
**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 13-1016

**GEORGE FEIGHNER,
*Petitioner,***

v.

**FEDERAL ENERGY REGULATORY COMMISSION,
*Respondent.***

**ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

**RESPONDENT'S OPPOSITION TO
EMERGENCY MOTION FOR STAY PENDING REVIEW**

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**FOR RESPONDENT
FEDERAL ENERGY REGULATORY
COMMISSION
WASHINGTON, D.C. 20426**

FEBRUARY 4, 2013

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GLOSSARY

Certificate Order	<i>Tennessee Gas Pipeline Co., L.L.C.</i> , 139 FERC ¶ 61,161 (May 29, 2012)
Commission or FERC	Federal Energy Regulatory Commission
EA	Environmental Assessment for the Northeast Upgrade Project, issued November 21, 2011
January 30 Response	Commission's Response in Opposition to Emergency Motion to Stay, D.C. Cir. No. 13-1015 (filed January 30, 2013)
National Park	Delaware Water Gap National Recreation Area
NEPA	National Environmental Policy Act
Pipeline	Tennessee Gas Pipeline Company, L.L.C., sponsor of the Northeast Upgrade Project
Project	Tennessee Gas Pipeline Company's Northeast Upgrade Project, comprised of (i) 40.3 miles of 30-inch diameter pipeline looping from Bradford County, Pennsylvania, across the Delaware River into New Jersey, (ii) modifications of four existing compressor stations including the addition of approximately 22,310 horsepower of compression at two stations, and (iii) upgrades at one meter station
Rehearing Order	<i>Tennessee Gas Pipeline Co., L.L.C.</i> , 142 FERC ¶ 61,025 (January 11, 2013)
Riverkeeper	Petitioners in companion case D.C. Cir. No. 13-1015: Delaware Riverkeeper Network, New Jersey Highlands Coalition, and Sierra Club, New Jersey Chapter

INTRODUCTION

The Federal Energy Regulatory Commission (“Commission” or “FERC”) reaffirms its opposition to a stay of a Commission-certificated natural gas pipeline, for the reasons stated in its January 30, 2013 response to a motion for stay in the companion case (No. 13-1015) and as explained below. Petitioner, George Feighner, asks this Court for the extraordinary remedy of indefinitely delaying the completion of a pipeline that the Commission determined, after over two years of environmental review, is needed to meet the Nation’s energy needs. Mr. Feighner’s motion comes on the heels of this Court’s January 17, 2013 order refusing to stay construction of this same pipeline in response to a request by Delaware Riverkeeper Network, New Jersey Highlands Coalition, and Sierra Club, New Jersey Chapter (collectively “Riverkeeper”). *See In re Del. Riverkeeper Network*, No. 13-1004 (D.C. Cir. Jan. 17, 2013) (denying petition under the All Writs Act).

Further, Mr. Feighner’s stay request follows Riverkeeper’s second attempt to obtain extraordinary relief in this case. *See Del. Riverkeeper Network v. FERC*, No. 13-1015, Emergency Motion for Stay (filed Jan. 24, 2013) (motion pending). The Commission responded in opposition to Riverkeeper’s emergency motion on January 30, 2013 (“January 30 Response”), the same day Mr. Feighner filed, without any advance notice to the Commission, his emergency motion. While Mr.

Feighner duplicates some of Riverkeeper’s motion – indeed he “joins [Riverkeeper’s] arguments” (Mot. 5) and asks that the matters be consolidated – his primary focus is his belief that an alternative route, a route that cuts through a National Park, is preferable. His argument, the alleged failure of the Commission to correctly consider his preferred alternative route, is rebutted by the Commission’s extensive analysis, reflected in the challenged orders and the environmental assessment, and fails to justify a stay.

