

171 FERC ¶ 61,049  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Adelphia Gateway, LLC

Docket No. CP18-46-002

ORDER DENYING REHEARING AND STAY

(Issued April 17, 2020)

1. On December 20, 2019, the Commission issued an order under section 7 of the Natural Gas Act (NGA)<sup>1</sup> and Parts 157, Subpart F and 284, Subpart G of the Commission's regulations,<sup>2</sup> authorizing Adelphia Gateway, LLC (Adelphia) to acquire, construct, and operate a new interstate pipeline system in Delaware and Pennsylvania (the Adelphia Gateway Project).<sup>3</sup> Delaware Riverkeeper Network and Delaware Riverkeeper (collectively, Delaware Riverkeeper), West Rockhill Township, and Sheila and Daniel McCarthy filed timely requests for rehearing of the Certificate Order.<sup>4</sup> Delaware Riverkeeper and West Rockhill Township also filed requests for stay of the Certificate Order. For the reasons discussed below, we deny the requests for rehearing and stay.

**I. Background**

2. The Adelphia Gateway Project includes the purchasing and repurposing of an existing pipeline and metering facilities owned by Interstate Energy Company, LLC (Interstate Energy) in Pennsylvania and the construction of new pipeline laterals, compressors, and related facilities in Delaware and Pennsylvania.<sup>5</sup> Specifically, Adelphia proposes to purchase and operate: (1) an approximately 84.2-mile-long,

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<sup>1</sup> 15 U.S.C. § 717f(c) (2018).

<sup>2</sup> 18 C.F.R. pts. 157, 284 (2019).

<sup>3</sup> *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (2019) (Certificate Order).

<sup>4</sup> We note that Arianne Elinich filed comments on the Certificate Order but did not file a request for rehearing.

<sup>5</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 4-6.

18-inch-diameter mainline extending from the Marcus Hook Industrial Complex in Delaware County, Pennsylvania, to the Martins Creek Terminal in Northampton County, Pennsylvania; (2) an approximately 4.4-mile-long, 20-inch-diameter mainline originating in Northampton County, Pennsylvania, and terminating at the Martins Creek Terminal; (3) four meter stations; and (4) various appurtenant facilities.<sup>6</sup>

3. Additionally, Adelphia proposes to construct and integrate the following new facilities with the existing facilities: (1) a 5,625-horsepower (hp) compressor station in Delaware County, Pennsylvania, consisting of three 1,875-hp natural gas-fired reciprocating compressor units (Marcus Hook Compressor Station); (2) a 5,625-hp compressor station in Bucks County, Pennsylvania, consisting of three 1,875-hp natural gas-fired reciprocating compressor units (Quakertown Compressor Station); (3) an approximately 0.3-mile-long, 16-inch-diameter lateral extending from the Marcus Hook Compressor Station to an existing meter station owned by Delmarva Power and Light Company (Delmarva)<sup>7</sup> in New Castle County, Delaware (Parkway Lateral);<sup>8</sup> (4) an approximately 4.4-mile-long, 16-inch-diameter lateral extending from the Marcus Hook Compressor Station to interconnections with Transcontinental Gas Pipe Line Company (Transco) and the PECO Energy Company (PECO)<sup>9</sup> in Delaware County, Pennsylvania (Tilghman Lateral);<sup>10</sup> (5) five meter stations; and (6) other appurtenant facilities.<sup>11</sup>

4. Adelphia proposes to operate the project in three zones: Zone North A, Zone North B, and Zone South.<sup>12</sup>

5. Adelphia held an open season between November 2, 2017, and December 8, 2017, for the proposed firm transportation services offered by the project. Lower Mount Bethel

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<sup>6</sup> *Id.* P 4.

<sup>7</sup> Delmarva is a public utility owned by Exelon Corporation (Exelon) providing natural gas and electricity to customers in Delaware and Maryland.

<sup>8</sup> The Parkway Lateral will also interconnect with two interstate natural gas pipelines owned by Columbia Gas Transmission and Texas Eastern Transmission Company, LP.

<sup>9</sup> PECO is a public utility owned by Exelon providing natural gas and electricity to customers in Pennsylvania.

<sup>10</sup> The Tilghman Lateral will also interconnect with the Monroe Refinery.

<sup>11</sup> Certificate Order, 169 FERC ¶ 61,220 at P 6.

<sup>12</sup> *Id.* PP 4-6.

Energy, LLC, and Martins Creek, LLC (collectively, Existing Shippers), have executed binding precedent agreements for firm transportation service totaling 175,000 dekatherms per day (Dth/day) (70% of the capacity) on the Zone North A system and 350,000 Dth/day (100% of the capacity) on the Zone North B system.<sup>13</sup> For the Zone South system, Adelphia has executed binding precedent agreements with two shippers for a total of 122,500 Dth/day of firm transportation service (49% of the zone's capacity).<sup>14</sup> Adelphia states that 22,500 Dth/day will be transported to the interconnect with PECO at the terminus of the Tilghman Lateral and 100,000 Dth/day will be transported to interconnections with existing interstate pipelines for further transportation on the interstate grid. Adelphia also asserts that it is engaged in discussions with various other shippers that submitted bids during the open season.<sup>15</sup>

6. In the Certificate Order, the Commission agreed with the conclusions presented in the Environmental Assessment (EA) and adopted the EA's recommended mitigation measures, as modified in the order.<sup>16</sup> The Certificate Order determined that the Adelphia Gateway Project, if constructed and operated as described in the EA, will not have a significant environmental impact and is required by the public convenience and necessity.<sup>17</sup>

## **II. Procedural Matters**

### **A. Deficient Requests for Rehearing**

7. Sheila and Daniel McCarthy's request for rehearing is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure. Rule 713 states that requests for rehearing must "[s]tate concisely the alleged error in the final decision" and "include a separate section entitled 'Statement of Issues,' listing each issue in a separately enumerated paragraph" that includes precedent relied upon.<sup>18</sup> Any issue not so listed will

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<sup>13</sup> *Id.* P 9 (citing Adelphia February 28, 2018 Answer at 4).

<sup>14</sup> *Id.* (citing Adelphia August 10, 2018 Data Response at 1).

<sup>15</sup> *Id.* (citing Adelphia July 10, 2018 Data Response at 1).

<sup>16</sup> *Id.* P 264.

<sup>17</sup> *Id.* PP 43, 264.

<sup>18</sup> 18 C.F.R. §§ 385.713(c)(1), (2) (2019).

be deemed waived.<sup>19</sup> Accordingly, we dismiss Sheila and Daniel McCarthy's rehearing request.<sup>20</sup> However, the rehearing request raises several of the same issues raised by Delaware Riverkeeper and West Rockhill Township, which are addressed below.

**B. Motion for Stay**

8. Delaware Riverkeeper and West Rockhill Township request that the Commission stay the Certificate Order.<sup>21</sup> Specifically, Delaware Riverkeeper requests that the Commission stay the Certificate Order pending issuance of an order on rehearing. West Rockhill Township provides no discussion, support, or reasons for granting the requested stay. On January 28, 2020, Adelphia filed an answer to Delaware Riverkeeper's and West Rockhill Township's requests for stay. This order addresses and denies Delaware Riverkeeper's and West Rockhill Township's requests for rehearing; accordingly, we dismiss Delaware Riverkeeper's request for stay as moot and deny West Rockhill Township's request for stay.

**C. Answers**

9. On February 4, 2020, Adelphia filed a motion for leave to answer and answer to the requests for rehearing filed by West Rockhill Township and by Sheila and Daniel McCarthy. On February 6, 2020, Adelphia filed a motion for leave to answer and answer to the request for rehearing filed by Delaware Riverkeeper. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>22</sup> prohibits answers to a request for rehearing. Accordingly, we reject Adelphia's filings.

**III. Discussion**

**A. Natural Gas Act**

10. Delaware Riverkeeper argues that the Commission violated the NGA by failing to establish that the Adelphia Gateway Project is required by present or future public

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<sup>19</sup> *Id.* § 385.713(c)(2).

<sup>20</sup> *See, e.g., Boott Hydropower, Inc.*, 143 FERC ¶ 61,159 (2013) (dismissing a request for rehearing that did not include a Statement of Issues and did not identify the specific error alleged).

<sup>21</sup> Delaware Riverkeeper Request for Rehearing and Stay at 148-49; West Rockhill Township Request for Stay at 1.

<sup>22</sup> 18 C.F.R. § 385.713(d)(1).

convenience and necessity.<sup>23</sup> Specifically, Delaware Riverkeeper asserts that the Commission: (1) improperly relied on precedent agreements;<sup>24</sup> (2) failed to find sufficient need for the project in order to prevent overbuilding;<sup>25</sup> (3) did not balance benefits of the project against adverse impacts on existing pipelines and their customers;<sup>26</sup> and (4) did not balance the benefits of the project against adverse impacts on landowners and the environment.<sup>27</sup>

### 1. Precedent Agreements

11. Delaware Riverkeeper asserts that the Commission should not rely solely on precedent agreements to demonstrate project need.<sup>28</sup> Delaware Riverkeeper disagrees with the Commission's policy not to "look behind contracts to determine whether the customer commitments represent genuine growth in market demand" or need.<sup>29</sup>

12. We affirm the Commission's finding in the Certificate Order that precedent agreements are significant evidence of demand for a project.<sup>30</sup> As the court stated

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<sup>23</sup> Delaware Riverkeeper Request for Rehearing and Stay at 8-25.

<sup>24</sup> *Id.* at 9, 17-18.

<sup>25</sup> *Id.* at 9, 12-25.

<sup>26</sup> *Id.* at 14-15.

<sup>27</sup> *Id.* at 25-27, 140-45.

<sup>28</sup> *Id.* at 17.

<sup>29</sup> *Id.* (citing *NE Hub Partners*, 90 FERC ¶ 61,142 (2000)).

<sup>30</sup> Certificate Order, 169 FERC ¶ 61,220 at P 35 (citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement) (precedent agreements, though no longer required, "constitute significant evidence of demand for the project")); *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (affirming Commission reliance on preconstruction contracts for 93% of project capacity to demonstrate market need); *Twp. of Bordentown v. FERC*, 903 F.3d 234, 263 (3d Cir. 2018) ("As numerous courts have reiterated, FERC need not 'look[] beyond the market need reflected by the applicant's existing contracts with shippers.'") (quoting *Myersville Citizens for a Rural Cmty., Inc., v. FERC*, 183 F.3d 1291, 1301, 1311 (D.C. Cir. 2015) (*Myersville*)); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*1 (D.C. Cir. Feb.19, 2019) (unpublished) (precedent agreements are substantial evidence of market need); *see also Midship Pipeline Co., LLC*,

in *Minisink Residents for Environmental Preservation & Safety v. FERC*, and again in *Myersville Citizens for a Rural Community, Inc. v. FERC*, nothing in the Certificate Policy Statement or in any precedent construing it suggests that the policy statement requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's precedent agreements with shippers.<sup>31</sup> As noted above, Adelphia has binding precedent agreements for approximately 76% of the firm transportation capacity of the Adelphia Gateway Project.<sup>32</sup> Thus, there is sufficient evidence in the record to support our finding that the service to be provided by the pipeline is needed.<sup>33</sup>

13. Nevertheless, Delaware Riverkeeper argues that the Commission should look beyond the need for transportation of natural gas in interstate commerce evidenced by the precedent agreements in this proceeding and make a judgement based on how the gas will be used after it is delivered at the end of the pipeline and the interstate transportation is

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164 FERC ¶ 61,103, at P 22 (2018) (long-term precedent agreements for 64% of the system's capacity is substantial demonstration of market demand); *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098, at P 16 (2018) (affirming that the Commission is not required to look behind precedent agreements to evaluate project need); *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 41 (2017), *order on reh'g*, 164 FERC ¶ 61,054 (2018), *aff'd*, *City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 605 (D.C. Cir. 2019) (finding need for a new pipeline system that was 59% subscribed).

<sup>31</sup> *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 110 n.10 (D.C. Cir. 2014); *see also* *Myersville*, 183 F.3d at 1311. Further, Ordering Paragraph (E) of the Certificate Order requires Adelphia to file a written statement affirming that it has executed contracts for service at the levels provided for in their precedent agreements prior to commencing construction. Certificate Order, 169 FERC ¶ 61,220 at ordering para. (E).

<sup>32</sup> *See supra* P 5; Certificate Order, 169 FERC ¶ 61,220 at P 42.

<sup>33</sup> *See, e.g.,* *Midship Pipeline Co., LLC*, 164 FERC ¶ 61,103, at P 22 (2018) (long-term precedent agreements for 64% of the system's capacity is substantial demonstration of market demand); *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022 at P 41, *order on reh'g*, 164 FERC ¶ 61,054 (2018), *aff'd*, *City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 605 (D.C. Cir. 2019) (finding need for a new pipeline system that was 59% subscribed); *Elba Express Co., L.L.C.*, 155 FERC ¶ 61,293, at P 8 (2016) (granting partial waiver where five of six shippers executed contracts, representing approximately 58% of the project's capacity); *Dominion Transmission Inc.*, 136 FERC ¶ 61,031, at P 8 (2011) (granting partial waiver where shippers executed contracts representing approximately 75% of the project's capacity).

completed.<sup>34</sup> However, under current Commission policy, if there are precedent or service agreements, the Commission does not, and need not, make judgments about the needs of individual shippers<sup>35</sup> or the ultimate end use of the commodity, and we see no justification to make an exception to that policy here.

14. We also disagree with Delaware Riverkeeper's assertion that the Commission must examine whether there is an affiliate relationship between Adelphia and its shippers. As the Certificate Order stated, when considering applications for new certificates, the Commission's primary concern regarding affiliates of the pipeline as shippers is whether there may have been undue discrimination against a non-affiliate shipper.<sup>36</sup> Here, Delaware Riverkeeper made no allegation that Adelphia has discriminated against a non-affiliate shipper; nor did Delaware Riverkeeper present evidence that such contracts were manufactured to inflate market demand.<sup>37</sup>

## **2. Market Need**

15. We disagree with Delaware Riverkeeper's assertion that "providing a supply of natural gas pipeline capacity to the Greater Philadelphia industrial region with potential to serve additional markets in the Northeast" implies an industry desire rather than actual public need for the project.<sup>38</sup> Delaware Riverkeeper asserts that there is insufficient demand for natural gas in the Philadelphia and Northeastern markets<sup>39</sup> and construction of the Adelphia Gateway Project will lead to overbuilding.<sup>40</sup>

16. Commission policy is to examine the merits of individual projects and assess whether each project meets the specific need demonstrated. Projections regarding future

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<sup>34</sup> Delaware Riverkeeper Request for Rehearing and Stay at 10.

<sup>35</sup> Certificate Policy Statement, 88 FERC at 61,744 (citing *Transcon. Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)).

<sup>36</sup> Certificate Order, 169 FERC ¶ 61,220 at P 35 n.62; *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085, at P 75 (2018), *order on reh'g*, 169 FERC ¶ 61,134, at P 15 (2019).

<sup>37</sup> Delaware Riverkeeper Request for Rehearing and Stay at 17.

<sup>38</sup> *Id.* at 10.

<sup>39</sup> *Id.* at 10-11 (citing Labyrinth Consulting Services, Inc., *Professional Opinion of Proposed PennEast Pipeline Project* (Feb. 26, 2015); Skipping Stone, *Analysis of Public Benefit Regarding PennEast* (Mar. 9, 2016)).

<sup>40</sup> *Id.* at 19-25.

demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states. Given this uncertainty associated with long-term demand projections, where an applicant has precedent agreements for long-term firm service, the Commission deems the precedent agreements to be the better evidence of demand. Where, as here, it is demonstrated that specific shippers have entered into precedent agreements for project service, the Commission places substantial reliance on those agreements to find that the project's proposed capacity is needed.<sup>41</sup>

17. As the Certificate Order explained, in addition to contracts with shippers, Adelphia presented additional evidence of public need for its project.<sup>42</sup> Here, Adelphia's shippers will provide gas to a variety of end users, including local distribution customers, electric generators, and marketers. The shippers have determined, based on their assessment of the long-term needs of their customers and markets, that there is a market for the natural gas transportation and that the Adelphia Gateway Project is the preferred means for delivering or receiving that gas.<sup>43</sup>

18. Delaware Riverkeeper argues that the Commission cannot justify need for the project because the project's gas may be exported through an LNG terminal at the Marcus Hook industrial area.<sup>44</sup> This argument is without merit. The Certificate Order

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<sup>41</sup> See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 42 (2017), order on reh'g, 163 FERC ¶ 61,197, at PP 35-44 (2018), *aff'd*, *Appalachian Voices v. FERC*, No. 17-1272, 2019 WL 847199 at \*2 (*Mountain Valley*).

<sup>42</sup> Certificate Order, 169 FERC ¶ 61,220 at P 36.

<sup>43</sup> *Id.*; Adelphia Application at 23-24.

