

155 FERC ¶ 61,234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-555-001

ORDER DENYING REHEARING

(Issued June 2, 2016)

1. On November 19, 2015, the Commission issued an order authorizing Dominion Transmission, Inc. (Dominion) under section 7 of the Natural Gas Act (NGA) to construct and operate its Lebanon West II Project.¹ On December 21, 2015, Allegheny Defense Project, the Ohio Valley Environmental Coalition, Heartwood, and the Freshwater Accountability Project (collectively, Allegheny) jointly filed a timely request for rehearing of the 2015 Order. For the reasons discussed below, this order denies Allegheny's request for rehearing.

I. Background

2. The 2015 Order authorized Dominion to replace, with the same diameter pipe, two 26-inch-diameter and nine 30-inch-diameter sections of its existing TL-400 pipeline, totaling approximately 10.08 miles in length of pipeline, in Ohio and Pennsylvania;² add 10,915 horsepower of compression at its existing Rural Valley Compressor Station in Armstrong County, Pennsylvania; and install additional regulation equipment and valves at compressor stations in Ohio and Pennsylvania. The Lebanon West II Project is designed to enable Dominion to provide an additional 130,000 dekatherms (Dth) per day of firm transportation service from Dominion's existing Mark West Liberty Bluestone

¹ *Dominion Transmission, Inc.*, 153 FERC ¶ 61,203 (2015) (2015 Order).

² Dominion proposed to replace the existing pipe with thicker-walled pipe to enable operation at the higher operating pressures needed to provide additional transportation service under the Lebanon West II Project.

Interconnection in Butler County, Pennsylvania, to the Lebanon-Texas Gas Interconnect with Texas Gas Transmission, LLC (Texas Gas) in Lebanon, Ohio.³

3. Dominion will construct 90 percent of the Lebanon West II Project facilities on existing rights-of-way or previously disturbed property. The compressor station modifications will take place within existing compressor station yards.

4. In the 2015 Order, the Commission found that the benefits of the proposed project will outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities. After preparing an Environmental Assessment (EA) to satisfy the requirements of the National Environmental Policy Act (NEPA), the Commission concluded that, with the adopted mitigation measures, the project would not constitute a major federal action significantly affecting the human environment.⁴ Allegheny's rehearing request raises issues related to the environmental analysis in the EA and the 2015 Order.

II. Discussion

A. Segmentation

5. The Council on Environmental Quality's (CEQ) regulations require the Commission to include "connected actions," "cumulative actions," and "similar actions" in its NEPA analyses.⁵ "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."⁶ "Connected actions" include actions that: (a) automatically trigger

³ R.E. Gas Development, LLC (R.E. Gas) subscribed to the 130,000 Dth per day of service for an initial term of 20 years.

⁴ 2015 Order, 153 FERC ¶ 61,203 at P 41. The environmental conditions are listed in Appendix B.

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

⁶ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Delaware Riverkeeper Network*). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. See *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCBS, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(c) for the proposition that "nothing in the relevant regulations compels the preparation of a single EIS for 'similar actions'").

other actions, which may require an environmental impact statement (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.⁷

6. In evaluating whether multiple actions are, in fact, connected actions, courts apply a “substantial independent utility” test. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”⁸ 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.”⁹

7. In *Delaware Riverkeeper Network*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.¹⁰ 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.¹¹ Subsequently, the same court in another case indicated that, in considering a pipeline application, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.¹²

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

⁸ *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”).

⁹ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

¹⁰ *Delaware Riverkeeper Network*, 753 F.3d at 1314.

¹¹ *Id.*

¹² See *Myersville Citizens for a Rural Cmty. Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015) (*Myersville*).