This case concerns a proposal by Tennessee Gas Pipeline Company, L.L.C. (“Pipeline”) to upgrade a portion of its existing “300 Line System,” a natural gas pipeline system constructed in the 1950s in northeastern United States. This proposal, the Northeast Upgrade Project, comprises 40.3 miles of pipeline looping,¹ 84 percent of which will be collocated with the Pipeline’s existing 300 Line, and upgrades to several existing compressor and meter stations (the “Project”). *See Tenn. Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at PP 4-5 (May 29, 2012) (“Certificate Order”); *Tenn. Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,025, at P 2 (Jan. 11, 2013) (“Rehearing Order”); *see also* January 30 Response

¹ A pipeline “loop” is a segment of pipe installed adjacent to an existing pipeline and connected to it at both ends. A loop allows more gas to be moved through the natural gas pipeline system. Environmental Assessment for the Northeast Upgrade Project at 1-8, n.5, FERC Docket No. CP11-161-000 (Nov. 21, 2011) (“EA”) (appended to FERC’s January 30 Response).

at 3 (describing Project and its benefits). The Project is divided into five loop segments – Loop 317, 319, 321, 323, and 325.

Mr. Feighner is concerned solely with Loop 323, which crosses his property in Sussex County, New Jersey. Certificate Order P 55. The Pipeline intentionally routed 6.4 miles of Loop 323 outside of the Pipeline’s existing right-of-way to circumvent a National Park, the Delaware Water Gap National Recreation Area (“National Park”).² Rehearing Order P 2; *see also* EA at 3-4 (original 300 Line predated the National Park designation). Mr. Feighner opposes the proposed route for Loop 323, and instead favors a route through the National Park that is 100 percent collocated with the 300 Line. To date, the Commission has not authorized tree clearing or construction on Loop 323. *See* Letters from FERC’s Office of Energy Projects to Pipeline, Docket No. CP11-161-000 (Dec. 14, 2012 & Jan. 24, 2013) (noting that consideration of Loop 323 authorization is on hold until an outstanding cultural resource consultation is completed).

² The Delaware Water Gap National Recreation Area, established in 1978, is a 70,000 acre protected area designated as a National Recreation area administered by the U.S. Department of the Interior’s National Park Service. It is located along the Delaware River in New Jersey and Pennsylvania. A 40-mile section of the Delaware River, entirely within the Park, has been granted protected status as the Middle Delaware National Scenic River under the National Wild and Scenic Rivers System, which is also administered by the National Park Service. The Park hosts significant Native American archaeological sites, and a number of structures remain from an early Dutch settlement during the colonial period. *See* EA at 3-3.

Throughout the extensive two-year environmental review process that resulted in the detailed 200-page EA, the Commission took a hard look at the environmental impacts of the Project and alternatives. Certificate Order PP 39-201. As particularly relevant here, the EA evaluated Loop 323 route alternatives within the National Park and adjacent to Pipeline’s existing 300 Line, which would avoid Mr. Feighner’s property and the additional miles of new pipeline right-of-way required by the route around the National Park. While the EA found that the route alternatives within the National Park would have less environmental impact, it found those routes infeasible because they would require federal legislation and the support of the National Park Service, which manages the National Park. Ultimately, the Commission determined that the Project, upon Pipeline’s satisfaction of numerous environmental conditions and mitigation measures, including measures specific to Mr. Feighner’s property, would not have a significant environmental impact and that its construction would be consistent with the public convenience and necessity under section 7(e) of the Natural Gas Act, 15 U.S.C. § 717f(e). *Id.* PP 201, 203.

ARGUMENT

Mr. Feighner has not justified the extraordinary remedy of a stay. *See Munaf v. Geren*, 553 U.S. 674, 691 (2008) (stay pending appeal “is an extraordinary and drastic remedy; it is never awarded as of right”). In order to

obtain such extraordinary relief, Mr. Feighner must establish: (1) a strong showing that he is likely to prevail on the merits of his appeal; (2) that, without such relief, he will be irreparably injured; (3) a lack of substantial harm to other interested parties; and (4) that the public interest favors a stay. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). “The courts must balance the competing claims of injury and consider the effect of granting or withholding the requested relief, paying particular regard to the public consequences.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008).

