for providing a restoration plan for all temporary impacts as part of its NJDEP permit application.

107. We find the EA properly concludes that the implementation of Transco's proposed measures will adequately minimize impacts on aquifers, groundwater, wells, seeps, springs, and wetlands, discussed above and in the EA, and as required by attached environmental conditions.

9. Wildlife, Fisheries, and Vegetation

108. NJDEP, Hopewell Township Citizens Against the PennEast Pipeline, Inc., Sierra Club, the Township of Chesterfield, and a number of individual are concerned about the Pole Farm Important Bird Area, the Rosedale bald eagle nest, mature trees/forest being removed, and threatened and endangered species.

¹⁰⁶ EA at 19.

109. As discussed in the EA, Transco's project would result in limited tree clearing and limited impacts on migratory birds.¹⁰⁷ No bald eagle habitat exists in the vicinity of the project. The Rosedale bald eagle nest, approximately one mile away from the project area, would not be impacted by the proposed activities. In its comments on the EA, NJDEP reiterates its recommendation allowing non-mechanical trimming if no nests are observed. The EA reasonably concludes that impacts on nesting birds will be minimized.

110. We received comments from the Township of Bordentown and concerned citizens about the impacts on vegetation and 4.5 acres of forest. As the EA states, the trees that will be removed are adjacent to existing cleared areas, and the habitat is already fragmented by existing agricultural and electrical right-of-way land uses. Further, the site is at the junction of Route 528 and the New Jersey Turnpike. Thus, noise, vibration, and human activities are present within baseline conditions. Wildlife species dependent upon unfragmented forest are likely not present at the site. Upland and wetland forest would be permanently converted to open, herbaceous land, but will be appropriately mitigated with Environmental Condition 12 and as described above.¹⁰⁸ As the EA correctly states, Transco will reseed areas temporarily affected by construction in accordance with measures in Transco's Soil Erosion and Sediment Control Plan and the Commission's Plan and Procedures to promote revegetation at project areas following construction. Where possible, Transco has also committed to preserving existing trees along the compressor station property boundaries abutting existing roadways. We agree with the EA's conclusion that the proposed project will not result in significant impacts on vegetation.

111. The USFWS states that the proposed project area does not contain habitat for the federally threatened bog turtle and agrees with the negative summer surveys results for the federally threatened northern long-eared bat. The USFWS does not recommend seasonal restrictions on tree clearing for two years from the June 16, 2015 survey date. No additional conditions are warranted.

112. NJDEP comments on the EA regarding restrictions on sediment generating activities between May 1 and June 30 to protect warm-water fish nest building and spawning. However, as the EA states, no surface waters will be affected by project activities.¹⁰⁹ Therefore, adherence to this time window is not warranted.

¹⁰⁷ EA at 26.

¹⁰⁸ EA at 22-24.

¹⁰⁹ EA at 19 and 27.

113. We find the EA correctly concludes that the proposed project will not have a significant impact on wildlife, threatened and endangered species, forests, or migratory birds, including bald eagles.

10. Cultural Resources

114. We received comments from Sierra Club and several concerned citizens regarding impacts on the Arneytown Historic District and associated cemetery, the Brigadier General William C. Doyle Veterans Memorial Cemetery, and the Chesterfield Historical Society properties. As stated in the EA, cultural resource investigations were conducted for the project. These historic properties and cemeteries are not within the direct or indirect area of potential effects. Transco has filed documentation that demonstrates that there are no outstanding cultural resources surveys. The New Jersey State Historic Preservation Officer (SHPO) concurred, stating that there would be no effects on historic properties. We agree with the New Jersey SHPO and the conclusion in the EA. Thus, Transco has satisfied the recommendation in the EA, and a condition will not be included in this order.

11. Land Use and Socioeconomics

115. We received comments from the Township of Bordentown, Sierra Club, the Township of Lawrence, the Township of Chesterfield, and concerned citizens about land use and socioeconomic issues associated with construction at Compressor Station 203. These issues include concerns about the project's potential to decrease property values, including impacts on businesses and tourism; impacts on farmland, public land, and roads; restricted access to residential properties; and lighting impacts on visual aesthetics at the Compressor Station 203 site.