8. Allegheny argues for the first time on rehearing that the Commission improperly segmented its review of the Lebanon West II Project from Texas Gas's Ohio-Louisiana Access Project in Docket No. CP14-553-000, which was pending Commission review at the same time.¹³ Allegheny asserts that the Ohio-Louisiana Access Project and the Lebanon West II Project are closely related connected actions because the two projects share a common shipper, R.E. Gas. R.E. Gas subscribed to the total amount of additional capacity made available from the Lebanon West II Project to transport natural gas from its production area in Butler County, Pennsylvania, to Dominion's interconnection with Texas Gas at Lebanon, Ohio (the Lebanon-Texas Gas Interconnect), and capacity on the Ohio-Louisiana Access Project to then transport its gas from the Lebanon-Texas Gas Interconnect to natural gas markets in the Midwest and Gulf Coast. Specifically, Allegheny relies on a 2014 Rex Energy Corporation (Rex Energy) press release,¹⁴ announcing the execution of transportation agreements with Dominion and Texas Gas to transport natural gas volumes from Rex Energy's Butler Operated Area in Butler County, Pennsylvania to the Gulf Coast.¹⁵

9. Allegheny also argues that the Ohio-Louisiana Access Project and the Lebanon West II Project are similar actions because both projects were under Commission review at the same time.¹⁶ Allegheny further asserts that the two projects are cumulative actions because they will have cumulatively significant impacts on the environment from future upstream production and downstream liquefied natural gas export.¹⁷

10. Allegheny's argument that the Commission improperly segmented its environmental analysis of the Ohio-Louisiana Access project from its review of Dominion's Lebanon West II Project is a new argument raised for the first time on

¹³ See *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160 (2015).

¹⁴ R.E. Gas, a subsidiary of Rex Energy engaged in drilling for oil and gas, is the shipper on both projects, notwithstanding Allegheny's reference to Rex Energy.

¹⁵ Rehearing Request at 19-20, quoting Rex Energy's April 29, 2014 press release, "Rex Energy Secures Gas Transportation Agreements to Midwest and Gulf Coast," included as Attachment 4 to Allegheny's Rehearing Request.

¹⁶ *Id.* "Similar actions" are those which, when viewed with other reasonably foreseeable or proposed agency actions, provide a basis for evaluating their environmental consequence together, such as common timing, location, impacts, alternatives, or implementation methods. 40 C.F.R. § 1508.25(a)(3) (2015).

¹⁷ *Id.*

rehearing of the 2015 Order. As a rule, we reject requests for rehearing that raise a new issue, unless we find that the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.¹⁸ Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.”¹⁹ Allegheny does not explain why it could not have raised this new argument earlier, and we find no reason that Allegheny could not have raised this argument before we issued the 2015 Order. For these reasons, we will deny Allegheny’s request for rehearing on this issue.

11. In any event, were we to consider Allegheny’s argument that the Ohio-Louisiana Access Project and Lebanon West II Project are connected, cumulative, or similar actions whose impacts should have been analyzed in the same environmental document, we would conclude, as discussed below, that the Commission staff did not improperly segment the environmental analysis of the two projects.²⁰

12. Regarding Allegheny’s argument that the Ohio-Louisiana Access Project and the Lebanon West II Project are connected actions, it is clear that the Ohio-Louisiana Access Project has substantial independent utility regardless of whether Dominion constructs the Lebanon West II Project. The purpose of the Ohio-Louisiana Access Project is to allow portions of Texas Gas’s system to operate bi-directionally to serve customers that want north-to-south service. By installing a new compressor station and modifying the existing interconnection between Texas Gas and Gulf South Pipeline Company, LP, both in Louisiana, and making other proposed system modifications, virtually all of which are also in Louisiana, Texas Gas can provide up to 758,000 Dth per day of firm transportation service from various receipt points at Lebanon, Ohio, southward to new markets in the Midwest and South. In total, seven shippers have contracted for capacity on the Ohio-Louisiana Access Project, and Texas Gas is connected to multiple pipelines at the Lebanon Hub. R.E. Gas, one of the seven shippers, has subscribed to ship only

¹⁸ See *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043, at P 19 (2012) (*Texas Gas*), appeal dismissed, *NO Gas Pipeline v. FERC*, 756 F.3d 764 (D.C. Cir. 2014).

¹⁹ 18 C.F.R. § 385.713(c)(3) (2015).

²⁰ See, also, *Texas Gas Transmission, LLC*, 155 FERC ¶ 61,099 (2016), rejecting identical arguments made by Allegheny on rehearing in the Ohio-Louisiana Access Project proceeding.