Just as this Court recently found with respect to Riverkeeper’s stay petition, and in other recent pipeline cases, Mr. Feighner too has “not satisfied the stringent standards that apply to petitions . . . that seek to stay agency action.” *In re Del. Riverkeeper Network*, No. 13-1004 (D.C. Cir. Jan. 17, 2013) (citing *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985) (holding that the four factors the court considers are identical whether the request for stay is filed as a petition under the All Writs Act or as a motion)). *See also* Jan. 30 Response at 5-6 (describing recent pipeline stay denials).

I. Mr. Feighner Is Unlikely To Succeed On The Merits

A NEPA violation must be “clearly established” in order to justify a stay. *Cuomo v. NRC*, 772 F.2d 972, 976 (D.C. Cir. 1985). *See also Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (explaining that the Supreme Court “at least

. . . suggest[s] if not . . . hold[s] ‘that a likelihood of success is an independent, free-standing requirement’”) (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009) (Kavanaugh, J., concurring), and referencing *Winter*, 555 U.S. at 22). Mr. Feighner cannot meet this standard.

A. Mr. Feighner’s Motion Is Based On Erroneous, Unsupported Assumptions

Mr. Feighner’s request for a stay rests entirely on his erroneous assumptions that (i) the Park Service did not oppose the route alternative that would cut through the National Park, (ii) the Park Service, without new Federal legislation from Congress, could grant new easements necessary for the construction of the Project in the National Park, and (iii) the Project could be built within the existing right-of-way easement. The record and law contradict these assumptions.

1. The National Park Service Opposed The Park Route

For this Project, Pipeline engaged in the Commission’s pre-filing environmental review process, which involves consultation with interested agencies including, in this case, the Park Service. *See* FERC Docket No. PF10-23-000. The proposed Project route for Loop 323, as presented during the pre-filing process, was entirely collocated with the existing 300 Line that traverses the National Park. Certificate Order P 104; EA at 3-3. The Park Service, in meetings and correspondence with Pipeline and the Commission during the pre-filing stage, explicitly opposed a route through the National Park. EA at 3-4. The EA notes:

“Superintendent Donahue [of the Park Service] stated that any new right-of-way across the [National Park] would require legislation by the U.S. Congress, and that the [Park Service] would likely strenuously oppose such legislation as inconsistent with the purpose of the [National Park].” *Id.* Consequently, Pipeline rerouted Loop 323 to circumvent the National Park. This revised route is the Project route presented to the Commission in Pipeline’s application for a certificate of public convenience and necessity. *Id.*

2. A Route Through The National Park Is Prohibited By Law

No statutory authority exists for the Park Service to authorize use of the National Park for the Project. The Park Service’s authority with respect to natural gas pipelines is explained in a memorandum of understanding governing coordinated environmental review in pipeline construction and operation proceedings:

The National Park Service (“NPS”), within the Department of the Interior, may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to such use of NPS lands. There are no general authorities for issuance of right-of-way permits for gas or other petroleum product pipelines across units of the National Park System. However, in individual instances, park-specific legislation may provide for such authorizations.³

³ *Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission*, at 2 (May 2002) (executed by the Department of the Interior), available at http://www.ferc.gov/industries/gas/enviro/gas_interagency_mou.pdf.

Congress established the National Park “for public outdoor recreation use and enjoyment” and for the “preservation of the scenic, scientific and historic features contributing to public enjoyment of such lands.”⁴ 16 U.S.C. § 460o. The enabling legislation is silent regarding gas pipelines. Thus, with respect to the National Park, there is no “park-specific legislation” that authorizes the Park Service to issue right-of-way permits for gas pipelines across the National Park.