116. The EA correctly concludes that based on the presence of existing industrial infrastructure and other industrial facilities, the project will not have a significant impact on property values, businesses, and tourism. Impacts on farmland¹¹⁰ and public land¹¹¹ are addressed in the EA. Transco will convert to industrial land use approximately 9.4 acres of farmland, most of which is considered prime farmland or farmland of state importance. Any potential affected property owner will be compensated for loss of crops and use of land. Transco states, however, that they own the property that will be used for the project. The permanent facility will result in a loss of farmland from production and converted to industrial use. Farmland, either active or fallow, also occurs on adjacent parcels. Impacts on New Jersey Green Acres properties are discussed further below.

¹¹⁰ EA at 15-16.

¹¹¹ EA at 32.

117. As stated in the EA, construction of the project will result in minor, short-term impacts along some roads and highways due to the movement and delivery of materials. In addition, an increase in temporary workers could occur during daylight hours. However, once in operation, minimal to no impacts would occur on traffic and transportation at Compressor Station 203 due to the small number of permanent workers and infrequent deliveries of materials.¹¹² We agree with the EA's conclusion that there will be no significant impacts on roads or on access to residential properties.

118. Compressor Station 203 will contain lights affixed to poles within the station yard, and lighting will be installed on the building structure within the station yard for safety and security purposes. Transco has designed the lights to minimize effects at night and to be as non-intrusive as practicable.¹¹³ Further, baseline conditions include lights associated with the highway (light poles, headlights, etc.). The EA concludes, and we agree, that lighting and visual impacts are not expected to affect existing residences in the vicinity of the project site given the disturbed nature of the property and its proximity to the existing infrastructure, including the New Jersey Turnpike and an electric transmission right-of-way.

12. Air Emissions

119. We received comments that the project's operating emissions are not presented in table 13 of the EA. This table, however, presents construction emissions. The reference to table 13 in the EA was a typographical error. Commenters also believe that the sum of all emissions associated with the project needs to be quantified. This reference to table 13 in the EA was also a typographical error. Operating emissions for Compressor Stations 203 and 205, the Chesterfield Meter Station, and the combined project facilities are presented in table 11 of the EA.

120. Multiple commenters believe that the acceptable limits of emissions are not regulated low enough. As stated in the EA, the EPA establishes major source emission thresholds for federal air permits. Emissions from facilities below major source thresholds (i.e. minor sources) are permitted at the state level. The EA notes that the only new source of emissions from the project facilities would be the new stand-by generator at Compressor Station 203, which would require a state permit and would comply with New Jersey regulations.

121. One commenter states that the EA fails to address how Transco would comply with EPA's proposed rulemaking amending the New Source Performance Standards

¹¹² EA at 31.

¹¹³ EA at 33-34.

Subpart OOOOa (*Standards of Performance for Crude Oil and Natural Gas Facilities*)¹¹⁴ to reduce methane, volatile organic compounds, and sulfur dioxide emissions. EPA proposed this rulemaking, but EPA has not yet finalized it. The proposed rulemaking provides that the effective date is 60 days after a final rulemaking. Thus, at this time, these standards do not apply to the project facilities. Should Transco's facilities include applicable facilities after a final rulemaking, NJDEP maintains the authority for ensuring compliance with the New Source Performance Standards for facilities in New Jersey.

122. Several commenters question whether Transco would implement mitigation measures identified under the EPA's Natural Gas STAR Program, including the use of dry seals over wet seals. If not, commenters request that we require the use of dry seals. The Natural Gas STAR Program is a voluntary program that encourages natural gas companies to use mitigation measures and technologies that improve operational efficiency and reduce methane emissions. The Williams Companies, Inc., the parent company of Transco, is a partner in the program.¹¹⁵ We note, however, that Transco designed the proposed facilities to be electric-driven, eliminating combustion emissions of all pollutants. Thus, we find no need to require compliance with this voluntary program.