100,000 Dth per day of the Ohio-Louisiana Access Project's 626,000 Dth per day total subscribed firm service capacity. The proposed in-service date of the Ohio-Louisiana Access Project is June 1, 2016, five months before the November 1, 2016 in-service date of the Lebanon West II Project.²¹ Thus, the Ohio-Louisiana Access Project would still have substantial independent utility without receiving gas from Dominion's Lebanon West II Project.

13. Dominion's Lebanon West II Project also has substantial independent utility apart from the Ohio-Louisiana Access Project. The purpose of the Lebanon West II Project, as stated in Dominion's application and a Rex Energy press release, is to provide Rex Energy access to Midwest and Gulf Coast natural gas markets.²² While this may be accomplished through Texas Gas's Ohio-Louisiana Access Project, that project is not the only interconnection through which Dominion could provide R.E. Gas with access to these markets. Operationally, the Lebanon West II Project does not depend on the Ohio-Louisiana Access Project to reach the Lebanon Hub. At the Lebanon Hub, Dominion interconnects with several pipelines, many of which could transport R.E. Gas's product to Midwest and Gulf Coast markets. The presence of additional capacity on Texas Gas's system due to the Ohio-Louisiana Access Project is not the sole factor making Dominion's Lebanon West II Project viable. R.E. Gas may be taking advantage of the presence of additional capacity made available by the two projects; however this should not be equated with NEPA's more stringent connected action requirement.

14. The two projects are not operationally or financially dependent on each other. Each project's proposed facilities, on different pipelines, are geographically remote – located in different states, hundreds of miles apart: the Ohio-Louisiana Access Project facilities are all in Louisiana, except for a compressor station reversal in Indiana, while the Lebanon West II Project facilities are in Ohio and Pennsylvania. The Commission notes that the Lebanon West II Project involves no new facilities for, or modifications to, Dominion's Lebanon-Texas Gas Interconnect, and the closest facilities of the two projects are Dominion's Washington Compressor Station in Washington, Ohio, and Texas Gas's Dillsboro Compressor Station in Dillsboro, Indiana, approximately 100 miles apart. The operation of each project does not depend on, and would proceed without, the other. Further, as the *Delaware Riverkeeper Network* court recognized in its decision in *Myersville Citizens for a Rural Community, Inc. v. FERC*,²³ when projects are neither functionally nor financially interdependent, they do not become connected actions

²¹ *Texas Gas*, 152 FERC ¶ 61,160 at PP 4-9.

²² Dominion Application at 2; Rex Energy's April 29, 2014 Press Release at 1.

²³ 783 F.3d 1301 (D.C. Cir. 2015).

as contemplated by NEPA simply because shippers that will use capacity to be created by one project may also use capacity that will be created by the other project.²⁴ Given the significant independent utility of the Ohio-Louisiana Access and Lebanon West II Projects, as well as their physical and temporal differences, the two projects are not connected actions.

15. The Ohio-Louisiana Access Project and Lebanon West II Project are also not similar or cumulative actions for purposes of environmental review. Allegheny alleges that the two projects are cumulative actions because they will have “cumulatively significant impacts,”²⁵ but fails to show how the two projects’ impacts will be “cumulatively significant” to each other or to upstream production or downstream export activities. Given the relatively small geographic footprint of each project, the distance between the project features, and minor impacts identified with each project, we do not find the two projects will result in cumulatively significant impacts requiring examination in a single environmental document. Allegheny’s argument that the two projects are similar actions is based solely on their purported common timing and fails to address the considerable distance between the two projects.²⁶ While the applications for the two projects were being considered at approximately the same time, as mentioned above, the Ohio-Louisiana Access Project had a requested in-service date a full five months before the Lebanon West II Project. Further, as noted, the project facilities are located on different pipeline systems, hundreds of miles away from one another and in different states. The vast distance between the projects and their minor environmental impacts render considering the impacts of the projects together as similar actions both unnecessary and unhelpful.²⁷ For the reasons discussed above, we find that the limited geographic scope and minor impacts of the two projects do not merit expanding our environmental review of the Lebanon West II Project to include the impacts of the Ohio-Louisiana Access Project.

²⁴ *Id.* at 1326-27.

²⁵ Rehearing Request at 20.