<sup>44</sup> Delaware Riverkeeper Request for Rehearing and Stay at 12-14. Delaware Riverkeeper cites to *Sierra Club*, 867 F.3d at 1373, and *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019), to support its proposition that the Commission must consider the exportation of natural gas when determining whether the project is required by the public convenience and necessity. Delaware Riverkeeper Request for Rehearing and Stay at 12-13. Delaware Riverkeeper confuses the issue addressed in both those cases with the issue at hand. The court's holdings in both *Sierra Club* and *Birckhead* speak to the Commission's obligations to estimate downstream emissions from a specific end-use, not whether that end-use is a factor the Commission must consider in making its NGA section 7 finding that the project is in the public convenience and necessity. *Sierra Club*, 867 F.3d at 1371 (where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should "estimate[] the amount of power-plant carbon emissions that the pipelines will make possible."); *Birckhead*,



addressed and dismissed Delaware Riverkeeper's identical claims made in its previous comments on the EA. Thus, we affirm the finding that there is no evidence in the record indicating that the project will be used to transport natural gas for export.<sup>45</sup>

19. Similarly, there is no evidence that the project may provide natural gas service for export from the Cove Point LNG Terminal in Maryland. Delaware Riverkeeper argues that the project may serve the Cove Point LNG Terminal because the project will provide natural gas deliveries at Adelpia's interconnect to Transco in Pennsylvania.<sup>46</sup> Delaware Riverkeeper speculates that this interconnect "provides a means to ship the gas to Cove Point,"<sup>47</sup> but there is no evidence that this is the case, given that there are hundreds of possible delivery points on Transco's system.<sup>48</sup> Accordingly, we deny Delaware Riverkeeper's request.

20. Further, we disagree with Delaware Riverkeeper's continued assertion that the project is not needed due to the Commission's approval of the PennEast Project.<sup>49</sup> Delaware Riverkeeper repeats the same arguments that have already been addressed in

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925 F.3d at 519 (the fact that "emissions from downstream gas combustion are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project.").

<sup>45</sup> Certificate Order, 169 FERC ¶ 61,220 at P 39. Delaware Riverkeeper notes that the Marcus Hook Industrial Complex, which forms a terminus of the project, is a large, international export terminal for hydrocarbons, including crude oil and natural gas liquids. Delaware Riverkeeper Request for Rehearing and Stay at 12. Oil and natural gas liquids are distinct products from LNG and no jurisdictional LNG export terminal interconnects with or is in the vicinity of the project. Certificate Order, 169 FERC ¶ 61,220 at P 39 n.68.

<sup>46</sup> Delaware Riverkeeper Request for Rehearing and Stay at 14.

<sup>47</sup> *Id.*

<sup>48</sup> Transcontinental Gas Corporation's electronic bulletin board lists over 900 receipt and delivery points for its system. *See* <http://www.1line.williams.com/Transco/index.html>.

<sup>49</sup> Delaware Riverkeeper Request for Rehearing and Stay at 18.

the Certificate Order.<sup>50</sup> For the reasons stated in that order,<sup>51</sup> we deny rehearing on this issue.

### **3. Existing Pipelines and Their Customers**

21. Delaware Riverkeeper argues that the Commission did not appropriately balance the benefits of the project against adverse impacts on existing pipelines and their customers.<sup>52</sup> Specifically, Delaware Riverkeeper speculates that the project will facilitate gas service away from the project's high-supply service area to higher priced markets, thereby driving up natural gas prices overall.<sup>53</sup>

22. We disagree. There is nothing in the record to support Delaware Riverkeeper's arguments that prices would rise in any of the markets served by Adelphia. The Certificate Order also stated that Adelphia's project is not intended to replace service on other pipelines, and no pipelines or their customers filed adverse comments regarding Adelphia's proposal.<sup>54</sup> Thus, we affirm the Certificate Order's determination that Adelphia's project will not adversely affect other pipelines or their captive customers.<sup>55</sup>

### **4. Landowner and Environmental Impacts**

23. Delaware Riverkeeper contends that the Commission failed to balance the public need for the project with the harm to landowners and communities. Delaware Riverkeeper claims that if the Commission appropriately balanced these interests, it would have denied the project.<sup>56</sup> Delaware Riverkeeper explains that the Certificate Order failed to balance adverse impacts on property values, agricultural crop production, emergency response services, environmental justice communities, and health, in addition to impacts from greenhouse gas (GHG) emissions.<sup>57</sup>

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<sup>50</sup> Certificate Order, 169 FERC ¶ 61,220 at P 40.

<sup>51</sup> *Id.*; EA at 176-178.

<sup>52</sup> Delaware Riverkeeper Request for Rehearing and Stay at 14-15.

<sup>53</sup> *Id.* at 14.

<sup>54</sup> Certificate Order, 169 FERC ¶ 61,220 at P 22.

<sup>55</sup> *Id.*

<sup>56</sup> Delaware Riverkeeper Request for Rehearing and Stay at 140-45.

<sup>57</sup> *Id.* at 143-44.

24. Delaware Riverkeeper also argues that the Commission has not properly balanced the potential use of eminent domain against the project's public benefits.<sup>58</sup> Delaware Riverkeeper states that Adelphia will use eminent domain to proceed with its project and asserts that affected landowners doubt the project's need, public goals, and environmental effects.<sup>59</sup> As a result, Delaware Riverkeeper claims that the Certificate Order is legally deficient, and Delaware Riverkeeper notes that the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit), in *City of Oberlin, Ohio v. FERC*, recently questioned the Commission's explanation that only Congress, and not the Commission, authorizes the actual taking of private property.<sup>60</sup>

25. Consistent with the Certificate Policy Statement, the need for and benefits derived from the project are balanced against the adverse impacts on landowners.<sup>61</sup> Here, the Commission balanced the concerns of all interested parties and did not give undue weight to the interests of any particular party.<sup>62</sup>

26. Contrary to Delaware Riverkeeper's claim, together the NGA, the Commission's regulations, and the Certificate Policy Statement do not require the Commission to deny a project due to the possible use of eminent domain. The Commission concluded that Adelphia had taken sufficient steps to minimize adverse impacts on landowners and surrounding communities.<sup>63</sup> The Commission considered the number of acres and the land uses affected by the project. More than 95% of the total length of the project's pipeline facilities consists of existing pipeline, and of the 4.7 miles of new pipeline that will be constructed, approximately 81% will be collocated or adjacent to existing rights-of-way.<sup>64</sup> Finally, both compressor stations are proposed at existing facility sites

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<sup>58</sup> *Id.* at 25-27.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 27 (citing *City of Oberlin, Ohio v. FERC*, 937 F.3d at 607).

<sup>61</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744. *See also National Fuel Gas Supply Corp.*, 139 FERC ¶ 61,037, at P 12 (2012) (*National Fuel*).

<sup>62</sup> Certificate Order, 169 FERC ¶ 61,220 at P 24.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; EA at 10.

that Adelphia would own following the acquisition of the facilities from Interstate Energy.<sup>65</sup>

27. Under the NGA, once a certificate has been granted, the certificate holder may obtain needed rights to private property by eminent domain.<sup>66</sup> The Fifth Amendment to the United States Constitution provides that private property may not be taken for public use without just compensation.<sup>67</sup> The D.C. Circuit has confirmed that the Commission's public convenience and necessity finding necessarily satisfies the Fifth Amendment's public-use requirement.<sup>68</sup> Delaware Riverkeeper cites *City of Oberlin, Ohio v. FERC*, but that case is inapplicable. There, the D.C. Circuit questioned whether, given the fact that NGA section 7 authorizes the use of eminent domain, it is lawful for the Commission to credit precedent agreements with foreign shippers serving customers toward a finding that a pipeline is required by the public convenience and necessity.<sup>69</sup> Here, none of the precedent agreements are with foreign shippers serving foreign customers,<sup>70</sup> and there are otherwise no Fifth Amendment implications where the Commission has properly determined that the project was required by the public convenience and necessity.

28. With respect to Delaware Riverkeeper's other assertions, it misunderstands the nature of the balancing required by the Certificate Policy Statement. The Certificate Policy Statement's balancing of adverse impacts and public benefits is an economic test, not an environmental analysis.<sup>71</sup> Only when the benefits outweigh the adverse effects on the economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.<sup>72</sup> In any event, we find that contrary to Delaware Riverkeeper's assertions,<sup>73</sup> the EA adequately analyzed the project's impacts

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<sup>65</sup> Certificate Order, 169 FERC ¶ 61,220 at P 24; EA at 182.

<sup>66</sup> 15 U.S.C. § 717f(h) (2018).

<sup>67</sup> U.S. CONST. amend. V.

<sup>68</sup> See *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000).

<sup>69</sup> *City of Oberlin, Ohio v. FERC*, 937 F.3d at 607.

<sup>70</sup> Certificate Order, 169 FERC ¶ 61,220 at P 39.

<sup>71</sup> *National Fuel*, 139 FERC ¶ 61,037 at P 12.

<sup>72</sup> Certificate Policy Statement, 88 FERC at 61,745.

<sup>73</sup> Delaware Riverkeeper Request for Rehearing and Stay at 143-44.

on property values, agricultural crop production, emergency response services, environmental justice communities, and health, as well as impacts from GHG emissions.<sup>74</sup> As a result, the Commission did not *err* in concluding that if constructed and operated in accordance with Adelphia's application and supplements, and in compliance with the environmental conditions in the appendix of the Certificate Order, the Commission's approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.<sup>75</sup>

29. Based on the foregoing, we affirm the Certificate Order's conclusion that Adelphia demonstrated public need for Adelphia Gateway Project.

## **B. Environmental Impacts**

### **1. Request for an Environmental Impact Statement**

30. Delaware Riverkeeper disagrees with the Certificate Order's determination that preparation of an Environmental Impact Statement (EIS) was not required to evaluate the impacts of the Adelphia Gateway Project.<sup>76</sup> Delaware Riverkeeper asserts that the project will result in numerous unknown impacts as a result of GHG emissions and cumulative impacts related to the project's concurrent operation with the PennEast Project.<sup>77</sup>

31. Under the National Environmental Policy Act (NEPA), agencies must prepare an EIS for major federal actions that may significantly impact the environment.<sup>78</sup> If an agency determines that a federal action is not likely to have significant adverse effects, it may prepare an EA.<sup>79</sup> Additionally, the Commission's regulations state that even for

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<sup>74</sup> EA at 106-07 (discussing impacts to property values); 41 (discussing impacts to agricultural uses); 147-48 (discussing Adelphia's intention to develop an Emergency Response Plan); 107-12 (finding that the Project would not result in high and adverse impacts on vulnerable populations and would not have a disproportionately high and adverse impact on the remaining environmental justice populations in the study area); 27-28 (evaluating the health impacts of the project); 121-32 (discussing impacts from GHG emissions).

<sup>75</sup> Certificate Order, 169 FERC ¶ 61,220 at P 264.

<sup>76</sup> Delaware Riverkeeper Request for Rehearing and Stay 145-48.

<sup>77</sup> *Id.* at 146.

<sup>78</sup> *See* 42 U.S.C. § 4332(2)(C) (2018); 40 C.F.R. § 1502.4 (2019).

<sup>79</sup> 40 C.F.R. §§ 1501.3, 1501.4 (2019). An EA is meant to be a "concise public

major construction projects under NGA section 7, an EA may be prepared first if the Commission believes that a proposed action may not be a major federal action significantly affecting the quality of the human environment.<sup>80</sup>

32. The EA for the Adelphia Gateway Project appropriately considers and discloses the environmental impacts of the project and supports a finding of no significant impact.<sup>81</sup> The EA also describes measures to mitigate anticipated environmental impacts—which the public was able to review and comment upon—and recommends that the Commission incorporate the measures as conditions to the certificate. The Certificate Order found that if the Adelphia Gateway Project is constructed and operated in accordance with Adelphia’s application and supplements, and in compliance with the 27 environmental conditions attached to the Certificate Order, approval of the project proposal would not constitute a major federal action significantly affecting the quality of the human environment.<sup>82</sup> Accordingly, we affirm the Certificate Order’s finding that preparation of an EIS is not necessary for this project.

33. Further, as discussed in more detail below,<sup>83</sup> the Certificate Order discussed the significance of GHG emissions by quantifying GHG emissions,<sup>84</sup> placing those emissions numbers in the context of cumulative emissions from other sources,<sup>85</sup> and discussing the

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document ... that serves to ... [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact.” *Id.* § 1508.9(a).

<sup>80</sup> 18 C.F.R. § 380.6(b) (2019); *see also Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App’x 472, 474 (2d Cir. 2012) (EIS not required for 39-mile-long greenfield pipeline project).

<sup>81</sup> Certificate Order, 169 FERC ¶ 61,220 at P 88; EA at 194.

<sup>82</sup> Certificate Order, 169 FERC ¶ 61,220 at P 264.

<sup>83</sup> *See infra* PP 87-97.

<sup>84</sup> The Commission quantified direct emissions and indirect emissions where it is known that the natural gas transported by the project will be used for a specific end-use combustion. Certificate Order, 169 FERC ¶ 61,220 at PP 254-257.

<sup>85</sup> The Commission compared the Adelphia Gateway Project’s emissions with nation-wide emissions. *Id.* P 255. The Commission concluded that the project will increase Pennsylvania emissions by 0.20 percent and national emissions by 0.01 percent. *Id.*

overall impact of these cumulative emissions.<sup>86</sup> The EA described the federal and state air emission regulatory regimes that will control the project's direct emission sources.<sup>87</sup> The EA stated that there are no applicable ambient standards or emission limits for GHGs under the Clean Air Act,<sup>88</sup> and did not identify any state GHG emission targets. The EA also discussed Adelphia's proposed mitigation measures for construction equipment exhaust<sup>89</sup> and operational emissions from the Quakertown and Marcus Hook Compressor Stations.<sup>90</sup> As explained below, the Commission determined that it cannot adequately assess the significance of GHG emissions. And, the Commission has stated in prior proceedings that the Social Cost of Carbon is not an appropriate tool, and mere numbers produced by that tool, do not provide context to determine significance.<sup>91</sup> These findings do not require us to prepare an EIS. If the Commission were to prepare an EIS, the EIS would reiterate the discussion of GHG emissions and climate change set forth in the EA. This would neither enhance agency decision making nor result in more meaningful public comment. As the Council on Environmental Quality has explained, "NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action."<sup>92</sup>

## 2. Purpose and Need

34. Delaware Riverkeeper argues that the Commission improperly adopted Adelphia's assertion of need, claiming that it is largely a statement of industry need and desires rather than true public need for the project.<sup>93</sup> Delaware Riverkeeper argues that the EA's statement of need does not give the public an adequate intent, purpose, or rationale for

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<sup>86</sup> *Id.* PP 254-257; EA at 169-72.

<sup>87</sup> EA at 117-132, 169-172.

<sup>88</sup> *Id.* at 119.

<sup>89</sup> *Id.* at 124 (discussing Adelphia's proposed idling limitations).

<sup>90</sup> *Id.* at 126-27 (discussing that Adelphia will follow the U.S. Environmental Protection Agency's voluntary Natural Gas STAR program and comply with current leak detection and repair requirements).

<sup>91</sup> *Supra* P 90 and note 286.

<sup>92</sup> 40 C.F.R. § 1500.1(c) (2019).

<sup>93</sup> Delaware Riverkeeper Request for Rehearing and Stay at 9.

the project and does not fairly balance the alleged need for the project with its adverse impacts.<sup>94</sup>

35. The Council on Environmental Quality (CEQ) regulations for implementing NEPA require only that an EA include a brief discussion of the need for the proposal.<sup>95</sup> The function of an EA's purpose and need statement is to define the objectives of the proposed action such that the agency can identify and consider legitimate alternatives.<sup>96</sup> The EA specified that the "Commission does not direct the development of the gas industry's infrastructure regionally or on a project-by-project basis, or define an applicant's stated purpose."<sup>97</sup>

36. Delaware Riverkeeper appears to conflate the description of the purpose of and need for the project in the EA, as required by NEPA, with the Commission's determination of "public need" under the public convenience and necessity standard of NGA section 7(c). When determining "public need," the Commission balances public benefits, including market need, against project impacts.<sup>98</sup> The EA appropriately explained that it was not a "decision document," and that, under NGA section 7(c), the final determination of the need for the project lies with the Commission.<sup>99</sup> Neither NEPA nor the NGA requires the Commission to make its determination of whether the project is required by the public convenience and necessity before the Commission issues its order on the project.

### 3. Alternatives

#### a. Scope of Alternatives Analysis

37. Delaware Riverkeeper argues that the Commission defined the Adelphia Gateway Project's purpose too narrowly, effectively eliminating evaluation of reasonable alternatives, in violation of NEPA.<sup>100</sup> Specifically, Delaware Riverkeeper contends that

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<sup>94</sup> *Id.* at 10.

<sup>95</sup> 40 C.F.R. § 1508.9 (2019).

<sup>96</sup> *Colo. Enviro. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

<sup>97</sup> EA at 2.

<sup>98</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 20-43.

<sup>99</sup> EA at 2.

<sup>100</sup> Delaware Riverkeeper Request for Rehearing and Stay at 133 (citing *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664 (7th Cir. 1997); *Nat'l Parks & Cons. Ass'n v.*



the EA's alternatives analysis ensured that only natural gas projects could be considered alternatives because the project's purpose was defined as providing natural gas rather than "energy generally."<sup>101</sup> Delaware Riverkeeper asserts that the evaluation of other energy projects, such as renewable energy or conservation, is required by NEPA,<sup>102</sup> particularly in light of changing energy markets.<sup>103</sup> Moreover, Delaware Riverkeeper repeats its previous argument that the alternatives section's definition of the project purpose is substantially more strict than the one articulated in the Purpose and Scope section in the beginning of the EA and argues that the Certificate Order wrongly concludes that there was no substantial difference between the two.<sup>104</sup>

38. Delaware Riverkeeper repeats the same arguments that have already been addressed in the Certificate Order.<sup>105</sup> For the reasons stated in that order,<sup>106</sup> we deny rehearing on this issue.