123. One commenter requests additional details regarding the design of the proposed compressor units, including the type of compressors (reciprocal or centrifugal). Multiple commenters note that the compressor stations would emit methane, a greenhouse gas pollutant, during blowdowns which would contribute to climate change. Another commenter requests the method used to calculate the methane emissions shown in table 11 of the EA, and Sierra Club expresses concern about fugitive emissions from leaks. Additionally, Transco requests that the text of the EA be modified to reflect that the primary greenhouse gases for the project would come from construction and that the use of electric-driven compressor units would not contribute any combustion-related greenhouse gases.

124. We reiterate that the new and modified compressor units will be electric motor-driven centrifugal compressors. The EA does not identify any regulatory air permitting requirements that would apply on the basis of greenhouse gas emissions. However, NEPA requires the consideration of impacts from a project, regardless of permitting

¹¹⁴ EPA issued the proposed rulemaking on September 18, 2015.

¹¹⁵ EPA's Natural Gas STAR Program partners "commit to improving their environmental performance through the implementation of cost-effective technologies and practices to reduce emissions of methane."

<http://www3.epa.gov/gasstar/partners/index.html#Transmission>

requirements. Thus, the EA appropriately recognizes that methane is a greenhouse gas¹¹⁶ and identifies the long-term non-combustion related operational greenhouse gas emissions from each station (fugitives and blowdowns) as the primary greenhouse gas contributor of the project (over 19,000 metric tons of carbon dioxide equivalents per compressor station per year). The EA also identifies the construction greenhouse gas emissions (about 3,000 metric tons of carbon dioxide equivalents). In its August 5, 2015 supplemental filing, Transco states that it used the Tier 2 Methodology from the Interstate Natural Gas Association of America's *Greenhouse Gas Emission Estimation Guidelines for Natural Gas Transmission and Storage – Volume I [Greenhouse Gas] Emission Estimation Methodologies and Procedures* to calculate the greenhouse gas emission estimates from blowdowns and fugitive emissions that were presented in table 11 of the EA. Transco adjusted the emission factor from this guideline document to reflect the methane composition of the natural gas in its system. We find that the EA properly discloses and characterizes the greenhouse gas emissions from the project.

125. One commenter states that Transco would use a charcoal filter and deodorizer to remove the odorant mercaptan during a scheduled blowdown event and requests that Transco use additional filters to remove other pollutants, including volatile organic compounds, which would be released during a blowdown event. Transmission pipeline quality natural gas is primarily composed of methane and typically includes less than one percent of volatile organic compounds. Charcoal filters also remove volatile organic compounds. Thus, we conclude that additional filters are not warranted.

126. NJDEP reiterates its recommendations that Transco implement mitigation measures to minimize the impact of diesel exhaust from non-road diesel construction equipment. Specifically, NJDEP recommends that Transco: comply with a three minute idling limit (New Jersey Administrative Code 7:27-14 and 7:27-15); use EPA Tier 4 compliant non-road diesel construction equipment; and use designated truck routes for all on-road diesel vehicles hauling materials or traveling to and from the construction site. The EA addresses NJDEP's recommendations, stating that Transco has committed to comply with these state regulations.¹¹⁷

127. One commenter believes that the project should not be authorized because construction of the project would emit a total of 389.4 tons of particulate matter less than 10 micron in diameter (PM₁₀), and 54.8 tons of particulate matter less than 2.5 microns in diameter (PM_{2.5}), which are transported in the air and could cause human respiratory

¹¹⁶ We note that the decision in *Utility Air Regulatory Group v. EPA* does not refute the EPAs endangerment finding that greenhouse gases are considered pollutants.

¹¹⁷ See EA at 38.

problems. Sierra Club further believes that construction of the project would emit toxic pollutants that would impact health.

128. The EA acknowledges that construction of the project would result in short-term, localized increases in emissions, including hazardous air pollutants, from construction equipment and fugitive dust.¹¹⁸ The emissions identified represent the combined emissions from both phases of the project over a two-year period, and the combined emissions from construction at all facilities (which are separated geographically). The EA also notes that construction emissions estimates did not include any mitigation measures. These emissions will be further reduced by implementation of Transco's Fugitive Dust Control Plan and its compliance with NJDEP's non-road and on-road diesel construction equipment regulations. Construction of the project would contribute hazardous air pollutant emissions of about 0.1 tons over the two year period, which would cease following construction. Based on the EA analysis, we find that construction of the project will result in short-term, localized impacts.