²⁶ CEQ regulations state that “common geography” is a factor to be considered in whether or not two separate projects may be seen as “similar.” 40 C.F.R. § 1508.25(a)(3) (2015).

²⁷ 40 C.F.R. § 1508.25(a)(3) (2015); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 1000-1001 (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.).

B. Indirect Effects of Natural Gas Production

1. Causation

16. Allegheny asserts that the Commission's environmental analysis of the Lebanon West II Project violated NEPA by failing to consider the indirect effects of gas drilling in the Marcellus and Utica shale formations. Allegheny argues that there is a causal link between the proposed project and shale gas production in the Marcellus and Utica shale formations strong enough for the impacts of the gas production to be considered an indirect effect of our approving the project, contending that the proposed project and shale gas production are "links of a single chain."²⁸ Allegheny cites statements in Dominion's application that the project is designed to provide natural gas transportation from Pennsylvania and Ohio and that it will enter into a firm transportation agreement with R.E. Gas. Further, Allegheny cites an annual report from Rex Energy, stating that Rex Energy's ability to move production to market depends on capacity on pipelines and other facilities operated by third parties.²⁹ Allegheny argues that the fact that an area may already be developed does not mean a particular project cannot facilitate further development, citing Rex Energy's statement that the project supports its development of the Butler Operated Area.³⁰ In support of its position, Allegheny cites *Colorado River Indian Tribes v. Marsh*,³¹ and *Mid States Coalition for Progress v. Surface Transportation Board*.³²

17. The record in this proceeding, including the reports and statements Allegheny cited, does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the proposed project that would necessitate further analysis. We do not dispute that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market. This does not mean, however, that the Commission's approval of

²⁸ Rehearing Request at 5-8, (citing *Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989)).

²⁹ Rex Energy, Annual Report (Form 10-K), at 32 (March 2, 2015).

³⁰ Rehearing Request at 7-8 (citing Rex Energy's May 5, 2015 First Quarter Operational and Financial Results).

³¹ *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425 (C.D. Cal. 1985) (*Colorado River*).

³² 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*).

this particular pipeline project will cause or induce the effect of additional or further shale gas production. As stated in the 2015 Order, the proposed project is responding to the need for transportation, not creating it.³³

18. As we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.³⁴ If the Lebanon West II Project was not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.³⁵ Any such production would take place pursuant to the regulatory authority of state and local governments. While as a filed proposal, the proposed project is currently a desired alternative for the subscribing shipper, producers have many potential options to ship gas to Midwest and Gulf Coast markets; Dominion's system, and the additional capacity created by the proposed project, are not needed to accomplish this. Denial of Dominion's application would not have stopped natural gas drilling in the Marcellus and Utica shale; it would only have required the shippers to seek out alternative projects or interconnects for getting their gas to the market.

19. We find *Colorado River* distinguishable. In *Colorado River*, a district court held that the Corps of Engineers (Corps) violated NEPA by not preparing a final EIS for a permit authorizing a developer to place riprap along a riverbank. The court stated that without the permit, the developer could not have received local government approval for its proposed residential and commercial development project along the riverbank.³⁶ The Corps originally prepared a draft EIS because proposed development along the banks would cause significant environmental impacts.³⁷ Before completing a final EIS,

³³ 2015 Order, 153 FERC ¶ 61,203 at P 24.

³⁴ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

³⁵ *Rockies Express*, 150 FERC ¶ 61,161 at P 39.

³⁶ *Colorado River*, 605 F. Supp. 1425, 1428.

³⁷ *Id.*

however, the Corps retracted its draft EIS because it determined that the appropriate scope of its environmental analysis should be limited to the activities within its jurisdiction, i.e., the river and the bank.³⁸ The court disagreed, finding that the Corps violated NEPA because it narrowed the scope of its analysis to primary or direct impacts of its authorization, ignoring the indirect and cumulative effects analysis required by NEPA. Here, however, Commission staff did analyze the indirect and cumulative effects of the project. Commission staff did not analyze the effects of induced natural gas production because, unlike in *Colorado River*, there is no sufficient causal link between our authorization of the project and any additional production. Allegheny did not provide any evidence of causally related production facilities during the Commission's initial analysis of the proposal and fails to do so here as well.