**b. No-Action Alternative**

39. Next, Delaware Riverkeeper asserts that the EA failed to support its denial of the discussed alternatives, including the no action alternative.<sup>107</sup> Specifically, Delaware Riverkeeper contends that the EA wrongly concludes that if Adelpia does not convert the existing pipeline into natural gas service, another pipeline will be built.<sup>108</sup> Delaware Riverkeeper argues that such a conclusion assumes that the project is needed despite

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*Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2009); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (*Busey*)).

<sup>101</sup> *Id.* at 134-35.

<sup>102</sup> *Id.* at 135-36 (citing *Busey*, 938 F.2d at 196), 137.

<sup>103</sup> *Id.* at 136 (citing Key-Log Economics, LLC, *Economic Costs of the PennEast Pipeline* (January 2017)).

<sup>104</sup> *Id.* at 134-35.

<sup>105</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 100-101.

<sup>106</sup> *See, e.g., id.* at ordering para. (E).

<sup>107</sup> Delaware Riverkeeper Request for Rehearing and Stay at 136.

<sup>108</sup> *Id.* at 137.

other analyses that demonstrate that there is no need for another pipeline in the Northeast.<sup>109</sup>

40. Delaware Riverkeeper repeats the same arguments that have already been addressed in the Certificate Order.<sup>110</sup> For the reasons stated in that order,<sup>111</sup> we deny rehearing on this issue.

**c. System Alternatives**

41. Delaware Riverkeeper next claims that the EA improperly dismissed existing natural gas transmission pipeline projects as system alternatives to the Adelpia Gateway Project.<sup>112</sup> Delaware Riverkeeper argues that the assertion that the capacity of these existing projects is not adequate to meet the demand for the Adelpia Gateway Project is not supported because the Commission does not ensure that actual need exists through verifying shippers, market demand, and alternatives.<sup>113</sup> Delaware Riverkeeper contends that by failing to sufficiently examine alternatives other than natural gas pipelines, the Commission violates the NGA's overriding purpose "to protect consumers against exploitation at the hands of natural gas companies."<sup>114</sup>

42. As explained in the Certificate Order, the EA analyzed whether existing natural gas transmission pipelines in the project area could be used as system alternatives for the Adelpia Gateway Project and concluded that these existing pipeline systems are fully subscribed and cannot provide the additional firm transportation service to the area that Adelpia is proposing to serve.<sup>115</sup> With respect to Delaware Riverkeeper's assertion that the Commission fails to verify the market demand for the project, the Commission requires that prior to construction of a pipeline project, the pipeline company must execute firm contracts for the capacity levels and terms of service represented in the

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<sup>109</sup> *Id.*

<sup>110</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 102-103.

<sup>111</sup> *Id.* P 103.

<sup>112</sup> Delaware Riverkeeper Request for Rehearing and Stay at 137.

<sup>113</sup> *Id.* at 137-38.

<sup>114</sup> *Id.* at 138 (quoting *United Distrib. Co. v. FERC*, 88 F.3d 1105, 1122 (D.C. Cir. 1996)).

<sup>115</sup> Certificate Order, 169 FERC ¶ 61,220 at P 40 (citing EA at 176-78).

signed precedent agreements.<sup>116</sup> Thus, demand for a project, which is demonstrated during the certificate proceeding with signed precedent agreements, is verified through the execution of firm contracts.

**d. Alternatives to Above-Ground Facilities**

43. Next, Delaware Riverkeeper argues that the EA improperly limited the analysis of alternatives to the compressor stations, meter stations, blowdown assembly valves, and mainline valves to only those alternatives that were raised by the public.<sup>117</sup> Delaware Riverkeeper states that its scoping comment expressed concerns regarding the proximity of blowdown valves in Chester County, Pennsylvania, and this comment should have prompted a discussion of potential alternatives that would lead to not locating these facilities so close together.<sup>118</sup>

44. Delaware Riverkeeper further asserts that the EA's analysis of alternatives to the compressor stations, meter stations, blowdown assembly valves, and mainline valves was itself inadequate and the Commission arbitrarily denied the alternatives as infeasible despite the possibility that such alternatives would help to substantially reduce the environmental impacts of the project.<sup>119</sup> Delaware Riverkeeper argues that the EA wrongly dismisses, for example, alternatives to the Quakertown Compressor Station and Paoli Pike Blowdown Assembly Valve because the alternatives would require more construction.<sup>120</sup> Delaware Riverkeeper contends that the EA relies only on conclusory statements that any extra construction would make other benefits inconsequential, such as in the case of an alternative that would avoid bog turtle habitat, but double the amount of land disturbance.<sup>121</sup>

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<sup>116</sup> See, e.g., *id.* at Ordering Para. (E).

<sup>117</sup> Delaware Riverkeeper Request for Rehearing and Stay at 138.

<sup>118</sup> *Id.* at 139.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

45. Delaware Riverkeeper repeats the same arguments that have already been addressed in the Certificate Order.<sup>122</sup> For the reasons stated in that order,<sup>123</sup> we deny rehearing on this issue.

**e. Electric-Driven Compression Alternative**

46. Delaware Riverkeeper next asserts that the Commission's evaluation of electric-driven compression was deficient because the Commission's reasoning relies on the industry's preference for gas-driven engines.<sup>124</sup> Delaware Riverkeeper further notes that despite refusing to consider upstream production impacts from the project, when considering the electric-driven compressor alternative, the Commission states that it cannot determine what the benefit of electric-driven compression would be because of the effect of upstream emissions as a result of higher loads on the electric system.<sup>125</sup>

47. We disagree that the Certificate Order primarily relied on "industry preference" in not recommending the use of electric-driven compressor units. Although the Certificate Order did state that "operators generally prefer gas-driven units for providing reliable, uninterrupted natural gas transmission," the Certificate Order also cited, in rejecting the electric-driven compressor alternative, the need to install about 0.7 mile of an additional dedicated feeder connection from the nearest substation<sup>126</sup> and the need for additional acreage at the compressor station site to accommodate a larger main transformer, auxiliary transformer, additional electrical equipment, and additional generators for backup power needs for electric-driven compressor units.<sup>127</sup>

48. With respect to air emissions, Delaware Riverkeeper mischaracterizes the findings of the Certificate Order. The Certificate Order states that the Commission is unable to determine whether electric-driven units would "result in *lower or higher* emissions from electric power generating stations because there is nothing in the record on the specific source of electricity that would power the alternative electric-driven compressor unit."<sup>128</sup>

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<sup>122</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 104-107.

<sup>123</sup> *Id.* PP 105, 107.

<sup>124</sup> Delaware Riverkeeper Request for Rehearing and Stay at 140.

<sup>125</sup> *Id.*

<sup>126</sup> Certificate Order, 169 FERC ¶ 61,220 at P 114.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* P 119 (emphasis added).

Thus, these emissions were not a factor in the Commission's determination that the use of electric-driven units would not provide a significant environmental advantage over Adelphia's proposed use of gas-driven units.

**f. Salford Alternative Site**

49. West Rockhill Township and Sheila and Daniel McCarthy argue that the EA wrongly rejected the Salford Alternative Site as the preferred alternative location for the Quakertown Compressor Station.<sup>129</sup> West Rockhill Township notes that the EA misidentifies the Salford Alternative Site as being 2.3 acres when in fact it is nearly 42 acres, and thus would be consistent with the guidelines for the size of compressor station sites.<sup>130</sup> West Rockhill Township further notes that the Quakertown Compressor Station site is immediately adjacent to land zoned for residential purposes and the Commission did not consider the safety implications of having a small compressor site in close proximity to residences.<sup>131</sup> Similarly, Sheila and Daniel McCarthy state that the EA finds that the Salford Alternative Site would be in closer proximity to residences, but they believe that there are residences closer to the proposed site.<sup>132</sup>

50. In the EA, Commission staff found that the Salford Alternative Site would not provide a significant environmental advantage over the proposed site because the alternative site would require additional compression, resulting in increased air emissions.<sup>133</sup> Further, regardless of whether the compressor station was moved, an above-ground facility (the Quakertown Meter Station) would still be located at the Quakertown Compressor Station site.<sup>134</sup> In addition, West Rockhill Township is

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<sup>129</sup> West Rockhill Township Request for Rehearing at 4; Sheila McCarthy and Daniel McCarthy Request for Rehearing at 4.

<sup>130</sup> West Rockhill Township Request for Rehearing at 4 (citing FEMA and DOT/PHMSA, Hazard Mitigation Planning: Practices for Land Use Planning and Development Near Pipelines (2015)).

<sup>131</sup> *Id.* at 5.

<sup>132</sup> Sheila and Daniel McCarthy note that there is a building that may contain a residence 900 feet from the Salford site and a single residence 1,200 feet from the site. They note that there is also a group of residences approximately 0.5-mile away. For the proposed site, Sheila and Daniel McCarthy state that the nearest comparable group of residences is closer, approximately 0.25-mile away. Sheila and Daniel McCarthy Request for Rehearing at 4-5.

<sup>133</sup> EA at 184.

<sup>134</sup> The Quakertown site is the location where the Adelphia Gateway Project

mistaken in asserting that the Salford Alternative Site is over 40 acres. Adelphia identified the size of the Salford site, which includes an existing industrial facility (Salford Reheating Station), as 2.3 acres.<sup>135</sup> In any event, as discussed above, the site was not considered the preferred alternative because it would result in increased air emissions.

51. With respect to concerns about safety, Adelphia is required by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA) to develop an emergency response plan prior to operation, which includes: (1) receiving, identifying, and classifying emergency events, gas leakage, fires, explosion, and natural disasters; (2) establishing and maintaining communications with local, fire, police, and public officials, and coordinating emergency response; (3) emergency system shutdown and safe restoration of service; (4) making personnel, equipment, tools, and materials available at the scene of an emergency; and (5) protecting people first and then property, and making them safe from actual or potential hazards.<sup>136</sup> Therefore, the EA and Certificate Order conclude that operation of the facility represents a minimal increase in risk to the public, and we affirm this finding.<sup>137</sup>

52. Regarding, Sheila and Daniel McCarthy's concern about nearby residences, petitioners misread the EA, which acknowledges that the Salford Alternative Site would be further from the closest residence than the proposed site.<sup>138</sup> Despite this, Commission staff found that, on balance, the alternative site would not offer a significant environmental advantage, and we agree with this conclusion.

53. Next, West Rockhill Township contends that while the EA states that additional horsepower would be required to operate the compressor station at the Salford Alternative Site, the EA did not disclose whether less horsepower would then be required at Adelphia's other proposed compressor station, the Marcus Hook Compressor Station, offsetting any additional horsepower required by utilizing the Salford Alternative Site.<sup>139</sup>

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interconnects with Texas Eastern Transmission Company, LP's existing natural gas pipeline system.

<sup>135</sup> EA at 184; Adelphia June 18, 2018 Data Response at 267 (RR01- Figure 10-10b).

<sup>136</sup> EA at 147-48.

<sup>137</sup> Certificate Order, 169 FERC ¶ 61,220 at P 226; EA 144-48.

<sup>138</sup> EA at 184.

<sup>139</sup> West Rockhill Township Request for Rehearing at 6.

Sheila and Daniel McCarthy believe that the EA rejected the Salford Alternative Site because of the costs associated with the additional compression needed, even though there was no quantitative cost comparison.<sup>140</sup>

54. In analyzing the additional compression requirements for the Salford Alternative Site, Adelphia states that more compression is needed because the inlet pressure to the station would be lower.<sup>141</sup> Thus, there are no offsetting reductions at the downstream Marcus Hook Compressor Station. In addition, Sheila and Daniel McCarthy are mistaken in asserting that Commission staff considered the cost of additional compression. The EA does not discuss additional cost, citing only to the increased air emissions that would result from additional compression.<sup>142</sup>

55. Last, West Rockhill Township also argues that the EA failed to consider the fact that high voltage electricity is already available at the Salford Alternative Site even though the Commission rejected the use of electric-driven compression at the Quakertown site because of, in part, the need for a new high voltage transmission line to serve the site.<sup>143</sup>

56. As discussed above, the Commission considered a variety of factors in rejecting the Salford Alternative Site, including the use of electric-driven compression. Even if a dedicated electric feeder line was not required, the use of electric-driven compression would still require additional acreage at the compressor station site to accommodate a larger main transformer, auxiliary transformer, additional electrical equipment, and additional generators for backup power needs for electric-driven compressor units.<sup>144</sup>

#### **4. Land Use and Visual Impacts**

##### **a. Size of Quakertown Compressor Station Parcel**

57. Delaware Riverkeeper, West Rockhill Township, and Sheila and Daniel McCarthy challenge the Commission's basis for permitting the Quakertown Compressor Station on

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<sup>140</sup> Sheila and Daniel McCarthy Request for Rehearing at 5.

<sup>141</sup> Adelphia June 18, 2018 Data Response at 131; *see also* Adelphia October 2, 2018 Data Response at 60 (noting that the Salford Alternative Site would require approximately 30% more horsepower).

<sup>142</sup> EA at 184.

<sup>143</sup> West Rockhill Township Request for Rehearing at 6.

<sup>144</sup> EA at 186.

a 1.5-acre parcel.<sup>145</sup> Specifically, Sheila and Daniel McCarthy contend that the 1.5-acre parcel does not provide a sufficient buffer between their property and the Quakertown Compressor Station.<sup>146</sup> West Rockhill Township argues that the Commission should require a 40-acre buffer between the Quakertown Compressor Station and other active uses.<sup>147</sup> West Rockhill Township and Sheila and Daniel McCarthy contend that there is no analysis in the EA or the Certificate Order explaining why the 10- to 40-acre size recommendation set forth in the Commission's, the U.S. Department of Homeland Security's Federal Emergency Management Agency's (FEMA), and PHMSA's publications should not govern the project plot size needed for a natural gas compressor station.<sup>148</sup>

58. Petitioners repeat the same arguments that have already been addressed in the Certificate Order and the EA.<sup>149</sup> For the reasons stated in that order and the EA,<sup>150</sup> we deny rehearing on this issue.

59. Next, West Rockhill Township contends that the EA and Certificate Order do not recognize the magnitude of the environmental, safety, and nuisance impacts from the proposed Quakertown Compressor Station compared to the impacts associated with the pre-existing meter station.<sup>151</sup> West Rockhill Township argues that even if the Commission does not require larger distances from a sited compressor station than what is required by FEMA and PHMSA, it must identify and discuss the implication of allowing industrial activities immediately adjacent to residential properties.<sup>152</sup> West

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<sup>145</sup> Delaware Riverkeeper Request for Rehearing and Stay at 51; West Rockhill Township Request for Rehearing at 2; Sheila and Daniel McCarthy Request for Rehearing at 4.

<sup>146</sup> Sheila and Daniel McCarthy Request for Rehearing at 4.

<sup>147</sup> West Rockhill Township Request for Rehearing at 3.

<sup>148</sup> *Id.* at 2; Sheila and Daniel McCarthy Request for Rehearing at 4.

<sup>149</sup> Certificate Order, 169 FERC ¶ 61,220 at P 127; EA at 28.

<sup>150</sup> Certificate Order, 169 FERC ¶ 61,220 at P 127; EA at 28.

<sup>151</sup> West Rockhill Township Request for Rehearing at 3.

<sup>152</sup> *Id.* at 3-4.



Rockhill Township contends that the Quakertown Compressor Station's safety is not addressed.<sup>153</sup>

60. We disagree. As explained in the EA, the Quakertown Compressor Station will be designed, constructed, tested, operated, and maintained pursuant to federal safety standards.<sup>154</sup> We dismiss claims that the Commission did not review the fact that the Quakertown Compressor Station would be located adjacent to residential property.<sup>155</sup> To the contrary, the Certificate Order and EA identified 22 structures and 15 residences that are within 50 feet of construction workspaces for the project as a whole.<sup>156</sup> The EA also described the mitigation measures Adelphia would undertake to minimize impacts to these structures and residences and concluded impacts on residences would not be significant.<sup>157</sup> Further, Adelphia must comply with PHMSA's minimum standards for operating and maintaining pipeline facilities, including requirements to establish an emergency plan and requirements for valve placement.<sup>158</sup> These standards, administered by PHMSA, include safety regulations and other approaches to risk management that ensure safety in the operation, maintenance, and emergency response of pipeline facilities.<sup>159</sup> Accordingly, the Certificate Order concluded and we affirm that the proposed Quakertown Compressor Station "would not result in significant impacts on the existing land use, viewshed, air quality, noise, and safety environment surrounding the proposed site."<sup>160</sup>

61. Finally, West Rockhill Township takes issue with the Certificate Order's and EA's direction for Adelphia to coordinate with local, county, and state government regarding land use activities and right-of-way.<sup>161</sup> West Rockhill Township contends that the township, through its zoning and land use planning authority, is not required to restrict

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<sup>153</sup> *Id.* at 3.

<sup>154</sup> EA at 143-144, 148.

<sup>155</sup> Certificate Order, 169 FERC ¶ 61,220 at P 226, 228.

<sup>156</sup> *Id.* P 228; EA at 91-92, Table B-15.