13. Toxic Emissions and Health Impacts

129. Many commenters, including Sierra Club, claim that generic compressor stations release large quantities of numerous toxic pollutants from blowdowns. Some commenters state that they have read reports of multiple instances of compressor stations being the cause of health impacts but do not provide specific reference to these reports, while other commenters refer to specific health studies by David Brown on a compressor station in Minisink, New York, and other compressor stations from production facilities, to support their assertions about health impacts. Other commenters refer to a compilation of information by Wilma Subra, linking health impacts to gas production infrastructure. Also, commenters note that sensitive populations (those with existing health conditions, children, elderly, and etc.) live or attend school near the compressor stations and they are concerned about the long-term health impacts that would occur as a result of operating proposed Compressor Station 203.

130. The vast majority of the cited reports/studies are based on natural gas production facilities, which often contain more pollutants than transmission quality natural gas.¹¹⁹ Further, the proposed facilities would use electric-driven compressors, which will not

¹¹⁸ See EA at 39.

¹¹⁹ The exact composition of natural gas is primarily dependent upon the geological source from which it is extracted. However, all gas must be processed to transmission or pipeline quality before entering interstate transmission pipelines. Further, interstate transmission pipelines interconnect with many other transmission pipeline systems, developing a transmission network of well mixed natural gas.

contribute any emissions from combustion. Emissions would be limited to small amounts of fugitive emissions and infrequent blowdown releases of transmission quality natural gas. In addition, the pollutants in the studies cited by the commenters may be related to releases of unprocessed raw gas from production facilities and not associated with transmission quality natural gas, or not classified as hazardous air pollutants. Thus, we find that the health risks from exposure to blowdown events from the proposed facilities would not be significant.¹²⁰

131. Several commenters continue to express generic concern about radon exposure. The EA addresses radon, summarizing the review of multiple studies and literature on radon in natural gas, including the Pennsylvania Department of Environmental Protection's most recent *Technologically Enhanced Naturally Occurring Radioactive Materials Study Report*.¹²¹ These studies and literature demonstrate that radon concentrations in Pennsylvania Marcellus Shale sourced gas would remain below the EPA action level and the Indoor Radon Abatement Act long-term goal. We continue to find that the risk of exposure to radon in natural gas is not significant.

14. Noise

132. We received numerous comments stating that because the new Compressor Station 203 would be a large facility and operate 24 hours per day, 7 days a week, it would cause a large amount of noise to the community. Many commenters note that noise levels are already high because the community is near the New Jersey Turnpike and adding compressor station noise would result in unacceptable noise levels. One commenter believes that the noise from the compressor station may not meet the Commission's noise guidelines discussed in the EA. Another commenter argues that the noise would constantly be at least 55 decibels on the A weighted scale (dBA), which would result in physiological effects on nearby residences who would have no relief from the noise levels.

133. The EA thoroughly evaluated noise impacts on nearby noise sensitive areas (NSAs), identifying existing background noise (inclusive of noise from the New Jersey Turnpike), projected noise levels from operation of Compressor Station 203, and combined noise levels. The EA cites an EPA study which identifies a day-night sound level (Ldn) of 55 dBA as protecting the public from indoor and outdoor activity interference. The projected noise levels from Compressor Station 203 would be well

¹²⁰ Natural gas in Transco's pipeline system in New Jersey is odorized to aid in the detection of leaks. However, filters and/or deodorizers may be used during scheduled blowdown events to remove nuisance odors.

¹²¹ See EA at 40.

below this level at all NSAs. Also, the compressor station's operation would result in a less than 1 dBA increase over existing noise levels, and would therefore not be noticeable to the human ear. Thus, we agree with the EA's conclusion that noise impacts from operation of the compressor station would not be significant. However, to ensure actual operations do not result in significant noise impacts, we have included as Environmental Condition 13, requiring a post-construction noise survey of Compressor Station 203 to ensure that actual noise levels are below 55 dBA Ldn.