20. Allegheny asserts that the court's ruling in *Mid States* supports the contention that the Commission must analyze the effects of upstream gas drilling in the Marcellus and Utica shale formations. *Mid States* involved the Surface Transportation Board's failure to analyze the downstream effects of a proposal to build and upgrade rail systems to reach coal mines in Wyoming's Powder River Basin.³⁹ The court found – and the project proponent did not dispute – that the proposed project would increase the use of coal for power generation.⁴⁰ The court held that where such downstream effects are reasonably foreseeable they must be analyzed even if the extent of those effects is uncertain.⁴¹

21. Here, Allegheny asserts that construction of the Lebanon West II Project would increase production, rather than end-use, as was the case in *Mid States*. And unlike *Mid States*, there is insufficient causal link between our authorization of the projects and any additional production. As we have explained, natural gas development will likely continue with or without the Lebanon West II Project. Thus, it is not merely the extent of production-related impacts that we find speculative, as was the case in *Mid States*, but also whether the project at issue will have any such impacts.

³⁸ *Id.*

³⁹ *Mid States*, 345 F.3d at 550.

⁴⁰ For example, the Surface Transportation Board made a finding of public demand for the rail line because it could offer a shorter and less expensive method by which to transport low-sulfur coal from the mines to the power plants, *id.* at 533, which the court concluded would “at the very least make coal a more attractive option to future entrants into the utilities market” *Id.* at 549.

⁴¹ *Id.* at 549.

2. Reasonable Foreseeability

22. Allegheny contends that the impacts of shale drilling in the Marcellus and Utica shale formations are reasonably foreseeable, contending that the Commission is attempting to “shirk” its responsibility to examine the environmental impacts of such drilling as “crystal ball inquiry” and placing the burden of gathering the information needed to make such a determination on the public.⁴²

23. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over natural gas production and thus, would be most likely to have the information needed to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas a given pipeline may be likely to transport, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and the applicable regulations in the various states.⁴³ Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.⁴⁴

24. Even if a causal relationship between our action and additional production were presumed, the scope of the impacts from any such induced production is not reasonably foreseeable. Knowing the identity of a producer of gas to be shipped on a pipeline, and even the general area where that producer's existing wells are, does not alter the fact that the number and location of any additional wells are matters of speculation. As we have explained above and in several other proceedings, factors such as market prices and production costs, among others, drive new drilling.⁴⁵ These factors, combined with the

⁴² Rehearing Request at 9.

⁴³ 2015 Order, 153 FERC ¶ 61,203 at P 25.

⁴⁴ *Habitat Educ. Ct. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with sufficient specificity to make their consideration meaningful need not be included in the environmental analysis).

⁴⁵ See *Dominion Transmission, Inc.*, 153 FERC ¶ 61,284 (2015); *Rockies Express*, 150 FERC ¶ 61,161 at P 39. See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045

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Marcellus and Utica shale formations' immense size and the highly localized nature of production impacts make any forecasting, by a state or federal agency, inherently speculative and impractical. A broad analysis, based on generalized assumptions rather than reasonably specific information, will not meaningfully help the Commission make decisions, e.g., evaluating potential alternatives. While speculation is implicit in NEPA, agencies are not required "to do the impractical, if not enough information is available to permit meaningful consideration."⁴⁶ Further, the mere fact that we found that induced natural gas production activities are not causally related to the proposed project or reasonably foreseeable does not mean, as Allegheny asserts, that we shifted our burden to conduct an environmental analysis to Allegheny or the public.

3. Cumulative Impacts

25. CEQ defines "cumulative impact" as "the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions"⁴⁷ The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

26. The "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."⁴⁸ CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe; the

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

⁴⁶ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (citing *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)). See also *The Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008) (speculation in an EIS is not precluded, but the agency is not obliged to engage in endless hypothesizing as to remote possibilities).

⁴⁷ 40 C.F.R. § 1508.7 (2015).