Mr. Feighner bases his argument upon a memorandum of understanding governing inter-agency coordination for pipeline *repairs*. Mot. 13 & 16 (quoting the May 2004 *Memorandum of Understanding on Coordination of Environmental Reviews for Pipeline Repair Projects*). But even the pipeline repair memorandum affirms that the Park Service is not authorized to do the very thing Mr. Feighner

⁴ 16 U.S.C. § 460o provides in its entirety:

In order to further the purposes of the joint resolution approved September 27, 1961 (re Delaware River Basin compact; 75 Stat. 688), and to provide in a manner coordinated with the other purposes of the Tocks Island Reservoir project, for public outdoor recreation use and enjoyment of the proposed Tocks Island Reservoir and lands adjacent thereto by the people of the United States and for preservation of the scenic, scientific, and historic features contributing to public enjoyment of such lands and waters, the Secretary of the Interior is authorized, as herein provided, to establish and administer the Delaware Water Gap National Recreation Area, hereinafter referred to as the “area,” as part of the Tocks Island Reservoir project, hereinafter referred to as “the project.”

demands – granting a right-of-way for a gas pipeline. The memorandum states: “There are no general authorities for issuance of right-of-way permits for gas or other petroleum product pipelines across units of the National Park System.”⁵

3. The Project Cannot Be Built Within The Existing Right-Of-Way

Mr. Feighner also relies on his unsupported assertion (Mot. 14, 16) that Pipeline’s existing right-of-way easement for the 300 Line could accommodate the Project, without the need to obtain any additional right-of-ways either temporary or permanent from the Park Service. But, the Commission’s record and findings contradict his claim. The EA explains that a typical permanent right-of-way for a pipeline is 50 feet, extending 25 feet from either side of the pipeline. EA at 1-10 & 1-20. Thus, where the Project is collocated with the existing 300 Line, the permanent right-of-way for the Project pipeline will consist of 25 feet of the existing right-of-way and an additional 25 feet of new right-of-way for the loop. *Id.* Construction right-of-ways are even larger, typically requiring at least a 75-foot right-of-way. *Id.* Moreover, as the Commission explained, the river crossing in the National Park at the location where the existing 300 Line crosses would require using a specific drilling technique (to avoid impacting a federally-listed

⁵ *Memorandum of Understanding on Coordination of Environmental Reviews for Pipeline Repair Projects*, at 4 (May 2004) (describing existing agency authorities and responsibilities and executed by the Department of the Interior), available at <http://www.ferc.gov/legal/maj-ord-reg/mou/mou-25.pdf>.

endangered species) which would require workspace outside of Pipeline's existing easement on National Park property. Rehearing Order P 106; Certificate Order P 105 (addressing proposed project alternative of replacing existing 300 Line 24-inch-diameter pipeline with a larger 36-inch-diameter pipe).

B. FERC Reasonably Analyzed Project Route Alternatives

Mr. Feighner's allegation (Mot. 6-17) that the Commission failed to take a hard look at alternatives for Loop 323 ignores the record. NEPA requires federal agencies to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). A "rule of reason governs 'both which alternatives the agency must discuss, and the extent to which it must discuss them.'" *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) (quoting *Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978)).

Consistent with its obligations under NEPA, the Commission extensively considered the National Park route advocated by Mr. Feighner, which the EA refers to as "Delaware Water Gap Alternative 1," and another alternative that would use National Park land. *See* EA at 3-3 to -9 (discussing Loop 323 route alternatives). In addition, the Commission considered a third alternative: replacing the existing 300 Line (a 24-inch-diameter pipeline) with a new 36-inch-

diameter pipeline. Rehearing Order PP 104-106; *see also* Certificate Order PP 56, 83-86, 103-105; EA at 3-3 to -9. All three alternatives would obviate the need for a route that circumvents the National Park. Rehearing Order PP 104-106. After evaluating the alternatives, the Commission concluded that, although each alternative would result in fewer environmental impacts, none of them would be feasible because each would require Congress to initiate and pass legislation to authorize the Park Service to grant right-of-way permits for natural gas pipelines. *Id.* With respect to Mr. Feighner's preferred alternative, Alternative 1, the EA concluded:

[T]he Delaware Water Gap Alternative 1 has an environmental advantage over the proposed route. However, because of [Park Service] opposition and the need for federal legislation enabling construction across [Park Service] property, authorizing Delaware Water Gap Alternative 1 would in essence result in the No Action Alternative, which we do not recommend. Although the Delaware Water Gap Alternative 1 offers an environmental advantage to the proposed route, . . . the proposed route would not result in significant environmental impacts.