134. One commenter is concerned that Transco will not perform a proper post-construction noise study. Another commenter contends that if the initial post construction noise study at Compressor Station 203 is above the specified thresholds, Transco will have one year to correct the problem, while NSAs are subject to the excess noise for this time period.

135. Environmental Condition 13 of this order requires Transco to perform a post-construction noise survey at its compressor stations at full load, assessing noise levels at the NSAs. Failure to comply with this condition could result in the Commission's Office of Enforcement taking action against Transco. Historically, it is rare when an applicant is unable to demonstrate compliance and needs to take additional mitigation measures. In this case, however, should post construction noise levels from Compressor Station 203 exceed the 55 dBA Ldn requirement at any NSA, these noise levels are unlikely to significantly alter overall noise levels because the New Jersey Turnpike is already a significant contributor to existing noise levels in excess of 55 dBA Ldn. Also, depending on the cause of the excess noise, it may take up to a year to identify and install additional mitigation or rectify compressor station noise levels. We note that Environmental Condition 13 requires Transco to file a report identifying the additional mitigation measures it would need to install. Thus, we find Environmental Condition 13 to be appropriate.

136. Many commenters are concerned about the potential for gas leaks and ruptures, referencing numerous natural gas pipeline incidents nationwide, even with existing safety regulations. Commenters, including Sierra Club, cite incidents involving natural gas production, transmission, and distribution facilities, as well as liquefied natural gas facilities. One commenter states that there is no central national or state inventory of compressor station incidents, so the commenter relied on local news accounts. Commenters note that there are many residences, schools, and churches near Compressor Station 203 and within the "blast zone." Also, several commenters state that Compressor Station 203 would be unmanned, which they claim presents safety concerns in the event of an incident.

137. As identified in the EA, the U.S. Department of Transportation (DOT) ensures that people and the environment are protected from the risk of pipeline facility incidents

through implementation of Minimum Federal Safety Standards.¹²² Natural gas pipeline operators are required to report significant incidents to DOT. DOT has made past incident data publicly available on its website.¹²³ Review of this information shows that incident rates are higher for distribution pipeline systems than transmission systems.¹²⁴ Further, production facilities and liquefied natural gas facilities are often more complex facilities, with more equipment, piping, and/or other chemicals stored on site than transmission pipeline facilities. Thus, we find it appropriate to only consider reported incidents from natural gas transmission facilities. Based on DOT reports, there were a total of 1,307 natural gas transmission system significant incidents from 1996 through 2015, with 8 of those incidents in New Jersey.¹²⁵ Over the past 5 years, these incidents have resulted in 26 injuries and 7 fatalities nationwide, with no injuries or fatalities in New Jersey. The number of incidents over the time period and the more than 300,000 miles of transmission pipelines and facilities indicate the risk is low for an incident at any given location. Further, the data shows that older infrastructure has a higher frequency of incidents from corrosion and material failure, as these are time dependent stresses and newer requirements better protect pipeline facilities.

138. While some commenters identified a “blast zone” of one mile, it is unclear how commenters derived a “blast zone” distance. Transco calculated the potential impact radius¹²⁶ following DOT regulation procedures for the compressor station and found that the potential impact radius did not contain any identified sites.¹²⁷ The EA recognizes the population density surrounding proposed Compressor Station 203, noting that the station is in a Class 3 area, requiring more stringent design requirements, testing procedures, and operation measures.¹²⁸ Also, it is common for pipeline and compressor facilities to be

¹²² See EA at 44.

¹²³ <http://www.phmsa.dot.gov/pipeline/library/data-stats/distribution-transmission-and-gathering-lng-and-liquid-incident-and-incident-data>.

¹²⁴ Distribution pipelines are often smaller diameter pipelines and/or plastic pipes that are more susceptible to damage.

¹²⁵ <http://www.phmsa.dot.gov/pipeline/library/data-stats/pipelineincidenttrends>.

¹²⁶ 49 C.F.R. § 192.903 (2015). “Potential impact radius means the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property.”

¹²⁷ 49 C.F.R. § 192.903 (2015). Identified sites can include recreational facilities, schools, office buildings, schools, religious facilities, hospitals, etc.