<sup>157</sup> Certificate Order, 169 FERC ¶ 61,220 at P 228; EA at 92-93.

<sup>158</sup> 49 C.F.R. § 192.179 (2019).

<sup>159</sup> Certificate Order, 169 FERC ¶ 61,220 at P 219.

<sup>160</sup> *Id.* P 111.

<sup>161</sup> West Rockhill Township Request for Rehearing at 4.

the lawful use of private property to accommodate this type of project.<sup>162</sup> West Rockhill Township misunderstands the Certificate Order. The Certificate Order did not ask the township to restrict or impose limitations on private property. Rather, to the extent that there are local or state permits requirements applicable to project activities, the Commission encourages applicants to file for and receive the local and state permits, in good faith, as stewards of the community in which the facilities are located.<sup>163</sup>

**b. Visual Impacts**

62. Sheila McCarthy and Daniel McCarthy assert that the Quakertown Compressor Station will result in visual impacts on their adjacent parcel of land and express concern as to the adequacy of Adelphia's visual screening mitigation measures.<sup>164</sup> Sheila McCarthy and Daniel McCarthy contend that they were not contacted by Adelphia regarding visual screening measures, which is likely attributable to a mistake on the landowner mailing list.<sup>165</sup> Sheila McCarthy and Daniel McCarthy argue that Environmental Condition 22 requires Adelphia to consult with West Rockhill Township on visual screening impacts, but their residence is located in Richland Township, and thus, their input on visual screening may be precluded.<sup>166</sup>

63. As the EA stated, the landowner mailing list has been continually updated throughout the environmental review process and currently includes Sheila McCarthy and Daniel McCarthy. We note that Sheila McCarthy and Daniel McCarthy are aware of the project's proximity to their property and have participated in the proceeding.<sup>167</sup>

64. Sheila McCarthy and Daniel McCarthy's home is surrounded by thick vegetation that acts as a natural barrier between their home and the proposed Quakertown Compressor Station.<sup>168</sup> To account for any visual disturbances, Environmental Condition 22 requires Adelphia to develop a visual screening plan to mitigate the visual impacts from the Quakertown Compressor Station on nearby residential developments in

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<sup>162</sup> *Id.* at 4.

<sup>163</sup> Certificate Order, 169 FERC ¶ 61,220 at P 98.

<sup>164</sup> Sheila and Daniel McCarthy Request for Rehearing at 4.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> EA at 26.

<sup>168</sup> *Id.* at Appendix K-2; Figure 1.

consultation with West Rockhill Township.<sup>169</sup> However, we find that residents of Richland Township, like Sheila McCarthy and Daniel McCarthy, could experience a similar level of visual impacts from the compressor station. Accordingly, we amend Environmental Condition 22 (as noted in Ordering Paragraph (F)) to require Adelphia to develop visual screening measures for the Quakertown Compressor Station in consultation with both West Rockhill Township and Richland Township.

## **5. Waterbodies and Wetlands**

65. Delaware Riverkeeper asserts the Commission failed to properly assess and consider impacts on water resources.<sup>170</sup>

66. As discussed in the Certificate Order,<sup>171</sup> Adelphia will avoid or minimize potential impacts on water resources through adherence to several project-specific plans, including, but not limited to: the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan); Adelphia's Procedures, which are based on the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures); an Inadvertent Return Contingency Plan; a Spill Prevention, Control, and Countermeasures Plan; an Erosion and Sediment Control Plan; an Unanticipated Discovery of Contamination Plan; and a Sampling and Analysis Plan for the Tilghman and Parkway Laterals.<sup>172</sup> On rehearing, Delaware Riverkeeper does not demonstrate error with the finding that construction and operation of the Adelphia Gateway Project in accordance with these measures would not result in significant impacts on water resources.

67. Delaware Riverkeeper asserts that the Commission's approval of the Adelphia Gateway Project despite the lack of a Clean Water Act section 401<sup>173</sup> certification is contrary to the plain language of the Clean Water Act. This is not correct. The Commission may issue certificates conditioned upon subsequent receipt of other governmental agency permits necessary to pipeline construction, including a water quality certification under the Clean Water Act.<sup>174</sup>

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<sup>169</sup> Certificate Order, 169 FERC ¶ 61,220 at P 128, Environmental Condition 22.

<sup>170</sup> Delaware Riverkeeper Request for Rehearing and Stay at 52-65.

<sup>171</sup> Certificate Order, 169 FERC ¶ 61,220 at P 136.

<sup>172</sup> EA at 55-56.

<sup>173</sup> 33 U.S.C. § 1341(a) (2018).

<sup>174</sup> See, e.g., *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 397-99 (D.C. Cir. 2017).

68. Delaware Riverkeeper asserts that the EA contained incomplete information.<sup>175</sup> However, the matters cited by Delaware Riverkeeper were addressed in the Certificate Order or otherwise lack merit. First, Delaware Riverkeeper states that Adelphia proposes to cross a wetland to access the Perkiomen Creek blowdown assembly valve without providing mitigation measures.<sup>176</sup> But Environmental Condition 17 requires Adelphia to file for review and approval site-specific justification for operational use of wetlands to access the Perkiomen Creek blowdown assembly valve, or identify an alternative access route for use during operation that avoids impacts on wetlands.<sup>177</sup> Second, Delaware Riverkeeper asserts that the EA lacked a wetland delineation for a portion of the Tilghman Lateral,<sup>178</sup> but ignores the EA's conclusion that a "desktop review has indicated that no wetlands are within the proposed right-of-way for the pipeline lateral."<sup>179</sup> Delaware Riverkeeper does not dispute this finding. Third, Delaware Riverkeeper asserts the Commission lacks information about a diversion ditch to manage stormwater flow from the Transco Meter Station into a nearby wetland.<sup>180</sup> However, Delaware Riverkeeper ignores Environmental Condition 16 that requires Adelphia to file for review and approval the results of consultation with the Pennsylvania Department of Environmental Protection (Pennsylvania DEP) and the Delaware County Conservation District to identify any potential alternative stormwater management configuration at the Transco Meter Station that will not result in impacts on nearby wetlands.<sup>181</sup> Fourth, Delaware Riverkeeper states Adelphia failed to address mitigation for inadvertent release of drilling fluid in areas of existing contamination.<sup>182</sup> But Delaware Riverkeeper ignores Environmental Condition 15 that requires a revised Inadvertent Return Contingency

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<sup>175</sup> Delaware Riverkeeper Request for Rehearing and Stay at 53-54.

<sup>176</sup> *Id.* at 54 (citing EA at 66).

<sup>177</sup> *See* Certificate Order, 169 FERC ¶ 61,220 at P 164.

<sup>178</sup> *Id.*

<sup>179</sup> EA at 63.

<sup>180</sup> Delaware Riverkeeper Request for Rehearing and Stay at 54 (citing EA at 61).

<sup>181</sup> Certificate Order, 169 FERC ¶ 61,220 at P 167. Later, Delaware Riverkeeper asserts that Adelphia is not in compliance with the Wetland and Waterbody Construction and Mitigation Procedures and Erosion and Sediment Control Plans. Delaware Riverkeeper Request for Rehearing and Stay at 64. But, again, Delaware Riverkeeper ignores Environmental Condition 16.

<sup>182</sup> Delaware Riverkeeper Request for Rehearing and Stay at 54 (citing EA at 50).

Plan.<sup>183</sup> Finally, Delaware Riverkeeper states that agency consultations regarding construction of the Tilghman and Parkway Laterals in the Marcus Hook area are still ongoing and that sampling results from contaminated site investigation activities have not been provided.<sup>184</sup> However, Delaware Riverkeeper ignores Environmental Condition 14, which requires Adelphia to file for approval a final Sampling and Analysis Plan for the Tilghman and Parkway Laterals.<sup>185</sup>

69. Delaware Riverkeeper questions the degree to which problems may arise during the proposed crossing of Marcus Hook Creek using horizontal directional drilling.<sup>186</sup> Delaware Riverkeeper cites incidents of non-compliance at other projects and argues these incidents of non-compliance demonstrate a failure to protect water resources.<sup>187</sup> In particular, Delaware Riverkeeper cites anecdotal evidence of inadvertent returns from Sunoco's Mariner East 2 pipeline and others.<sup>188</sup> With regard to that specific claim, we note that Delaware Riverkeeper fails to address geological differences between the Sunoco project and the Adelphia Gateway Project.<sup>189</sup>

70. In any event, Delaware Riverkeeper's anecdotal references to non-compliance at other projects do not demonstrate that the Certificate Order's mitigation measures are inadequate. First, we note that Adelphia will cross Marcus Hook Creek using horizontal directional drill methods in accordance with Adelphia's Procedures and Erosion and Sediment Control Plan.<sup>190</sup> Further, impacts on groundwater from horizontal direction drill operations would be minimized by the use of fluid additives certified for conformance with National Sanitation Foundation and American National Standards

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<sup>183</sup> Certificate Order, 169 FERC ¶ 61,220 at P 139.

<sup>184</sup> Delaware Riverkeeper Request for Rehearing and Stay at 54 (citing EA at 49-50).

<sup>185</sup> See Certificate Order, 169 FERC ¶ 61,220 at PP 139.

<sup>186</sup> Delaware Riverkeeper Request for Rehearing and Stay at 55-56.

<sup>187</sup> *Id.* at 56 (stating that it observed horizontal directional drilling violations in the Mariner East 2 pipeline in Delaware County; the Tennessee Gas Pipeline 300 Line upgrade, Northeast Upgrade, and Orion Project (which crossed the Lackawaxen River); and the Atlantic Sunrise Pipeline).

<sup>188</sup> *Id.* at 56.

<sup>189</sup> Certificate Order, 169 FERC ¶ 61,220 at P 141.

<sup>190</sup> See Certificate Order, 169 FERC ¶ 61,220 at PP 123.

Institute Standard 60, acceptable by Pennsylvania DEP Horizontal Directional Drilling Guidance.<sup>191</sup> In addition, drilling fluids, primarily composed of non-hazardous and non-toxic bentonite clay, can act to seal the walls of the borehole and minimize the amount of drilling fluid released into the surrounding geologic formations.<sup>192</sup> Finally, Adelphia is required to comply with its Inadvertent Return Contingency Plan,<sup>193</sup> which includes measures to prevent, contain, and mitigate any inadvertent returns from HDD activities.<sup>194</sup> On rehearing, Delaware Riverkeeper does not identify specific concerns with the mitigation measures that we require. Further, impacts on groundwater from horizontal direction drill operations would be minimized by the use of fluid additives certified for conformance with National Sanitation Foundation and American National Standards Institute Standard 60, acceptable by Pennsylvania DEP Horizontal Directional Drilling Guidance.<sup>195</sup> As discussed in part above, the Certificate Order addressed potential impacts resulting from horizontal directional drilling, including mitigation measures to minimize impacts.<sup>196</sup> In addition, Delaware Riverkeeper overlooks the Commission's compliance inspection and monitoring for addressing unanticipated issues, including those related to water resources.<sup>197</sup> Adelphia will train construction personnel, including construction management and environmental inspectors, on all mitigation measures.<sup>198</sup> Adelphia has committed to employing at least five environmental inspectors during construction and restoration.<sup>199</sup> These environmental inspectors will have the authority to (1) stop activities that violate the Adelphia Gateway Project's environmental conditions and (2) order appropriate corrective action.<sup>200</sup>

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<sup>191</sup> *Id.* P 141; EA at 55.

<sup>192</sup> EA at 55.

<sup>193</sup> Certificate Order, 169 FERC ¶ 61,220 at P 136.

<sup>194</sup> EA at 22.

<sup>195</sup> *Id.* P 141; EA at 55.

<sup>196</sup> *Id.* PP 140-41.

<sup>197</sup> EA at 24.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

71. Monitoring for compliance with environmental measures does not end with construction. The compliance inspection and monitoring continues during post-construction to document restoration and revegetation of the rights-of-way and other disturbed areas and to address any landowner concerns.<sup>201</sup> In addition, Adelpia will monitor wetlands and upland areas, and submit reports documenting the status of revegetation in disturbed areas.<sup>202</sup> As described in the EA, “[t]hese reports would describe the results of post-construction inspections, any problem areas, landowner/agency concerns, and corrective actions taken.”<sup>203</sup> In particular, with regard to wetlands, Adelpia will file a wetland revegetation monitoring report after the completion of construction, and will continue to file monitoring reports on an annual basis thereafter until revegetation efforts are considered successful.<sup>204</sup> Finally, Commission staff will periodically inspect the Adelpia Gateway Project throughout construction and restoration to independently audit the environmental inspectors to ensure compliance with the Certificate Order and its conditions.<sup>205</sup> Commission staff will continue to monitor and inspect the vegetation along the project route until restoration and revegetation are deemed successful.<sup>206</sup> We find that the Certificate Order’s environmental compliance inspection and monitoring measures assure that the certificate’s mitigation measures will in fact minimize impacts on water and other resources.

72. Delaware Riverkeeper expresses concern that sedimentation and increased turbidity will impact water quality in streams.<sup>207</sup> Delaware Riverkeeper states that many erosion and sediment control measures frequently fail and cannot be relied upon as effective protection. Much of Delaware Riverkeeper’s rehearing request is

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<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> Delaware Riverkeeper Request for Rehearing and Stay at 57.

speculation.<sup>208</sup> Nonetheless, the Certificate Order addressed these assertions.<sup>209</sup> With regard to Delaware Riverkeeper's assertions about the effectiveness of mitigation measures, the Certificate Order explained that Delaware Riverkeeper failed to "provide specific information on what mitigation measures are missing from Adelphia's plan [or] provide examples of what has failed on past projects and resulted in impacts on waterbodies."<sup>210</sup> Similarly, Delaware Riverkeeper's rehearing request lacks specific information.

73. Delaware Riverkeeper acknowledges that the EA addressed "the issues that construction activities can have on soil and in turn, water resources."<sup>211</sup> Although NEPA requires the Commission to address project impacts, Delaware Riverkeeper asserts that there is no "identification of what Adelphia will do to minimize" potential harms.<sup>212</sup> We disagree. On rehearing, Delaware Riverkeeper raises the same arguments that it raised in its EA comments and that were addressed in the Certificate Order, including arguments regarding: (1) threats to the water table and local water supply;<sup>213</sup> (2) potential water contamination from methane and waste liquids;<sup>214</sup> (3) cumulative impacts related to other pipelines and the new pathways for water flow that they may create;<sup>215</sup> (4) potential water

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<sup>208</sup> *Id.* at 56 ("if done carelessly or in unsuitable geological locations") (emphasis added) and 58 ("should give pause").

<sup>209</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 160-161; EA at 15, 18, 58-61.

<sup>210</sup> Certificate Order, 169 FERC ¶ 61,220 at P 161.

<sup>211</sup> Delaware Riverkeeper Request for Rehearing and Stay at 61.

<sup>212</sup> *Id.* at 61-62.

<sup>213</sup> Certificate Order, 169 FERC 61,220 at PP 140-149. No drinking water wells were identified within 150 feet of any construction activities. EA at 56. If such wells are identified, Adelphia would evaluate the well before and after construction, and would mitigate any damage by restoration, repair or replacement of water supply, including installation of a new well if applicable. *Id.* No impacts outside of 150 feet are anticipated. *Id.*

<sup>214</sup> EA at 56 ("If Adelphia encounters contaminated groundwater during construction, it would follow the procedures within the Unanticipated Discovery of Contamination Plan."); Certificate Order, 169 FERC 61,220 at P 146.

<sup>215</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 147-48.



impacts related to soil compaction, trenching, and other activities;<sup>216</sup> (5) potential impacts on wetlands;<sup>217</sup> (6) herbicide usage and other maintenance practices that harm wetlands and the aquatic life in them;<sup>218</sup> and (7) loss of an exceptional value wetland affected by the Paoli Pike blowdown assembly valve.<sup>219</sup> Delaware Riverkeeper does not specifically address the mitigation measures addressing these issues and discussed and identified in the EA and Certificate Order or indicate specific mitigation measures that are lacking and that would address its concerns. Accordingly, we deny rehearing.

## **6. Contaminated Site Impacts**

74. Delaware Riverkeeper argues that the EA failed to consider environmental impacts from construction near five contaminated sites: the Congoleum Corporation Plant 3, the Metro Container Corporation Superfund site, the Monroe Energy site, the Foote Mineral Company Superfund site, and the Johnson Mathey-West Whiteland site.<sup>220</sup> Delaware Riverkeeper states that the Commission should have examined the possibility of water or soil contamination due to construction near these sites rather than relying on Adelphia's proposed Unanticipated Discovery of Contamination Plan or its Inadvertent Return Contingency Plan.<sup>221</sup> Regarding the Inadvertent Return Contingency Plan, Delaware Riverkeeper notes that the current plan analyzed in the EA did not address mitigation measures in the event of an inadvertent release in an area of existing contamination.<sup>222</sup>

75. As discussed in the Certificate Order, the EA fully examined the possible impacts of construction on the contaminated sites and detailed the extent of the contamination at all five sites.<sup>223</sup> The EA explained that Adelphia proposed to conduct testing near the Congoleum Corporation Plant, the Metro Container Corporation Superfund site, and the

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<sup>216</sup> *Id.* P 158 (discussing mitigation measures).

<sup>217</sup> EA at 62-67; Certificate Order, 169 FERC ¶ 61,220 at PP 164-67.