⁴⁸ *Kleppe v. Sierra Club*, 427 U.S. 390 at 413.

list of environmental effects must focus on those that are truly meaningful.”⁴⁹ Further, a cumulative impact analysis need only include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”⁵⁰ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.⁵¹

27. As we have explained, consistent with CEQ guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by a proposed project and other past, present, and reasonably foreseeable future actions.⁵² While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.⁵³

28. Allegheny argues that the cumulative impact analysis in the EA did not adequately consider the environmental harms associated with natural gas development activities in the Marcellus and Utica shale formations. Allegheny asserts that the Commission restricted its region of influence to exclude unconventional natural gas production facilities in Ohio, Pennsylvania, and West Virginia, as identified in a map published by

⁴⁹ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf (1997 CEQ Guidance).

⁵⁰ *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

⁵¹ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf (2005 CEQ Guidance).

⁵² See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁵³ *Id.* P 120.

Penn State University's Marcellus Center for Outreach and Research. Allegheny states that the Commission could have analyzed the impacts of natural gas production activities using information provided by certain state agencies in Ohio, Pennsylvania, and West Virginia, and Pennsylvania State University's Marcellus Center for Outreach.

29. Allegheny states that the Commission routinely restricts its cumulative impact analysis of proposed natural gas projects, citing various Commission natural gas proceedings,⁵⁴ in situations when the geographic boundaries of the analysis almost always should be expanded. Allegheny argues that, when considering these other projects together with the proposed project, it is clear that the Commission ignores the majority of the project's impacts. Allegheny cites *LaFlamme v. FERC (LaFlamme)*⁵⁵ and *Natural Resources Defense Council, Inc. v. Hodel (Hodel)*⁵⁶ to bolster its claim that the Commission must expand its cumulative impacts analysis and consider inter-regional impacts of Marcellus and Utica shale development.

30. In considering cumulative impacts, CEQ advises an agency to first identify the significant cumulative effects issues associated with the proposed action.⁵⁷ The agency should then establish the geographic scope for analysis.⁵⁸ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.⁵⁹ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁶⁰ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁶¹

⁵⁴ Rehearing Request at 12-14.

⁵⁵ 852 F.2d 389 (9th Cir. 1988) (*La Flamme*).

⁵⁶ 865 F.2d 288 (D.C. Cir. 1998) (*Hodel*).

⁵⁷ 1997 CEQ Guidance at 11.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See 2005 CEQ Guidance, *supra* at 2-3, n. 53, which notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude

(continued...)

31. Here, the EA's cumulative effects analysis took precisely the approach the CEQ guidance advises.⁶² Based on the small scale and minor, temporary and highly localized impacts of the project, Commission staff concluded that a one-mile radius to assess cumulative impacts was appropriate, explaining that this area would include most resources affected.⁶³ The EA identified potential cumulative impacts associated with 28 past, present, and reasonably foreseeable future projects or activities in the region of influence. The EA indicated that energy projects consist of both non-traditional gas production wells and conventional gas production.⁶⁴ The EA considered the development of oil and gas resources including wells, gathering lines, electric distribution lines, and access roads.

32. The EA explained that the construction footprints at well sites are variable and may include different kinds of affected environmental resources. This makes impacts impossible to quantify. Instead, the EA discussed the cumulative impacts in general, qualitative terms. The EA evaluated the potential cumulative impacts of those projects on soils; geology; groundwater, waterbodies, fisheries, and wetlands; vegetation and wildlife; land use and visual resources; cultural resources; and air quality and noise. The EA concluded that the adverse cumulative impacts that could occur would be temporary, localized, and minimal, and that, overall, the project would not result in significant cumulative impacts.

33. We find that the EA identified the appropriate geographic scope for considering cumulative impacts and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus and Utica shale formations. Given the large geographic scope of the Marcellus and Utica shale, the magnitude of the kind of analysis Allegheny requested – of the impacts of gas drilling in all the Marcellus and

of the environmental impacts of the proposed action. Further, the Supreme Court held that determination of the extent and effect of cumulative impacts, “and particularly identification of the geographic area within which they occur, is a task assigned to the special competency of the agenc[y],” and is overturned only if arbitrary and capricious. *See Kleppe*, 427 U.S. at 414-15.

⁶² We note that the 1997 Guidance states that the “applicable geographic scope needs to be defined case by case.” 1997 CEQ Guidance at 15.

⁶³ EA at 53.