¹²⁸ See EA at 45.

monitored remotely. Here, the compressor stations would be monitored 24 hours per day and, in the event of an incidence, can be shut-down remotely. As stated in the EA, we find that operation of the proposed facilities would represent a minimum increase in risk to the nearby public. We also agree with the EA's conclusion that they can be constructed and operated safely.

139. Several commenters are concerned that in the event of an incident at Compressor Station 203, there is an inadequate amount of first responders near the facility. One commenter asked who is responsible for paying to support the required or additional personnel and equipment to respond to an incident. Transco pays property taxes on all of its facilities, and presumably these funds are available or can be allocated to assist with any local resource needs. Further, as identified in the EA, DOT regulations require Transco to establish a written emergency plan.¹²⁹ Emergency plans must include procedures for maintaining adequate means of communication with appropriate fire, police, and other public officials. These plans must also provide for the availability of personnel, equipment, tools, and materials, as needed at the scene of an emergency.

140. A number of commenters are concerned that the natural gas flowing through Transco's facilities would not be odorized, meaning that the public could not detect when a blowdown or venting of natural gas occurs during normal or emergency conditions. In compliance with DOT's safety regulations for facilities in a Class 3 location, Transco's pipeline system in New Jersey is odorized, which includes proposed new Compressor Station 203.

141. One commenter states that Route 528 is the only main road through Chesterfield Township and an incident could destroy this evacuation route. The majority of residences near Compressor Station 203 are located north and west of the New Jersey Turnpike, and have access to other main roads, including Route 206. Residences south and east of the New Jersey Turnpike also have access to main roads, including Bordentown Crosswicks Road (Route 672) and Old York Road (Route 660). Thus we find that an incident would not significantly affect evacuation routes.

15. Alternatives

142. Sierra Club and other concerned citizens recommend that other alternative sites be explored for proposed Compressor Station 203, including areas that are less populated, sited closer to roads, and zoned for industrial land use. The EA identifies no preferable action, system, and site alternatives. None of the alternatives or sites evaluated in the EA would meet the project objectives or offer any significant environmental advantages over

¹²⁹ See 49 C.F.R. 192.615 (2015).

the proposed project. The EA correctly concludes that no alternative offers a significant environmental advantage over the proposed Compressor Station 203 site.

16. Transco's Project Clarification

143. Transco notes Transco provides clarifying comments on the EA, stating that Units 1 and 2 at Compressor Station 205 during Phase 2 will not be replaced as originally proposed, but will instead be "re-wheeled." Transco also states that the new electrical substation, including the below-ground power line near Compressor Station 203 are jurisdictional facilities, as they will be installed, owned, and operated by Transco. These clarifications do not change the EA's analysis or the conclusions contained in the EA.

144. Transco notes in its comments and clarifications to the EA that when Transco filed its application filing, Transco did not identify any properties as being encumbered by the New Jersey Green Acres Program.¹³⁰ Transco has since been advised by NJDEP that the parcel owned by the Bordentown Township on the Compressor Station 203 site¹³¹ is parkland encumbered by the Green Acres Program. Transco states that this parcel cannot be avoided by the project because station piping and electrical conduit, to be located underground, would traverse this parcel in order to connect new Compressor Station 203 to the electrical substation and to Transco's existing Trenton Woodbury Lateral. Bordentown Township indicates that it is not willing to grant Transco the permanent and temporary easement needed for the project, in accordance with Green Acres provisions. NJDEP clarifies that activities on encumbered parkland that are not in direct support of conservation or recreation uses are highly discouraged, stating that such uses will be considered a diversion and will require prior approval from the Green Acres Program, the Commissioner of NJDEP, and the State House Commission.

145. We acknowledge the potential land use conflict with the Green Acres Program and state parkland/open space, specifically parcel Block 204 Lot 3.02, which currently contains a dirt road. The facilities that would directly affect this parcel would be located below ground, not visible to the public, and consist of the valves and tie-in piping necessary to connect the existing Trenton-Woodbury Lateral to the proposed Chesterfield Meter Station and Compressor Station 203. The piping will be constructed, and the land restored and reseeded in accordance with provisions in Transco's Soil Erosion and

¹³⁰ The Green Acres Program's mission is a partnership at the local and state level, and provides a system of interconnected open spaces whose protection will preserve and enhance New Jersey's natural environment and historic, scenic, and recreational resources for public use and enjoyment. The program is administered by NJDEP. <http://www.nj.gov/dep/greenacres/>.