<sup>218</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 160-61.

<sup>219</sup> *Id.* P 167 (discussing mitigation measures “to avoid impacts on the portion of the wetland containing suitable bog turtle habitat”).

<sup>220</sup> Delaware Riverkeeper Request for Rehearing and Stay at 68-72.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 71.

<sup>223</sup> Certificate Order, 169 FERC ¶ 61,220 at P 138; EA at 45-47.

Monroe Energy site, all of which are adjacent to the Tilghman Lateral,<sup>224</sup> as part of its Sampling and Analysis Plan for the Tilghman and Parkway Laterals (Sampling and Analysis Plan).<sup>225</sup> Environmental Condition 14 of the Certificate Order requires Adelphia to update its Sampling and Analysis Plan and include necessary mitigation measures, in consultation with the Environmental Protection Agency (EPA) and the Pennsylvania DEP, and identify areas where project construction (including horizontal directional drilling) could create a preferential migration path for contamination.<sup>226</sup> In addition, Environmental Condition 15 requires that Adelphia file a revised Inadvertent Return Contingency Plan, which addresses containment and cleanup measures for inadvertent releases in areas of contamination.<sup>227</sup>

76. As for the Foote Mineral Company Superfund site and the Johnson Matthey-West Whiteland site, the EA explained that nearby construction at Mainline Valve 2 is not expected to result in impacts at the contaminated sites.<sup>228</sup> The Foote Mineral Company site has been remediated and no unacceptable risks are present.<sup>229</sup> Given the 0.6 mile distance between construction activities and the Johnson Matthey-West Whiteland site, no contamination related impacts are anticipated.<sup>230</sup> Nonetheless, the EA noted that Adelphia would implement its Unanticipated Discovery of Contamination Plan, which requires measures to contain and address contaminated soils.<sup>231</sup>

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<sup>224</sup> EA at 45-46 (discussing contamination during construction of the Tilghman Lateral from the Congoleum Corporation Plant 3), 46 (discussing contamination during HDD of the Tilghman Lateral from the Metro Container Corporation Superfund site); 47 (explaining Monroe Energy site has soil, groundwater, and air contamination and is adjacent to the Tilghman lateral).

<sup>225</sup> *Id.* at 48.

<sup>226</sup> Certificate Order, 169 FERC ¶ 61,220 at P 139.

<sup>227</sup> *Id.*

<sup>228</sup> EA at 47-48.

<sup>229</sup> *Id.* at 47.

<sup>230</sup> *Id.* at 48.

<sup>231</sup> *Id.* at 47-48.

## 7. Endangered Species

77. Delaware Riverkeeper argues that the EA failed to properly consider the project's effects on endangered species, particularly bog turtles and their habitats, and erred in not requiring mitigation for any loss of habitat.<sup>232</sup> Delaware Riverkeeper states that although suitable bog turtle habitat was identified in areas of project construction and the bog turtle surveyor recommended limiting construction to between November 1 and April 14, the EA concluded that with the employment of a U.S. Department of the Interior Fish and Wildlife Service Recognized Qualified Bog Turtle Surveyor during construction and the limited amount of habitat that would be disturbed, construction and operation of the project is not likely to adversely affect the bog turtle, and did not recommend the construction timing restriction.<sup>233</sup> Further, Delaware Riverkeeper notes that bog turtle surveys for the Chester Creek Blowdown Assembly Valve site and Quakertown Meter Station site were incomplete due to a lack of permission to access some of the wetlands.<sup>234</sup> With respect to the Paoli Pike Blowdown Assembly Valve site, Delaware Riverkeeper avers that the majority of workspace is within the action area of potential bog turtle habitat, and that the access road would temporarily affect 0.06 acre of suitable bog turtle habitat during construction and permanently affect 0.01 acre.<sup>235</sup> Delaware Riverkeeper asserts that if a bog turtle population does exist at this site, it is likely to be small and highly stressed, and any additional loss of habitat, no matter how small, could be detrimental to its continued existence.<sup>236</sup>

78. Delaware Riverkeeper argues that although assuming bog turtle presence and utilizing exclusion fencing and a Fish and Wildlife Service Qualified Bog Turtle Surveyor on site may assist with mitigating impacts during construction, it does not address the permanent habitat loss that would exist after construction.<sup>237</sup> Therefore, Delaware Riverkeeper concludes that a Phase 2 presence/absence survey should be

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<sup>232</sup> Delaware Riverkeeper Request for Rehearing and Stay at 65-66.

<sup>233</sup> *Id.* at 66.

<sup>234</sup> *Id.* at 67.

<sup>235</sup> *Id.* (noting that the existing suitable habitat itself is only approximately one-acre and already fragmented).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

conducted so that the Commission can know whether the project is not likely to adversely affect the bog turtle.<sup>238</sup>

79. With respect to the project's potential effects on bog turtles, Delaware Riverkeeper repeats the same arguments that have already been addressed in the Certificate Order and the EA.<sup>239</sup> For the reasons stated in that order and the EA,<sup>240</sup> we deny rehearing on this issue.

80. Next, Delaware Riverkeeper argues that the Commission failed to address the impacts on protected species from the long-term impacts from the project, including from increased forest edge and habitat degradation, and the adverse impacts of more noise, light, air pollution, and heat.<sup>241</sup> Delaware Riverkeeper further notes that although the Commission concluded that about 60.6% of soils within the project area have low revegetation potential, the Commission did not discuss the effects of this on species and their habitat, particularly on bog turtles at the Quakertown site.<sup>242</sup> Delaware Riverkeeper contends that this is of particular concern because the only solution if revegetation is not successful is, essentially, to keep trying.<sup>243</sup>

81. We disagree that the Commission failed to adequately address the impacts. The EA discusses the potential impact of the project on endangered species and finds that the project would have *no effect* on the red knot and small whorled pogonia, *no significant impact* on the eastern redbelly turtle and peregrine falcon, and would be *not likely to adversely affect* the bog turtle, Indiana bat, and northern long-eared bat.<sup>244</sup> Moreover, the project will not commence construction until the Commission's consultation requirements under the Endangered Species Act are completed and any mitigation measures are finalized with the Fish and Wildlife Service.

82. With respect to areas with low revegetation potential, the EA explains that of the 28.3 acres of soils determined to have a low revegetation potential within the project area, 24.3 acres are classified as urban or made land and four acres are in areas of previous

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<sup>238</sup> *Id.* at 67-68.

<sup>239</sup> Certificate Order, 169 FERC ¶ 61,220 at P 181.

<sup>240</sup> *Id.* P 182; EA at 81-82.

<sup>241</sup> Delaware Riverkeeper Request for Rehearing and Stay at 68.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> EA at 78-80.

disturbance where vegetation has been removed and the areas are covered with gravel.<sup>245</sup> The potential for successful revegetation for the remaining project soils would be high or moderate,<sup>246</sup> and Adelphia would monitor wetlands annually for a period of three years or until revegetation is successfully established<sup>247</sup> and would monitor upland areas after the first and second growing seasons following restoration or until revegetation is successful.<sup>248</sup>

## 8. Socioeconomics

83. Delaware Riverkeeper restates its comments on the EA and asserts that the EA failed to analyze the economic impacts of compressor stations, including property losses, air pollution costs, health impacts, and economic losses from fires and explosions.<sup>249</sup> These arguments have already been addressed in the Certificate Order,<sup>250</sup> and for the reasons stated in that order,<sup>251</sup> we deny rehearing on this issue.

84. Similarly, Sheila and Daniel McCarthy express concern that the Quakertown Compressor Station, located near their home, will affect their property value.<sup>252</sup> The impact the project could have on property values depends upon many variables, including the size of the parcel, the parcel's current value and land use, and the value of nearby properties.<sup>253</sup> We acknowledge the potential that the new compressor station could

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<sup>245</sup> *Id.* at 44-45.

<sup>246</sup> *Id.* at 45.

<sup>247</sup> If wetland restoration is not successful at the end of three years, in accordance with Adelphia's Procedures, it must develop and implement, in consultation with a professional wetland ecologist, a remedial revegetation plan to actively revegetate the wetland and file annual reports documenting the progress until wetland revegetation is successful.

<sup>248</sup> *Id.* at 24.

<sup>249</sup> Delaware Riverkeeper Request for Rehearing and Stay at 48-50; Delaware Riverkeeper March 1, 2019 Comments at 70-71.

<sup>250</sup> Certificate Order, 169 FERC ¶ 61,220 at P 187.

<sup>251</sup> *Id.* P 188.

<sup>252</sup> McCarthy Request for Rehearing at 5-6.

<sup>253</sup> EA at 106.

impact resale values, but continue to find that any such impact would not be significant.<sup>254</sup> As explained in the Certificate Order, the Quakertown Compressor Station will be a new facility within an existing facility site that is currently in operation, but which is adjacent to several residences; therefore, adjacent or nearby properties property values could experience impacts due to noise, visual impacts, and negative public perception.<sup>255</sup> Commission staff assessed impacts from construction and operation of the project, including those associated with the compressor stations, and found that the project would not result in significant noise,<sup>256</sup> health,<sup>257</sup> or visual impacts<sup>258</sup> on local residents and the surrounding communities.<sup>259</sup>

## 9. Air Quality

85. Delaware Riverkeeper asserts the Commission failed to address air quality, public health, public safety, noise, and adverse economic impacts from Adelphia's compressor stations, blowdown valves, and other emissions sources.<sup>260</sup> However, with one exception addressed below, Delaware Riverkeeper merely repeats its earlier filed comments on the EA.<sup>261</sup> These comments were addressed in the Certificate Order,<sup>262</sup> and we deny rehearing for the reasons set forth therein.

86. Delaware Riverkeeper argues that reliance on the National Ambient Air Quality Standards (NAAQS) as protective of human health is flawed because the NAAQS are a

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<sup>254</sup> Certificate Order, 169 FERC ¶ 61,220 at P 188, EA at 106-07.

<sup>255</sup> Certificate Order, 169 FERC ¶ 61,220 at P 188; EA at 106-07.

<sup>256</sup> EA at 137-39.

<sup>257</sup> *Id.* at 127-28.

<sup>258</sup> *Id.* at 99-101.

<sup>259</sup> *See Myersville*, 183 F.3d at 1324-25 (finding Commission's consideration of property values adequate under NEPA where the Commission acknowledged the potential negative impact, but determined that "some property-value effects could be mitigated" through measures required by the certificate).

<sup>260</sup> Delaware Riverkeeper Request for Rehearing and Stay at 39-46.

<sup>261</sup> *Compare* Delaware Riverkeeper March 1, 2019 Comments at 64-68 *with* Delaware Riverkeeper Request for Rehearing and Stay at 39-45.

<sup>262</sup> *See* Certificate Order, 169 FERC ¶ 61,220 at PP 196-228.

measure for regional air quality, not human health or public health in a community or on an individual level.<sup>263</sup> As explained in the Certificate Order, NAAQS “are established by EPA to protect human health, including sensitive populations such as children, the elderly, and those with asthma, and public welfare, and none of the concentrations will exceed the NAAQS criteria when combined with existing ambient pollutant concentrations.”<sup>264</sup> The EA concluded that “results of Adelphia’s modeling analysis indicate that the combined total of background and project-related emissions would not exceed the NAAQS, which are established to be protective of human health, including sensitive populations such as children, the elderly, and asthmatics.”<sup>265</sup> Accordingly, we agree with the EA’s finding that the Adelphia Gateway Project would not result in significant impacts on air quality or to human health.<sup>266</sup>

## 10. GHG and Climate Change

87. Delaware Riverkeeper asserts that the Commission failed to carry out its obligations under NEPA and the NGA to address GHG emissions.<sup>267</sup> Delaware Riverkeeper asserts the Commission underestimated direct GHG emissions.<sup>268</sup> Delaware Riverkeeper repeats the same arguments that have already been addressed in the

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<sup>263</sup> Delaware Riverkeeper Rehearing at 45-46 (citing Certificate Order, 169 FERC ¶ 61,220 at P 202).

<sup>264</sup> Certificate Order, 169 FERC ¶ 61,220 at P 202; EA at 132. *See also Rio Grande*, 170 FERC ¶ 61,046 at P 60 (“NAAQS reflect the limits that the EPA believes are necessary to protect human health and welfare.”) (citing 42 U.S.C. § 7409(b) (2018)); *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 182 (2016) (“The EPA developed each NAAQS to protect human health, including that of sensitive populations (e.g., asthmatics, those with cardiovascular disease, children, the elderly, etc.) to account for the latest research on health impacts.”); *Transcon. Gas Pipe Line Co.*, 167 FERC ¶ 61,110, at P 34 (2019) (“Under the Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) established the National Ambient Air Quality Standards (NAAQS) to protect human health and public welfare.”).

<sup>265</sup> *Id.* at 128-29.

<sup>266</sup> EA at 129.

<sup>267</sup> Delaware Riverkeeper Request for Rehearing and Stay at 89-131.

<sup>268</sup> *Id.* at 96-100.

Certificate Order.<sup>269</sup> For the reasons stated in that order,<sup>270</sup> we deny rehearing on this issue.

88. Delaware Riverkeeper also emphasizes the links between natural gas infrastructure and GHG emissions, and between GHG emissions and climate change.<sup>271</sup> The Certificate Order and the EA recognized these links.<sup>272</sup> On rehearing, Delaware Riverkeeper asserts that the Commission's ultimate decision to grant the certificate for the Adelpia Gateway Project violated NEPA in light of the impacts from GHG emissions. However, Delaware Riverkeeper does not demonstrate error with the Commission's analysis of the project's GHG impacts, as required by the Commission's regulations, which state that requests for rehearing must "[s]tate concisely the alleged error in the final decision."<sup>273</sup>

89. Delaware Riverkeeper asserts the Commission improperly ignored indirect GHG emissions from upstream production and from downstream consumption.<sup>274</sup> On rehearing, Delaware Riverkeeper merely repeats the arguments it advanced in its EA comments and that were addressed in the Certificate Order.<sup>275</sup> For the reasons stated in that order,<sup>276</sup> we deny rehearing on this issue.

90. Delaware Riverkeeper also asserts the Commission failed to address the significance of GHG emissions.<sup>277</sup> In particular, Delaware Riverkeeper asserts the Commission should have looked at the Social Cost of Carbon<sup>278</sup> and the ecosystem

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<sup>269</sup> Certificate Order, 169 FERC ¶ 61,220 at P 253.

<sup>270</sup> *Id.*

<sup>271</sup> Delaware Riverkeeper Request for Rehearing and Stay at 92-95.

<sup>272</sup> *See* Certificate Order, 169 FERC ¶ 61,220 at PP 254-257; EA at 169-72.

<sup>273</sup> 18 C.F.R. § 385.713(c)(1).

<sup>274</sup> Delaware Riverkeeper Request for Rehearing and Stay at 100-106 (upstream emissions) and 106-115 (downstream consumption).

<sup>275</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 242-243 (upstream emissions) and PP 244-249 (downstream emissions).

<sup>276</sup> *Id.*

<sup>277</sup> Delaware Riverkeeper Request for Rehearing and Stay at 115-30.

<sup>278</sup> *Id.* at 119-29.



services analysis<sup>279</sup> tools. However, the Certificate Order discussed the significance of GHG emissions by quantifying GHG emissions,<sup>280</sup> placing those emissions numbers in the context of cumulative emissions from other sources,<sup>281</sup> and discussing the overall impact of these cumulative emissions.<sup>282</sup> NEPA requires nothing more. On rehearing, Delaware Riverkeeper merely repeats the arguments it advanced in its comments. Accordingly, rehearing is denied for the reasons provided in the Certificate Order.<sup>283</sup>

91. Delaware Riverkeeper asserts the Commission improperly rejected the use of the ecosystem services analysis tool.<sup>284</sup> As Delaware Riverkeeper explains, the ecosystem services analysis measures the benefits (in the form of food, timber, clean drinking water, and other forms) to people and reduces to a “per-acre ecosystem service productivity estimate[]” that is “denominated in dollars per acre per year.”<sup>285</sup> But the Commission has consistently found monetizing environmental impacts to be inappropriate for project-level decision-making, and we therefore find that the ecosystem services analysis tool is similarly inappropriate as a tool to meaningfully inform the Commission’s decisions on natural gas transportation infrastructure projects under the NGA or as a tool

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<sup>279</sup> *Id.* at 129-30.

<sup>280</sup> The Commission quantified direct emissions and indirect emissions where it is known that the natural gas transported by the project will be used for a specific end-use combustion. Certificate Order, 169 FERC ¶ 61,220 at PP 254-257.

<sup>281</sup> The Commission compared the Adelphia Gateway Project’s emissions with nation-wide emissions. *Id.* P 255. The Commission concluded that the project will increase Pennsylvania emissions by 0.20 percent and national emissions by 0.01 percent. *Id.*

<sup>282</sup> *Id.* PP 254-257; EA at 169-72.

<sup>283</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 254-257. *See Mountain Valley*, 161 FERC ¶ 61,043 at P 296, *order on reh’g*, 163 FERC ¶ 61,197 at PP 275-297, *aff’d*, *Appalachian Voices v. FERC*, No. 17-1272, 2019 WL 847199 at \*2 (“[The Commission] gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”). *See generally Adelphia Gateway LLC*, 169 FERC ¶ 61,220 (2019) (McNamee, Comm’r, concurring at PP 64-65) (elaborating on how the Social Cost of Carbon is not a useful tool for determining whether GHG emissions are significant).