EA at 3-8. *See also* Rehearing Order P 105 (noting that the practical result of approving a route crossing the National Park is that Pipeline would not, at least not in the time-frame needed, be able to construct the Project).

It is reasonable and permissible for the Commission to reject a route alternative that is not feasible. *See, e.g., Mt. Lookout-Mt. Nebo Property Protection Ass'n v. FERC*, 143 F.3d 165, 172-73 (4th Cir. 1998) (affirming FERC orders rejecting alternative under NEPA because it was not economically feasible);

see also *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978) (agency not required to discuss alternatives that would become available “if at all, only after protracted debate and litigation not meaningfully compatible with the time-frame of the needs to which the underlying proposal is addressed”); *see also* *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1208 (9th Cir. 2004) (recognizing that alternatives that require “congressional action” rarely qualify for inclusion in a NEPA-required environmental review).

Further, it is equally permissible for the Commission to reject an environmentally preferable alternative where the Commission concludes that other values outweigh the project’s limited but nonetheless acceptable environmental costs. *See* *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 967-68 (D.C. Cir. 2000) (upholding FERC’s approval of a project despite an environmentally preferable alternative). Moreover, as the Supreme Court has observed,

[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process. If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (citations omitted). Where, as here, the EA evaluated multiple alternatives, included considerable detail on each alternative, and stated why they were not

recommended, the Commission met its obligation under NEPA. *See Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1331 (D.C. Cir. 2004) (upholding FERC's choice among alternatives).

C. The Commission Fully Complied With NEPA

As the Commission explained in its January 30 Response to Riverkeeper's emergency motion for stay, the Commission conducted a thorough environmental analysis of the Project in full compliance with NEPA. January 30 Response at 13-14. Mr. Feighner now incorporates by reference Riverkeeper's merits arguments including, specifically, its segmentation argument. *See* Mot. 5, 18-19. But, Mr. Feighner did not raise unlawful segmentation or any other NEPA violation, other than the alternatives issue discussed above, in his rehearing request (or at any point during the Commission proceeding). Accordingly, Mr. Feighner has waived these arguments, and this Court lacks jurisdiction to consider them. 15 U.S.C. § 717r(b) (limiting the Court's jurisdiction to those objections "urged before the Commission in the application for rehearing"); *see, e.g., Nat'l Comm. for the New River*, 373 F.3d at 1332 (petitioner waived argument by failing to raise it before the Commission in its rehearing request).

In any event, any claims of unlawful segmentation, failure to consider cumulative effects of other projects, and inadequate mitigation are meritless. *See* January 30 Response at 6-15. Mr. Feighner's true objection is to the

Commission's ultimate result – that, on balance, and after review of the potential environmental impacts and imposition of numerous environmental conditions, the Project is an environmentally acceptable action. Certificate Order P 136; Rehearing Order P 64. But this does not establish a valid claim under NEPA, which is merely a procedural statute that does not dictate an agency's results. *U.S. Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 756 (2004).

II. Mr. Feighner Has Not Established Irreparable Harm

A claim of irreparable injury absent a stay must be “both certain and great; it must be actual and not theoretical.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). An applicant for a stay cannot rely on unsupported assertions to meet this stringent standard, but must instead “justify the court’s exercise of such an extraordinary remedy.” *Cuomo*, 772 F.2d at 978. Where an environmental harm is alleged, “broader injunctive relief is appropriate, of course, where substantial danger to the environment, in addition to a violation of [NEPA] procedural requirements, is established.” *Huntington v. Marsh*, 884 F.2d 648, 653 (2d Cir. 1989).