⁶⁴ Production and gathering facilities are not regulated by the Commission but are overseen by the region's state and local agencies with jurisdiction over the management and extraction of shale oil and gas resources.

Utica shale formations – bears no relationship to the limited magnitude of Dominion’s instant proposal, which involves temporary construction impacts on 192.2 acres and permanent impacts to 130.4 acres of mostly open land. Moreover, even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, the impacts from such development are not reasonably foreseeable.

34. We also disagree with Allegheny’s argument that the Commission’s use of regions of influence is inconsistent with CEQ regulations. Our cumulative impacts analysis considered the additive impact of a proposed action’s direct and indirect effects with other past, present, or reasonably foreseeable actions that have impacts occurring in the same region, and within the same time span, *as the impacts of the proposed action*. We believe this is consistent with the CEQ’s Guidance.⁶⁵

35. Allegheny’s reliance on *LaFlamme* is misplaced, as that case in fact supports the Commission’s use of a region of influence and an analysis of cumulative impacts limited to those impacts occurring in the area of the project at issue. In *LaFlamme*, the court found that in preparing an EA for the Sayles Flat Project, a hydroelectric project on the American River in California, the Commission failed to consider the cumulative impacts of other projects on the American River because it had relied on a previous EIS for another project on the river, which had limited its review to assessing the impact of that project’s diversion dams and other proposed facilities in that project’s area. Thus, the court criticized the Commission’s use of the “narrow analysis” of another project’s EIS as a substitute for the analysis required for the Sayles project.⁶⁶ The court in *LaFlamme* did not fault the Commission for limiting its cumulative impacts analysis for the Sayles Flat Project to the cumulative effects of dams and facilities in the area of the project. If anything, *LaFlamme* supports identifying a region of influence appropriately connected to the location of the project under review.

36. Similarly, Allegheny’s reliance on *Hodel* is unavailing. Allegheny interprets this case to mean that the Commission must consider the reasonably foreseeable impacts of shale gas extraction on a broader scale. We disagree. In *Hodel*, the court considered the U.S. Department of the Interior’s EIS conducted in conjunction with its plan to award five-year leases for hydrocarbon exploration and production on multiple offshore blocks. The court found that the EIS focused primarily on assessing impacts associated with the

⁶⁵ EA at 53.

⁶⁶ *LaFlamme*, 852 F.2d 389 at 401-02. The court stated: “At no point did the [[Upper Mountain Project] EIS analyze the effects other projects, pending or otherwise, might have on this section of the American River Basin,” i.e., the Sayles Flat Project section. *Id.* at 399.

area next to each lease block, and thereby failed to consider potential inter-regional cumulative impacts on migratory species if exploration and production were to take place simultaneously on several lease blocks within the migratory range of a species. However, *Hodel* involved a plan for resource-development leasing over a vast geographic area (including the North Atlantic, North Aleutian Basin, Straits of Florida, Eastern Gulf of Mexico, and waters off California, Oregon, and Washington).

37. In contrast, the ‘plan’ before us is to replace approximately 10.08 miles of pipeline segments and add compression facilities and valves at five sites, in Pennsylvania and Ohio. Because we find the proposal will have no reasonably foreseeable impacts on shale development, we find no reason to adopt a region of influence for reviewing cumulative impacts that would include all the Marcellus and Utica shale formations. The Department of Interior’s leasing of large tracts in federal waters in *Hodel* is dissimilar from the Commission’s case-by-case review of individual and independent projects. Whereas mineral leases, especially those that cover extensive and contiguous areas, establish the location and time frame for future development, the Commission does not permit, and indeed has no jurisdiction over, activities upstream of the point of interconnection with an interstate pipeline, e.g., leasing, exploration, production, processing, and gathering. To the extent the court in *Hodel* was persuaded by an earlier Supreme Court statement that under NEPA “proposals for . . . related actions that will have cumulative or synergistic environmental impact upon a region *concurrently pending before an agency* must be considered together,”⁶⁷ production and gathering activities in the Appalachian shale areas are not related actions concurrently pending before the Commission. Thus, there is no way to relate any specific production and gathering activities to this project.

The Commission orders:

Allegheny’s request for rehearing of the 2015 Order is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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