<sup>284</sup> Delaware Riverkeeper Request for Rehearing and Stay at 129-30.

<sup>285</sup> *See* Delaware Riverkeeper March 1, 2019 Comments at 63.

that would help us ascribe significance.<sup>286</sup> Further, the tool does not provide a mechanism for the Commission to attribute project emissions to a physical climate change effect.

92. Finally, Delaware Riverkeeper asserts that the Commission failed to consider the effects of climate change on the Adelpia Gateway Project.<sup>287</sup> Delaware Riverkeeper cites CEQ guidance that has now been repealed.<sup>288</sup> Regardless, the EA described impacts on the environment (which includes the Adelpia Gateway Project) that may be attributed to climate change.<sup>289</sup> How the Adelpia Gateway Project's incremental contribution to GHG emissions will impact the Adelpia Gateway Project itself, and how the so impacted project will in turn incrementally affect the broader environment is beyond the scope of the EA.<sup>290</sup> Although NEPA requires "reasonable forecasting,"<sup>291</sup> an agency "is

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<sup>286</sup> See *Mountain Valley*, 163 FERC ¶ 61,197 at PP 283-87.

<sup>287</sup> Delaware Riverkeeper Request for Rehearing and Stay at 130-31.

<sup>288</sup> CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews at 28-29 (Aug. 1, 2016), Notice of Availability, 81 Fed. Reg. 51,866 (Aug. 5, 2016) (Final Guidance). The Final Guidance, which is "not a rule or regulation" and "does not change or substitute for any law, regulation, or other legally binding requirement, and is not legally enforceable," was subsequently withdrawn. Withdrawal of Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, 82 Fed. Reg. 16,576 (Apr. 5, 2017).

<sup>289</sup> EA at 170-72.

<sup>290</sup> Delaware Riverkeeper devoted one line in its lengthy comments on the EA to this issue without citing any detail. See Delaware Riverkeeper March 1, 2019 Comments at 42. This is inadequate for NEPA purposes. See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 764 (2004) (*Pub. Citizen*) ("Persons challenging an agency's compliance with NEPA must 'structure their participation so that it ... alerts the agency to the [parties'] position and contentions,' in order to allow the agency to give the issue meaningful consideration.") (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978)).

<sup>291</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (*N. Plains Res. Council*) (quoting *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

not required to engage in speculative analysis”<sup>292</sup> or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>293</sup>

93. The dissent argues the Commission violated NEPA by failing to consider whether the project’s GHG emissions have a significant impact on climate change. The dissent claims that the Commission has several tools to assess the harm from the project’s contribution to climate change, including the Social Cost of Carbon and that in the alternative, the Commission could quantitatively or qualitatively assess significance, as it does for other resources, including farmland, vegetation, and wildlife. The dissent further contends that the Commission’s failure to establish a metric to assess the significance of GHG emissions contributes to the Commission’s failure to adequately consider GHG mitigation, particularly when project GHG emissions may require that the Commission complete an EIS, rather than an EA.

94. As discussed above,<sup>294</sup> the Certificate Order discussed the significance of GHG emissions by quantifying GHG emissions, placing those emissions numbers in the context of cumulative emissions from other sources, and discussing the overall impact of these cumulative emissions.<sup>295</sup> NEPA requires nothing more.

95. As for the dissent’s claim that the Commission has other tools at its disposal to assess significance, including the Social Cost of Carbon, we disagree. The Social Cost of Carbon is not a suitable method for determining whether GHG emissions that are caused by a proposed project will have a significant effect on climate change. The Commission has provided extensive discussion on why the Social Cost of Carbon is not appropriate in project-level NEPA review and cannot meaningfully inform the Commission’s decisions on natural gas infrastructure projects under the NGA.<sup>296</sup> It is not appropriate for use in any project-level NEPA review for the following reasons:

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<sup>292</sup> *Id.* at 1078.

<sup>293</sup> *Id.* (quoting *Env’tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006) (internal quotation marks and citation omitted)).

<sup>294</sup> *Supra* P 33.

<sup>295</sup> *Supra* notes 84-86.

<sup>296</sup> *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh’g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff’d*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*2 (D.C. Cir. Feb. 19, 2019) (*Mountain Valley*) (“[The Commission] gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is

- (1) EPA states that “no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations”<sup>297</sup> and consequently, significant variation in output can result;<sup>298</sup>
- (2) the tool does not measure the actual incremental impacts of a project on the environment; and
- (3) there are no established criteria identifying the monetized values that are to be considered significant for NEPA reviews.<sup>299</sup>

We have also repeatedly explained that while the methodology may be useful for other agencies’ rulemakings or comparing regulatory alternatives using cost-benefit analyses

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required for NEPA purposes.”); *see also EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016); *Sierra Club v. FERC*, 672 F. App’x 38, (D.C. Cir. 2016); *350 Montana v. Bernhardt*, No. CV 19-12-M-DWM, 2020 WL 1139674, \*6 (D. Mont. March 9, 2020) (upholding the agency’s decision to not use the Social Cost of Carbon because it is too uncertain and indeterminate to be useful); *Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt.*, 377 F. Supp. 3d 1223, 1239-41 (D. Colo. 2019) (upholding the agency’s decision to not use the Social Cost of Carbon); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77-79 (D.D.C. 2019) (upholding the agency’s decision to not use the Social Cost of Carbon).

<sup>297</sup> *See* Fact Sheet: *Social Cost of Carbon* issued by EPA in November 2013, [https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon\\_.html](https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html).

<sup>298</sup> Depending on the selected discount rate, the tool can project widely different present-day cost to avoid future climate change impacts. *See generally Adelpia Gateway, LLC*, 169 FERC ¶ 61,220 (McNamee Comm’r, concurring at n.139) (“The Social Cost of Carbon produces wide-ranging dollar values based upon a chose discount rate, and the assumptions made. The Interagency Working Group on Social Cost of Greenhouse Gases estimated in 2016 that the Social Cost of one ton of carbon dioxide for the year 2020 ranged from \$12 to \$123.”).

<sup>299</sup> *See generally Adelpia Gateway, LLC*, 169 FERC ¶ 61,220 (McNamee, Comm’r, concurring at P 65) (“When the Social Cost of Carbon estimates that one metric ton of CO<sub>2</sub> costs \$12 (the 2020 cost for a discount rate of 5 percent), agency decision-makers and the public have no objective basis or benchmark to determine whether the cost is significant. Bare numbers standing alone simply *cannot* ascribe significance.”) (emphasis in original) (footnote omitted). The dissent has not specifically explained how to ascribe significance to calculated Social Cost of Carbon numbers.

where the same discount rate is consistently applied, it is not appropriate for estimating a specific project's impacts or informing our analysis under NEPA.<sup>300</sup>

96. We also disagree with the dissent's claim that the Commission can establish its own methodology for determining significance as we do for other resources. The Commission applies standard methodologies and established metrics for assessing the significance of the environmental impacts on these resources. For example, to assess the project's impacts to wetlands, Commission staff quantified the acreage and types of wetlands using: field surveys; the applicant's wetland delineation performed in accordance with the U.S. Army Corps of Engineers' Wetlands Delineation Manual and the Regional Supplements to the U.S. Army Corps of Engineers Wetland Delineation Manual: Eastern and Piedmont Region (2012) and Atlantic and Gulf Coast (2010); aerial photographs; and Pennsylvania DEP and Delaware Department of Natural Resources and Environmental Control state wetland mapping.<sup>301</sup> Based on this data developed using the identified methodologies, staff explained in the EA that the project construction would temporarily affect wetlands.<sup>302</sup> However, a majority of these effects would be short-term in nature and would cease when, or shortly after, the wetlands are restored and revegetated.<sup>303</sup> Further, the Certificate Order explained that Adelphia would minimize wetland impacts by implementing the construction and mitigation measures outlined in its Procedures and Environmental Condition 17 requires Adelphia to provide site-specific justification for permanent impacts on wetlands associated with an access road (AR-33.97-01) or identify an alternative access route for use during operation that avoids impacts on wetlands associated with this road.<sup>304</sup>

97. In contrast, here the Commission has no benchmark to determine whether a project has a significant effect on climate change. To assess a project's effect on climate change, the Commission can only quantify the amount of project emissions, but it has no way to then assess how that amount contributes to climate change. For example, that

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<sup>300</sup> *Mountain Valley*, 161 FERC ¶ 61,043 at P 296. Moreover, Executive Order 13783, Promoting Energy Independence and Economic Growth, has disbanded the Interagency Working Group on Social Cost of Greenhouse Gases and directed the withdrawal of all technical support documents and instructions regarding the methodology, stating that the documents are "no longer representative of governmental policy." Exec. Order No. 13,783, 82 Fed. Reg. 16093 (2017).

<sup>301</sup> EA at. 62-67

<sup>302</sup> EA at 64.

<sup>303</sup> *Id.*

<sup>304</sup> Certificate Order, 169 FERC ¶ 61,220 at P 164.

calculated number cannot inform the Commission on climate change effects caused by the project, *e.g.*, increase of sea level rise, effect on weather patterns, or effect on ocean acidification. Without adequate support or a reasoned target, the Commission cannot ascribe significance to particular GHG emissions amounts.

## 11. Noise

98. Delaware Riverkeeper expresses concern with continuous noise emitted from compressor stations during normal operations and asserts that during certain events, such as construction, emergency venting, and blowdowns, the noise can exceed allowable levels.<sup>305</sup> Delaware Riverkeeper argues that the Commission allowed Adelphia to site a compressor station abutting residential homes, which is contrary to the Commission's landowner pamphlet.<sup>306</sup>

99. Delaware Riverkeeper and Sheila McCarthy and Daniel McCarthy contend that low frequency noise emitted during normal operation can lead to numerous health issues, including Vibroacoustic Disease.<sup>307</sup> Delaware Riverkeeper contends that the EA only assessed noise levels as compared to regulations, and did not consider the public nuisance and health effects result from the noise.<sup>308</sup> These arguments have already been addressed in the Certificate Order.<sup>309</sup> For the reasons stated in that order,<sup>310</sup> we deny rehearing on this issue.

100. Delaware Riverkeeper contends the Commission incorrectly concludes that because the Quakertown Compressor Station will be located on a site that currently has existing natural gas infrastructure, wildlife would be accustomed to existing noise levels.<sup>311</sup> Delaware Riverkeeper argues that the Commission ignores the fact that

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<sup>305</sup> Delaware Riverkeeper Request for Rehearing and Stay at 50.

<sup>306</sup> *Id.* at 51.

<sup>307</sup> *Id.* at 50; Sheila and Daniel McCarthy Request for Rehearing at 2.

<sup>308</sup> Delaware Riverkeeper Request for Rehearing and Stay at 50-51.

<sup>309</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 127, 211, 215.

<sup>310</sup> *Id.*

<sup>311</sup> Delaware Riverkeeper Request for Rehearing and Stay at 52 (citing Certificate Order, 169 FERC ¶ 61,220 at P 216).

Adelphia is planning to add or expand the present infrastructure and that noise levels will increase beyond the end of construction.<sup>312</sup>

101. Contrary to Delaware Riverkeeper's assertions, the EA reviewed ongoing noise impacts as a result of the Adelphia Gateway Project, which accounts for noise beyond the construction phase.<sup>313</sup> The EA evaluated the impacts of additional noise from the compressor station and concluded that the station would not result in an audible sound level increase at the nearest noise sensitive area.<sup>314</sup> Further, we find that due to existing industrial activities in the area, the temporary noise disturbance caused by construction of the Quakertown Compressor Station, and ability of wildlife to acclimate to the limited increase in noise during operation, noise from the Quakertown Compressor Station would not significantly impact wildlife.

102. Next, Sheila and Daniel McCarthy contend that the Certificate Order incorrectly found that the Adelphia Gateway Project would not result in significant noise, health, or visual impacts on local residents.<sup>315</sup> Sheila and Daniel McCarthy argue that the Certificate Order references modeling conducted by Adelphia related to noise levels near the Quakertown Compressor Station site during operation, but that the analysis was conducted in 2017 and the compressor station was not operating at that time.<sup>316</sup>

103. Sheila and Daniel McCarthy's arguments that the noise analysis is inadequate because it was conducted prior to the construction of the compressor stations misapprehends the purpose of the 2017 ambient noise survey, which was to identify baseline, or existing, noise levels in the project area.<sup>317</sup> However, the Commission has implemented safeguards for the public if the actual noise impacts exceed the projected noise impacts and requires Adelphia to provide for subsequent noise assessments following construction of the compressor station.<sup>318</sup>

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<sup>312</sup> Delaware Riverkeeper Request for Rehearing and Stay at 52.

<sup>313</sup> EA at 137-42.

<sup>314</sup> Certificate Order, 169 FERC ¶ 61,220 at P 216.

<sup>315</sup> Sheila and Daniel McCarthy Request for Rehearing at 1-3.

<sup>316</sup> *Id.* at 1.

<sup>317</sup> EA at 134.

<sup>318</sup> Certificate Order, 169 FERC ¶ 61,220 at Environmental Condition 25.

104. Sheila and Daniel McCarthy next question how Adelphia estimated the noise produced by compressors in operation and how the estimate was validated.<sup>319</sup> Sheila and Daniel McCarthy argue that the Commission requires that day-night sound levels should not exceed 55 decibels on the A-weighted scale (dBA)<sup>320</sup> in noise sensitive areas, but because the EA does not break out day and night averages, petitioners question whether the compressor station will exceed this threshold.<sup>321</sup> Sheila and Daniel McCarthy assert that homes within 985 feet of the nearest compressor station report an average noise level of 60.3 dBA.<sup>322</sup> Sheila and Daniel McCarthy express concern about: (1) differing interior and exterior noise levels, (2) whether the Commission conducted an interior noise study, and (3) whether their home will be habitable after the compressor station is constructed.<sup>323</sup>

105. Details of the ambient noise survey and noise impact analysis used to assess the impacts of the Adelphia Gateway Project were included in Adelphia's Application.<sup>324</sup> As explained in the EA, our selected noise criterion is based on the 1974 EPA study, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* (USEPA 1974) that identified a day-night sound level (Ldn) of 55 dBA as protecting the public from indoor and outdoor activity interference.<sup>325</sup> The analysis accounted for the continuous operation of the Quakertown Compressor Station<sup>326</sup> as well as the increased sensitivity to sound levels that humans

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<sup>319</sup> Sheila and Daniel McCarthy Request for Rehearing at 2. Sheila and Daniel McCarthy state that the Commission should evaluate noise based on a 2017 University of Maryland study. However, Sheila and Daniel McCarthy have not identified or provided a copy of that study.

<sup>320</sup> The A-weighted sound level, expressed as dBA, is used to quantify noise impacts on people.

<sup>321</sup> Sheila and Daniel McCarthy Request for Rehearing at 2 (citing Certificate Order, 169 FERC ¶ 61,220 at P 211).

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* (citing Certificate Order, 169 FERC ¶ 61,220 at P 211).

<sup>324</sup> Adelphia Application at Appendix 9-D.

<sup>325</sup> EA at 133.

<sup>326</sup> *Id.* at 127.



experience at nighttime in its calculations.<sup>327</sup> The Commission determined operation of the Quakertown Compressor Station would not exceed allowable thresholds.<sup>328</sup>

106. Finally, Sheila and Daniel McCarthy question the value of the ongoing noise mitigation.<sup>329</sup> Specifically, Sheila and Daniel McCarthy reference Environmental Condition 25 that requires Adelphia to file a noise survey 60 days after its in-service date.<sup>330</sup> If the compressor station exceeds the 55 dBA level, Adelphia must provide additional noise controls within one year of the in-service date. Sheila and Daniel McCarthy state that this condition could require residents to endure excess noise for up to 10 months.<sup>331</sup> Moreover, Sheila and Daniel McCarthy raise concern with the fact that the Commission did not direct a format for the noise survey, request certain information,<sup>332</sup> or require Adelphia to make the surveys publicly available.<sup>333</sup>

107. As stated in the EA, operation of the Quakertown Compressor Station is not expected to result in significant noise impacts.<sup>334</sup> However, if noise exceeds the 55 dBA allowable threshold, Adelphia will need sufficient time to remedy the excess noise. Such mitigation measures may include timely and cost intensive upgrades. At this time, the Commission declines to adopt further guidelines for future noise surveys, but we note that Environmental Condition 25 requires that when Adelphia conducts the noise surveys, it must operate the compressor stations at maximum possible power load, which will

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<sup>327</sup> *Id.* at 133.

<sup>328</sup> *Id.* at 138.

<sup>329</sup> Sheila and Daniel McCarthy Request for Rehearing at 3.

<sup>330</sup> Certificate Order, 169 FERC ¶ 61,220 at Environmental Condition 25.

<sup>331</sup> Sheila and Daniel McCarthy Request for Rehearing at 3.

<sup>332</sup> Sheila and Daniel McCarthy request that the Commission require Adelphia to provide: the name of the company and person conducting the noise survey, their credentials and/or certifications; the date, time, and weather conditions during the survey; charts or graphs showing the dBA and frequency; locations of data collection; and instrumentation used and calibration certificates. *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> EA at 137.

ensure that the Quakertown Compressor Station's greatest capacity for noise will be surveyed.<sup>335</sup> The surveys will be filed in the public record.