Mr. Feighner alleges essentially the same types of harms as Riverkeeper – tree clearing and related environmental impacts of Project construction. And like Riverkeeper, Mr. Feighner has not established substantial danger to the environment. *See* January 30 Response at 16-18. Mr. Feighner is correct (Mot. 7)

that other routes, bypassing his property, might be environmentally preferable, though those routes were rejected for other reasons (*see supra* pp. 10-12).

Rehearing Order P 105. And the Commission recognized that “the loss of some mature trees may be unavoidable.” Certificate Order P 58. But the Commission also specifically addressed Mr. Feighner’s alleged injury and determined that there would be no significant impact on the environment, let alone substantial danger to the environment. *See* Rehearing Order P 116 (denying Mr. Feighner’s requested stay and finding no irreparable injury).

With regard to Mr. Feighner’s property in particular, the Commission explained that Pipeline will implement both specialized construction techniques and site-specific residential construction plans that “will minimize disruption to residential areas to the extent practicable and facilitate restoration of these areas as soon as possible upon completion of construction.” Certificate Order P 52; *see also* Rehearing Order P 114. These methods apply to the 16 residences, including Mr. Feighner’s, located within 50 feet of the construction work area. EA at 2-64; *see also id.* at 2-66 to -67 (describing special methods and procedures for construction near residences). Moreover, Pipeline must compensate landowners for temporary and permanent easements, as well as “repair, replace, or compensate landowners for project-related damages.” Certificate Order P 52; Rehearing Order

P 114. In short, Pipeline’s measures to prevent, mitigate and compensate Mr. Feighner ensure that he will not face irreparable harm.

Nonetheless, if the Court finds an irreparable injury, that finding must be balanced against the other stay factors. *See Nken v. Holder*, 556 U.S. 418, 427 (2009) (stay “is not a matter of right, even if irreparable injury might otherwise result”). Here, a thorough environmental analysis of the Project, including the impacts on Mr. Feighner’s property and an assessment of alternatives, was conducted in full compliance with NEPA. Any injury remaining after mitigation is outweighed by the public benefits of enhanced natural gas transportation options that would be reduced, if not eliminated altogether as Project economics change, by a stay.

III. A Stay Will Substantially Injure Other Parties And Is Contrary To The Public Interest

As detailed in the Commission’s January 30 Response to Riverkeeper’s emergency motion, at pp. 18-20, neither of the last two requirements for a stay – “serious adverse effects on other persons” and on the “public interest” – justifies a stay of Project construction. Mr. Feighner presents a myopic view of the “public interest” (Mot. 18), expressing concern for the environmental loss associated with

the Project route – a view not shared by the Park Service.⁶ The Commission, however, in evaluating the Project, considered the broader public interest. And, here, the interests of the public in ensuring adequate supplies of natural gas, especially in the high-demand northeastern United States, and of Pipeline in developing the Project, as conditioned by the Commission, strongly support denying the requested stay.

⁶ The Park Service noted: “Utility Companies normally assert the least environmental impacts result from utilizing utility corridors located in [the Park]. This is flawed logic and can adversely affect the natural and cultural resources in [the Park] as well as the mission of the National Park Service. [T]hese lands belonging to *all of the citizens* of the United States were [] purchased for public enjoyment in perpetuity.” Letter to FERC from Mr. John J. Donahue, Superintendent, National Park Service, FERC Docket No. PF10-23-000 (filed Oct. 8, 2010) (comments on Pipeline’s initial pre-filing proposal to route Project through the National Park).

CONCLUSION

For the foregoing reasons, Mr. Feighner's motion for a stay should be denied.

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February 4, 2013

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), the Court's Administrative Order Regarding Electronic Case Filing, and the Court's January 30, 2013 order in this case, I hereby certify that I have, this 4th day of February, 2013, filed the foregoing with the Court via the Court's CM/ECF system, with the paper copies hand-delivered to the Court by 12:00 p.m. as required by the Court, and served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or U.S. Mail as indicated below.

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