¹³¹ This parcel is identified as Block 204 Lot 3.02

Sediment Control Plan and our Plan. Thus, we find that Transco has minimized impacts on the Green Acres Program to the maximum extent practicable.

146. Any non-federal permit or requirements would need to be consistent with the conditions of this certificate for the project. The Commission encourages cooperation between interstate pipelines and local authorities. However, if such authorities prohibit or unnecessarily delay Transco from meeting its obligations under this Order, their requirements would be preempted by the certificate. Transco would be required to comply with all reasonable requirements of a state or local approval.

17. Environmental Conclusions

147. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Transco's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

148. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.¹³²

149. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Transco to construct and operate the Garden State Expansion Project, as described and conditioned herein, and as more fully described in the application.

¹³² See, e.g., *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 it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Transco's:

- (1) completion of construction of the authorized facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the appendix to this order;
- (4) execution of a firm service agreement prior to commencing construction for levels and terms of service equivalent to those represented in its precedent agreement supporting the certificate application;

(C) Transco's incremental recourse reservation charges under Rate Schedule FT are approved, subject to the condition described in the body of this order

(D) Transco is required to calculate an incremental recourse commodity charge for Phase 1 the project as described in the body of this order. Transco's request to charge its currently effective commodity charge as the initial recourse rate for Phase 2 of the project is approved.

(E) Transco's request for use of its system-wide electric power charges and system-wide fuel retention percentage is approved;

(F) Transco shall file actual tariff records with the incremental reservation charges and the incremental commodity charges no earlier than 60 days, and no later than 30 days, prior to the date the project facilities go into service;

(G) Transco shall keep separate books and accounting of costs attributable to the proposed incremental services, as described in the body of this order;

(H) Transco shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(I) The untimely motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

As recommended in the EA, this authorization includes the following conditions:

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transco's exercise of eminent domain authority granted under the National Gas Act section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Transco's right of eminent domain granted under the National Gas Act section 7(h) does not authorize them to increase the size of their natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transco shall file with the Secretary detailed alignment maps and aerial photographs at a scale not smaller than 1: 6,000 identifying all facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Transco shall file an Implementation Plan for the project with the Secretary for review and written approval by the Director of OEP. Transco must file revisions to its plan as schedules change. The plan shall identify:
 - a. how the company will implement the construction procedures and mitigation measures described in its application and supplements (including

- responses to staff data requests), identified in the EA, and required by this Order;
- b. how the company will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions the company will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of the company's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) the company will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports for the project with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by the company from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of its project facilities**, Transco shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Transco must receive written authorization from the Director of OEP **before placing its project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing its authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Transco shall file with the Secretary its final site-specific Soil Erosion and Sediment Control Plans and a Construction Spill Plan.
12. **Prior to construction**, Transco shall file with the Secretary, for review and approval of the Director of the OEP, a revised plot plan for all aboveground structures proposed to be placed in wetlands to avoid direct wetland impacts; or provide documentation from the NJDE Protection and/or the EPA that its permit allows its placement in the wetland.
13. **Transco shall file noise surveys with the Secretary no later than 60 days after placing the modified Compressor Station 205 and new Compressor Station 203 in service**. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey within six months. If the noise attributable to the operation of all of the equipment at either compressor station, under interim or full horsepower

load conditions, exceeds an day-night sound level of 55 A-weighted decibel at any nearby Noise Sensitive Areas, Transco should file a report on what changes are needed and should install the additional noise controls to meet the level within one year of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls.**

14. **Prior to construction,** Transco shall file with the Secretary the location of all private wells within 150 feet of Compressor Station 203 and Chesterfield Meter Station Project activities. Transco shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. **Within 30 days of placing the facilities in service,** Transco shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.