## **12. Public Safety and Health**

108. West Rockhill Township argues that the Certificate Order and EA fail to support the conclusion that the Adelphia Gateway Project will be constructed and operated safely.<sup>336</sup> West Rockhill Township questions what aspects of the Adelphia Gateway Project serve to increase risk and posits whether the public safety analysis relates to the size of the Quakertown Compressor Station site.<sup>337</sup>

109. The Adelphia Gateway Project will be designed, constructed, tested, operated, and maintained pursuant to federal safety standards.<sup>338</sup> In response to West Rockhill's question regarding risk, we clarify that the EA assessed the risk as to the likelihood of a pipeline rupture.<sup>339</sup>

110. Delaware Riverkeeper argues that the Commission's EA is contradictory because it dismisses a commenter's claims regarding emissions from a compressor station on the basis that is inappropriate to compare studies, but then compares the Adelphia Gateway Project with the New Market Project.<sup>340</sup>

111. Delaware Riverkeeper misinterprets the analysis conducted in the EA. The EA compared the Adelphia Gateway Project to the New Market Project in response to comments regarding the need for a Title V air emission permit and a human health assessment. As described in the EA, a public commenter relied on a study of 18 Title V major source<sup>341</sup> compressor stations that operate throughout New York to support its contention that the Adelphia Gateway Project would emit a certain amount of

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<sup>335</sup> Certificate Order, 169 FERC ¶ 61,220 at Environmental Condition 25.

<sup>336</sup> West Rockhill Township Request for Rehearing at 3, 7.

<sup>337</sup> *Id.* at 8.

<sup>338</sup> EA at 143-44.

<sup>339</sup> *Id.* at 151.

<sup>340</sup> Delaware Riverkeeper Request for Rehearing and Stay at 46-47 (citing EA at 130).

<sup>341</sup> The Clean Air Act Title V permit program requires sources of air emissions to obtain federal operating permits if their criteria pollutant emissions reach or exceed the Title V major source threshold. 40 C.F.R. pt. 70 (2019).

pollutants.<sup>342</sup> In the EA, Commission staff refuted this commenter's claims, explaining that the Adelphia Gateway Project's compressor stations are not Title V major sources; therefore, it is not appropriate to compare the emissions of larger facilities that have significantly greater volumes of emissions as compared to a minor source, like the Adelphia Gateway Project.<sup>343</sup>

112. Comparatively, another commenter requested that the Commission conduct a human health assessment for the Adelphia Gateway Project.<sup>344</sup> The EA explained that the Commission had undertaken a human health assessment for the New Market Project,<sup>345</sup> a project much larger in scope than the Adelphia Gateway Project. The New Market Project's human health assessment concluded that modeled hazardous air pollutant emissions from both normal operations and blowdown events were below a level of health concern.<sup>346</sup> Here, the EA found that a human health assessment was not necessary for the Adelphia Gateway Project because the New Market Project's compressor stations are twice as big as the Adelphia Gateway Project's proposed compressor stations and thus emitted a greater volume of hazardous air pollutants.<sup>347</sup> The EA determined that based on the size of the project's compressor stations and the conclusions of the New Market Project's EA, the Adelphia Gateway Project does not warrant a human health risk assessment.<sup>348</sup> We agree.

113. Delaware Riverkeeper persists that the Certificate Order and EA were contradictory because the EA explains that air pollution modeling is typically evaluated on a county or regional scale, but the Commission relied on the New Market EA for its human health assessment.<sup>349</sup>

114. Again, Delaware Riverkeeper misconstrues the analysis and studies referenced in the EA. In response to a commenter's argument that the Commission should rely on the

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<sup>342</sup> EA at 130.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> See New Market Project EA in Docket No. CP14-497-000 at Appendix B.

<sup>346</sup> *Id.*

<sup>347</sup> EA at 130.

<sup>348</sup> *Id.*

<sup>349</sup> Delaware Riverkeeper Request for Rehearing and Stay at 47-48.

aforementioned Title V major source compressor station study in New York,<sup>350</sup> the EA explained that the study is insufficient because air pollution modeling is typically evaluated on a county or regional scale.<sup>351</sup> The EA explained that for the Adelphia Gateway Project, Adelphia incorporated site-specific factors into its air pollutant modeling.<sup>352</sup> Delaware Riverkeeper conflates the EA's air pollutant modeling, which analyzed criteria pollutants in the NAAQS established to protect human health, with the New Market Project's human health assessment, which was a separate study that analyzes hazardous air pollutants and volatile organic compounds.<sup>353</sup> Therefore, the EA is not contradictory, but rather, consistent with its finding that air pollution modeling should typically be evaluated on a county or regional scale.

115. Next, Delaware Riverkeeper contends that the EA's public safety assessment was based on generalizations rather than an examination of actual impacts.<sup>354</sup> Delaware Riverkeeper contends that the EA's public safety section did not assess risks from compressor stations or blowdown assembly valves and lacked any recognition of the stress an emergency would place on the local community.<sup>355</sup>

116. Contrary to Delaware Riverkeeper's contentions, emergency response procedures are addressed in section 9.6 of the EA.<sup>356</sup> Additionally, the Commission found that Adelphia will construct, operate, monitor, and maintain the Adelphia Gateway Project in accordance with the federal pipeline safety regulations at Title 49 of the U.S. Code of Federal Regulations, Part 192 (49 C.F.R. pt. 192 (2019)), which are protective of public safety. These regulations are implemented by PHMSA, which participated in preparation of the EA, including the analysis of the project impacts on reliability and safety.<sup>357</sup> The Quakertown Compressor Station will therefore not differ in any substantial manner from other compressors constructed in accordance with PHMSA regulations. Moreover, compressor stations are typically located in fenced areas which limits the

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<sup>350</sup> *Supra* P 106.

<sup>351</sup> EA at 130-31.

<sup>352</sup> *Id.* at 131.

<sup>353</sup> *Id.*

<sup>354</sup> Delaware Riverkeeper Request for Rehearing and Stay at 46.

<sup>355</sup> *Id.*

<sup>356</sup> EA at 144-48.

<sup>357</sup> *Id.* at 1; Certificate Order, 169 FERC ¶ 61,220 at P 225-226.

public's proximity to the facilities and therefore enhances the public safety surrounding compressor stations. We reiterate that because Adelphia will comply with all requisite safety standards, the Adelphia Gateway Project will be designed, constructed, operated, and maintained with public safety in mind.

117. West Rockhill Township next contends that significant work was required on the southern segment of the existing facilities to be acquired from Interstate Energy to upgrade that section and protect the public health and safety, but the EA implies that no work has been conducted on the existing facilities in the northern segment to investigate, repair, or improve that portion.<sup>358</sup> West Rockhill Township states that Adelphia's application, the EA, and the Certificate Order contain only conclusory statements regarding the safety of the existing pipeline being acquired by Adelphia and not a substantive report, assessment, projection, or recommendation.<sup>359</sup>

118. The northern segment of the Adelphia Gateway Project has been transporting natural gas since 2014.<sup>360</sup> As it pertains to the Adelphia Gateway Project, the northern segment will only experience a change in ownership; thus we anticipate that Adelphia's purchase of the existing system will not result in environmental impacts on most resources.<sup>361</sup> Operation and maintenance activities of the northern segment, including mowing and right-of-way inspections, will be similar to those currently conducted.<sup>362</sup> Accordingly, an additional environmental analysis of the northern segment is not warranted. However, the EA nonetheless analyzed safety on the northern system, explaining that the project already has cathodic protection to protect against corrosion, and we note that the segment would be operated in accordance with PHMSA's operational safety regulations.<sup>363</sup>

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<sup>358</sup> West Rockhill Township Rehearing Request at 7.

<sup>359</sup> *Id.*

<sup>360</sup> Certificate Order, 169 FERC ¶ 61,220 at P 4 n.7.

<sup>361</sup> EA at 6, 144, 149.

<sup>362</sup> Certificate Order, 169 FERC ¶ 61,220 at P 146.

<sup>363</sup> EA at 6.

### 13. Indirect Upstream and Downstream Impacts

119. Delaware Riverkeeper alleges that the Commission failed to consider the indirect impacts of the project,<sup>364</sup> including upstream shale gas production<sup>365</sup> and downstream exportation.<sup>366</sup>

120. NEPA requires agencies to consider indirect effects or impacts that are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>367</sup> With respect to causation, “NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause”<sup>368</sup> in order “to make an agency responsible for a particular effect under NEPA.”<sup>369</sup> As the Supreme Court has explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”<sup>370</sup> Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation” will not fall within NEPA if the causal chain is too attenuated.”<sup>371</sup> Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>372</sup>

121. Delaware Riverkeeper claims that the Commission’s refusal to consider indirect effects of the Adelpia Gateway Project runs counter to court rulings in *Barnes v. U.S.*

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<sup>364</sup> Delaware Riverkeeper Request for Rehearing and Stay at 72-89.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 88-89.

<sup>367</sup> 40 C.F.R. § 1508.8 (2019).

<sup>368</sup> *Pub. Citizen*, 541 U.S. at 767 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, at 774 (1983) (*Metro. Edison*)).

<sup>369</sup> *Id.* at 767.

<sup>370</sup> *Id.*

<sup>371</sup> *Metro. Edison*, 460 U.S. at 774.

<sup>372</sup> *Pub. Citizen*, 541 U.S. at 770.

*Department of Transportation*,<sup>373</sup> *Sierra Club v. Marsh*,<sup>374</sup> and *Mid States Coalition for Progress v. Surface Transportation Board*,<sup>375</sup> which it claims support its assertion that pipeline projects have the unique potential to spur natural gas consumption and production, resulting in both upstream and downstream indirect impacts on the price, production, and use of natural gas.<sup>376</sup>

122. We disagree.<sup>377</sup> NEPA requires a case-by-case examination of discrete factors when considering whether an action is a legally relevant cause of an indirect effect.<sup>378</sup> None of the cases Delaware Riverkeeper relies upon is determinative here. In *Barnes*, the Ninth Circuit Court of Appeals held that a runway expansion project, involving the addition of a third runway at a two-runway airport, had the unique potential to create aviation demand.<sup>379</sup> In *Marsh*, the U.S. Court of Appeal for the First Circuit held that the State of Maine's decision to build a causeway, loading dock, and possible industrial park on Sears Island had the potential to spur industrial development on the island.<sup>380</sup> In contrast, here, Adelphia is purchasing Interstate Energy's existing non-jurisdictional natural gas and oil pipelines, repurposing those pipelines to provide the interstate transportation of natural gas, and integrating approximately five miles of new pipeline and two compression facilities to that system. This case differs from the addition of a runway at an airport that has only two runways in *Barnes* and spawning future industrial development due to the construction of a cargo port in *Marsh*. Further, Delaware Riverkeeper's reliance on *Mid States* in this context is "misplaced since the agency in *Mid States* stated that a particular outcome was reasonably foreseeable and that it would

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<sup>373</sup> *Barnes v. U.S Dep't of Transp.*, 655 F.3d 1124, 1138 (9th Cir. 2011) (*Barnes*).

<sup>374</sup> *Sierra Club v. Marsh*, 769 F.2d 868, 877-79 (1st Cir. 1985) (*Marsh*).

<sup>375</sup> *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003) (*Mid States*).

<sup>376</sup> Delaware Riverkeeper Request for Rehearing and Stay at 74-76.

<sup>377</sup> See generally *Adelphia Gateway LLC*, 169 FERC ¶ 61,220 (2019) (McNamee Comm'r concurrence) (elaborating on the purpose of the NGA and that one of its purposes is to facilitate the development and access to natural gas, as well as an analysis of consideration of indirect effects under NEPA).

<sup>378</sup> *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971) (*Calvert Cliffs' Coordinating Comm.*).

<sup>379</sup> *Barnes*, 655 F.3d at 1138.

<sup>380</sup> *Marsh*, 769 F.2d at 877-79.

consider its impact, but then failed to do so,” but here, the Commission did neither of those things.<sup>381</sup>

123. Regarding upstream impacts from natural gas production, there is no record evidence that would help the Commission determine the origin of the natural gas that will be transported on the project, let alone predict the number and location of any additional wells that would be drilled as a result.<sup>382</sup> Delaware Riverkeeper contends that NEPA compels the Commission to examine impacts from upstream production.<sup>383</sup> In *Mid States*, the U.S. Court of Appeals for the Eighth Circuit warned that even “if the nature of the effect is reasonably foreseeable but its extent is not . . . the agency may not simply ignore the effect.”<sup>384</sup> But here, the nature of the effect – increased natural gas production – is not reasonably foreseeable. Courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”<sup>385</sup> Although courts have held that NEPA requires “reasonable forecasting,” an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>386</sup> Here, because the project will receive natural gas from other interstate pipelines,<sup>387</sup> the specific source of natural gas to be transported via the project is currently unknown and will likely change throughout the project’s operation.<sup>388</sup> Thus, the Commission was not required to address the effects of increased

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<sup>381</sup> *Ark. Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 431 F.3d 1096, 1102 (8th Cir. 2005).

<sup>382</sup> Certificate Order, 169 FERC ¶ 61,220 at P 243.

<sup>383</sup> Delaware Riverkeeper Request for Rehearing and Stay at 78.

<sup>384</sup> *Mid States*, 345 F.3d at 549-550 (holding that that the Surface Transportation Board must examine increase in coal usage associated with the construction and rehabilitation of railroad lines for the transportation of coal from a mining area); Delaware Riverkeeper Request for Rehearing and Stay at 74.

<sup>385</sup> *EarthReports, Inc. v. FERC*, 828 F.2d 949, 955 (D.C. Cir. 2016) (citations omitted); *see also Marsh*, 976 F.2d at 767.

<sup>386</sup> *N. Plains Res. Council*, 668 F.3d at 1078.

<sup>387</sup> Certificate Order, 169 FERC ¶ 61,220 at P 243.

<sup>388</sup> *Id.*



natural gas production because there is no evidence that the project will increase production.

124. As to downstream impacts from gas exportation, the D.C. Circuit in *Sierra Club v. FERC* held that where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should “estimate[] the amount of power-plant carbon emissions that the pipelines will make possible.”<sup>389</sup> However, outside the context of known specific end use, the D.C. Circuit held in *Birckhead v. FERC*, that “emissions from downstream gas combustions are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project.”<sup>390</sup> The court in *Birckhead* also noted that “NEPA . . . requires the Commission to at least attempt to obtain the information necessary to fulfill its statutory responsibilities,” but citing to *Delaware Riverkeeper Network*, the court acknowledged that NEPA does not “demand forecasting that is not meaningfully possible.”<sup>391</sup>

125. Here, Delaware Riverkeeper fails to point to any evidence in the record to demonstrate that downstream impacts qualify as a reasonably foreseeable indirect effect. Delaware Riverkeeper pins its argument on the Commission’s failure to analyze the downstream impacts of exporting natural gas transported by the Adelpia Project.<sup>392</sup> As we previously stated, there is no evidence in the record that indicates that the project will be used to transport natural gas for export.<sup>393</sup> Such generalized statements contrast with *Sierra Club v. FERC*, where the court relied on record evidence that the gas would be used in identified power plants.<sup>394</sup> Likewise, we disagree with the dissent’s assertion that the Parkway Lateral will serve two existing power plants owned by the Calpine Corporation and thus, the combustion of gas at these power plants is an indirect effect of the Adelpia Project. As we explained in the Certificate Order, Adelpia’s generalized statements that gas transported on the lateral could serve Calpine’s power plants do not

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<sup>389</sup> *Sierra Club*, 867 F.3d 1357 at 1371.

<sup>390</sup> *Birckhead*, 925 F.3d at 519 (citing *Calvert Cliffs’ Coordinating Comm.*, 449 F.2d at 1122).

<sup>391</sup> *Id.* at 520 (quoting *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014)).

<sup>392</sup> Delaware Riverkeeper Request for Rehearing and Stay at 88-89.

<sup>393</sup> *Supra* PP 18-19.

<sup>394</sup> *Sierra Club*, 867 F.3d at 1372 (“What are the ‘reasonably foreseeable’ effects of authorizing a pipeline that will transport natural gas to Florida power plants? First, that gas will be burned in those power plants.”).

provide evidence that it is reasonably foreseeable that the gas will be consumed in Calpine's power plants.<sup>395</sup> Adelphia has not entered into a precedent agreement with any shippers who would serve the Calpine Power Plant.<sup>396</sup> Without a precedent agreement stating the amount of capacity that would serve a power plant, we cannot reasonably quantify or foresee the GHG emission impacts. Accordingly, we find these generalized statements insufficient to render the impacts associated with either the exportation of the gas to be transported or consumption of the gas at Calpine's power plants reasonably foreseeable indirect effects of the project.

#### 14. Cumulative Impacts

126. Delaware Riverkeeper argues that the Commission did not fully consider the cumulative impacts from the PennEast Project, Texas Eastern Transmission Company, LP's Greater Philadelphia Expansion Project, and the Mariner East Project.<sup>397</sup> Delaware Riverkeeper further contends that the Commission failed to consider multiple utility and other linear projects that are being constructed or proposed to be constructed in the Delaware River watershed, in each sub-watershed, and in each unique ecological community and human community.<sup>398</sup> Delaware Riverkeeper avers that because the Commission incorrectly evaluates pipeline projects in isolation and does not analyze the cumulative actions of these projects, the Commission failed to properly address foreseeable impacts on water resources, air quality, public health, and other impacts, contrary to NEPA's requirements.<sup>399</sup> Delaware Riverkeeper asserts that even for projects listed in the EA as potentially contributing to cumulative impacts, the EA fails to give real consideration to the significance of the cumulative impacts or analyze the impacts holistically, and incorrectly relies on the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* to minimize impacts.<sup>400</sup>

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<sup>395</sup> Certificate Order, 169 FERC ¶ 61,220 at P 249.

<sup>396</sup> *Id.* Where Adelphia had entered into a precedent agreement to provide service for a specific end use, we estimated the downstream GHG emissions of that end use. *Id.* P 255 (estimating GHG emissions of a Kimberly-Clark generation facility that would be served by PECO's subscribed Zone South Capacity).

<sup>397</sup> Delaware Riverkeeper Request for Rehearing and Stay at 28-30.

<sup>398</sup> *Id.* at 36.

<sup>399</sup> *Id.* at 32, 37 (citing 40 C.F.R. §§ 1508.7, 1508.25(a)(2) (2019)).

<sup>400</sup> *Id.* at 32, 38.

127. Delaware Riverkeeper contends that the ecological system and ecological services impacts from these projects are compounded from the cumulative impacts of water crossings and wetlands disturbances on the health of the Delaware River basin and its tributaries.<sup>401</sup> Delaware Riverkeeper states this is of particular concern with the Adelphia Gateway Project because the project affects many of the same sub-watersheds affected by the PennEast Project, the Greater Philadelphia Expansion Project, and the Mariner East Project.<sup>402</sup> Delaware Riverkeeper avers that under NEPA guidance, the environmental review area must include all the sub-watersheds through which the pipeline crosses and that a critical consideration in determining the cumulative environmental effects must be the interaction of runoff, lost recharge, deforestation, damaged habitat, compacted soils, air pollution, water pollution, methane emissions, and all other harms impacted by the proposed Adelphia Gateway Project along with the other past, present, and reasonably foreseeable future actions.<sup>403</sup> Delaware Riverkeeper notes that construction of new pipeline right-of-way can also result in impacts on sensitive glacial soils, extreme soil compaction, lack of diverse growth, bare soils, and thermal heat and fragmentation impacts on the right-of-way and within forests.<sup>404</sup> Delaware Riverkeeper contends that the Commission should study the impacts, including the cumulative impacts, of the stream crossings proposed by Adelphia through Marcus Creek and Stoney Creek on a sub-watershed scale.<sup>405</sup>

128. We disagree that the cumulative impact analysis in the EA is insufficient. The EA considered the cumulative impacts of the Adelphia Gateway Project with other projects or actions within the geographic and temporal scope of the projects.<sup>406</sup> The EA, consistent with CEQ guidance, defined the geographic scope for the analysis based on each type of impact and identified projects that could potentially contribute cumulative impacts on a particular resource. The EA then analyzed the cumulative impacts on each resource and found that the project's contribution to cumulative impacts on resources affected by the project would not be significant, and that the potential cumulative impacts

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<sup>401</sup> *Id.* at 36.

<sup>402</sup> *Id.* at 36-37 (citing Princeton Hydro, *Technical Review of Volume I FERC Draft Environmental Impact Statement Submitted for PennEast Pipeline Project* (Sept. 2016)).

<sup>403</sup> *Id.* at 37 (citing 40 C.F.R. §§ 1508.7-8, 1508.27 (2010)).

<sup>404</sup> *Id.* (citing Delaware Riverkeeper Network, *Field-Truthing and Monitoring of the Proposed PennEast Pipeline*, FERC Draft EIS, Docket No. CP15-558 (Sept. 2016)).

<sup>405</sup> *Id.* at 38.

<sup>406</sup> EA at 152-73.

of the project and the other projects considered would be minor or insignificant.<sup>407</sup> This methodology is consistent with CEQ guidance for conducting a cumulative impact analysis.<sup>408</sup> With respect to Delaware Riverkeeper's assertion that the cumulative impact analysis did not consider impacts on a "sub-watershed scale," as stated in the Certificate Order, the geographic scope for evaluating impacts on groundwater, wetlands, vegetation, wildlife, and surface water resources are the sub-watershed boundaries (HUC 12), which define the drainage area upstream of tributaries to major rivers, and range from 10,000 to 40,000 acres in size.<sup>409</sup> The cumulative impacts analysis was based on assessment of impacts for 11 subwatersheds, including the Repaupo Creek – Delaware River HUC-12 subwatershed that contains Marcus Hook Creek and Stoney Creek.<sup>410</sup>

129. Delaware Riverkeeper contends that the Certificate Order incorrectly concludes that consideration of the cumulative impacts associated with the PennEast Project is unnecessary because the Adelphia Gateway Project is already constructed.<sup>411</sup> Delaware Riverkeeper asserts that although the Adelphia Gateway Project and PennEast Project overlap at various points in the Zone North A and are barely a few miles apart in other areas, the EA incorrectly finds that the PennEast Project is outside of the geographic scope of the proposed project (including for air quality), with the exception of a power plant that the Adelphia Gateway Project would continue supplying.<sup>412</sup> Delaware Riverkeeper avers that methane and other leaks of emissions can occur along the entire length of the project, including where it is near to or overlaps with the present PennEast route, that the Adelphia Gateway Project crosses through some of the same HUC-12 watersheds as PennEast, and that Adelphia, using the HUC-10 scale, analyzed the PennEast Project for cumulative impacts.<sup>413</sup>

130. As explained in the Certificate Order, although the PennEast Project crosses the Adelphia Gateway Project in several locations on the northern portion of Adelphia's pipeline, this pipeline is already constructed and providing natural gas transportation

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<sup>407</sup> *Id.* at 173.

<sup>408</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 16 (January 1997).

<sup>409</sup> Certificate Order, 169 FERC ¶ 61,220 at P 238.

<sup>410</sup> EA at 57, Table B-6, 154.

<sup>411</sup> Delaware Riverkeeper Request for Rehearing and Stay at 31-32

<sup>412</sup> *Id.* at 31.

<sup>413</sup> *Id.*

service.<sup>414</sup> Therefore, the existing pipeline is part of the environmental baseline.<sup>415</sup> Delaware Riverkeeper provides no evidence demonstrating that the PennEast Project should be considered to be in the same geographic scope of the cumulative impact assessment where Adelphia proposes new construction. Accordingly, the EA and Certificate Order appropriately addressed the PennEast Project in the cumulative impact analysis.

### 15. Segmentation: Cumulative and Similar Actions

131. Delaware Riverkeeper repeats its argument that the Commission should have considered the Adelphia Gateway and the PennEast Projects in a single impact statement, claiming that the projects are cumulative and similar actions.<sup>416</sup> As it argued for cumulative impacts, Delaware Riverkeeper contends that the projects are cumulative actions because they overlap at various points in Zone North A, are only a few miles apart in other areas, cross through the same HUC-12 watersheds, and will result in cumulative impacts due to methane and other emissions leaks.<sup>417</sup>

132. Cumulative actions are those “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”<sup>418</sup> In turn, a cumulative impact is defined by the CEQ regulations as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . . Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”<sup>419</sup> The question of whether multiple actions “constitute cumulative actions that must be analyzed together is” circular in nature and depends on whether the projects will have “cumulatively significant impacts.”<sup>420</sup>

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<sup>414</sup> Certificate Order, 169 FERC ¶ 61,220 at P 232.

<sup>415</sup> EA at 157, Table B-30.

<sup>416</sup> Delaware Riverkeeper Request for Rehearing and Stay at 27-32.

<sup>417</sup> *Id.* at 31.

<sup>418</sup> 40 C.F.R. §1508.25(a)(2).

<sup>419</sup> *Id.*

<sup>420</sup> *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993-97 (9th Cir. 2004) (*Klamath-Siskiyou Wildlands Ctr.*) (holding that whether the federal government’s four proposed timber sales which were originally conceived as a single project but ultimately divided into four separate, but immediately adjacent

133. As discussed above and in the EA, the Adelphia Gateway and PennEast Projects do not have cumulatively significant impacts.<sup>421</sup> Although the Adelphia Gateway and PennEast Projects overlap in several locations, these portions of the Adelphia Gateway Project are already constructed and will not contribute to any of the environmental impacts identified by Delaware Riverkeeper.<sup>422</sup>

134. Regarding Delaware Riverkeeper's claim that the Adelphia Gateway and PennEast Projects are similar actions, CEQ regulations provide that when proposed actions are "similar," the agency "may wish" to assess them in the same document and "should do so" when a single document provides "the best way to assess adequately the combined impacts of similar actions."<sup>423</sup> Similar actions are those "which 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."<sup>424</sup> Unlike connected and cumulative actions, analyzing similar actions together in a single environmental document is not mandatory.<sup>425</sup>

135. Delaware Riverkeeper fails to explain why the Adelphia Gateway and PennEast Projects are similar actions. Nonetheless, we find that collective review would provide minimal meaningful analysis because the projects' impacts do not overlap. Further, collective review would be inappropriate because the PennEast Project was authorized in January 2018,<sup>426</sup> and the projects thus do not have "common timing." Accordingly, we deny rehearing because the Commission continues to find that analyzing the projects in a

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projects, were "cumulative actions" that must be discussed in a single NEPA document was an "open issue").

<sup>421</sup> EA at 157, Table B-30.

<sup>422</sup> *Id.*

<sup>423</sup> 40 C.F.R. § 1508.25(a)(3).

<sup>424</sup> *Id.*

<sup>425</sup> See *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCB, 2009 WL 824410, at \*13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) and noting that "nothing in the relevant regulations compels the preparation of a single EIS for 'similar actions.'"); see also *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 999-1001 (emphasizing that agencies are only required to assess similar actions in a single NEPA document when the agency determines that is the best way to do so); *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1306 (9th Cir. 2003).

<sup>426</sup> See Certificate Order, 169 FERC ¶ 61,220 at P 26 n.37.

single document is neither necessary nor the best way to evaluate them, particularly when both projects were subject to rigorous environmental review.

The Commission orders:

(A) Delaware Riverkeeper's and West Rockhill Township's requests for rehearing are hereby denied, as discussed in the body of this order.

(B) Sheila McCarthy and Daniel McCarthy's request for rehearing is hereby dismissed, as discussed in the body of this order.

(C) Delaware Riverkeeper's request for stay is hereby dismissed as moot, as discussed in the body of this order.

(D) West Rockhill Township's request for stay is hereby denied, as discussed in the body of this order.

(E) Environmental Condition 22 is amended to read:

**22. Prior to construction,** Adelphia shall file with the Secretary, for review and written approval by the Director of OEP, site-specific visual screening plans for the Quakertown Compressor and Meter Stations and the Delmarva Meter Station. Adelphia shall develop the visual screening plan for the Quakertown facilities in consultation with West Rockhill Township and Richland Township. The plans shall include photo simulations of the resulting viewshed from the perspective of nearby visual receptors.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Adelphia Gateway, LLC

Docket No. CP18-46-002

(Issued April 17, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order on rehearing because I believe that the Commission's action violates both the Natural Gas Act<sup>1</sup> (NGA) and the National Environmental Policy Act<sup>2</sup> (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order, the Commission denies rehearing of its order authorizing Adelphia Gateway, LLC's (Adelphia) proposed Adelphia Gateway Project (Project),<sup>3</sup> and continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantified the direct GHG emissions from the Project's construction and operation<sup>4</sup> as well as a fraction of its downstream GHG emissions.<sup>5</sup> That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to misleadingly state that "approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment"<sup>6</sup> and,

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<sup>1</sup> 15 U.S.C. § 717f (2018).

<sup>2</sup> National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

<sup>3</sup> *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (2019) (Certificate Order), *order on reh'g*, 171 FERC ¶ 61,049 (2020) (Rehearing Order).

<sup>4</sup> Adelphia Gateway Project Environmental Assessment (EA) at 125, 128 & Tables B-19, B-21; *see also* Certificate Order, 169 FERC ¶ 61,220 at P 254.

<sup>5</sup> Certificate Order, 169 FERC ¶ 61,220 at P 255.

<sup>6</sup> Certificate Order, 169 FERC ¶ 61,220 at P 264; *see also* EA at 194.



as a result, conclude that the Project is required by the public convenience and necessity.<sup>7</sup> Claiming that a project has no significant environmental impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. Making matters worse, the Commission again refuses to make a serious effort to assess the indirect effects of the Project. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has repeatedly criticized the Commission for its stubborn refusal to identify and consider the reasonably foreseeable GHG emissions caused by the downstream combustion of natural gas transported through an interstate pipeline. But even so, today's order doubles down on approaches that the D.C. Circuit has already rejected. So long as the Commission refuses to heed the court's unambiguous directives, I have no choice but to dissent.

#### **I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking**

4. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and consumption of fossil fuels, including natural gas. The Commission recognizes this relationship, finding, as it must, that "GHGs in the atmosphere may endanger public health and welfare through climate change"<sup>8</sup> and that the "construction and operation, as well as downstream emissions from newly created Project capacity, would increase the atmospheric concentration of GHGs . . . and contribute incrementally to future climate change impacts."<sup>9</sup> In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is required by the public convenience and necessity.<sup>10</sup>

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<sup>7</sup> Rehearing Order, 171 FERC ¶ 61,049 at P 6.

<sup>8</sup> EA at 119.

<sup>9</sup> *Id.* at 171-172; *see also* Certificate Order, 169 FERC ¶ 61,220 at P 257.

<sup>10</sup> Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f. Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change

5. Today's order on rehearing falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the Project's impact on climate change.<sup>11</sup> That is now clearly established D.C. Circuit precedent.<sup>12</sup> And yet the Commission continues to insist that it need not consider whether the Project's contribution to climate change is significant because it does not have a "scientifically-accepted methodology" to consider the impacts.<sup>13</sup> However, the most troubling part of the Commission's rationale is what comes next. Based on this alleged inability to assess significance, the

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by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("The [FEIS] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action," as well as a discussion of direct and indirect effects *and their significance*. (emphasis added)). The majority argues that the Commission can consider a project's direct GHG emissions under NEPA and in its public convenience and necessity determination without actually determining whether the GHG emissions are significant. Rehearing Order, 171 FERC ¶ 61,049 at PP 33, 90, 93-97. This argument defies logic and reason and has no basis in a proceeding entirely devoid of even the affectation that the Commission is factoring the Project's GHG emissions in its decisionmaking. The argument is particularly problematic in this proceeding given the conclusion that the Project will not have any significant impact on the environment. Certificate Order, 169 FERC ¶ 61,220 at P 264. How the Commission can rationally conclude that a project has no significant impacts, refuse to assess the significance of what might be the project's most significant impact, and then claim to have adequately considered that impact is beyond me. *C.f. infra* nn. 14-15 and accompanying text.

<sup>11</sup> *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *see also Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

<sup>12</sup> *See Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019), *reh'g en banc granted, judgment vacated*, 2019 WL 6605464 (D.C. Cir. Dec. 5, 2019); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019); *Sabal Trail*, 867 F.3d at 1371-72.

<sup>13</sup> EA at 172.

Commission concludes that the Project will not “significantly affect” the environment.<sup>14</sup> Think about that. The Commission is simultaneously stating that it cannot assess the significance of the Project’s impact on climate change, while still concluding that all environmental impacts will not significantly affecting the quality of the human environment.<sup>15</sup> That is unreasoned and an abdication of our responsibility to give climate change the “hard look” that the law demands.<sup>16</sup>

6. It also means that the Project’s impact on climate change does not play a meaningful role in the Commission’s public interest determination, no matter how often the Commission assures us that it does. Using the approach in today’s order, the Commission will always conclude that a project will not significantly affect the environment irrespective of that project’s actual GHG emissions or those emissions’ impact on climate change. If the Commission’s conclusion will not change no matter how many GHG emissions a project causes, those emissions cannot, as a logical matter, play a meaningful role in the Commission’s public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

## **II. The Commission’s NEPA Analysis of the Project’s Contribution to Climate Change Is Deficient**

7. The Commission’s NEPA analysis is similarly flawed. When conducting a NEPA review, an agency must consider both the direct and the indirect effects of the project under consideration.<sup>17</sup> While the Commission quantifies the direct GHG emissions

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<sup>14</sup> See, e.g., Certificate Order, 169 FERC ¶ 61,220 at P 264; EA at 194.

<sup>15</sup> Certificate Order, 169 FERC ¶ 61,220 at P 264.

<sup>16</sup> E.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (“[A]gencies cannot overlook a single environmental consequence if it is even “arguably significant.”); see *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) (“Not only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.” (internal quotation marks omitted)); see also *Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that agency action is “arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency”).

<sup>17</sup> 40 C.F.R. §§ 1502.16(b), 1508.8(b); *Sabal Trail*, 867 F.3d at 1371.

related to the Project's construction and operation,<sup>18</sup> and the downstream GHG emissions associated with gas delivered to a cogeneration facility,<sup>19</sup> it fails to consider the full scope of the indirect GHG emissions resulting from the incremental natural gas capacity facilitated by the Project.<sup>20</sup> The D.C. Circuit has repeatedly instructed the Commission that the GHG emissions caused by the reasonably foreseeable combustion of natural gas transported through a pipeline are an indirect effect and must, therefore, be included within the Commission's NEPA analysis.<sup>21</sup> It is past time for the Commission to learn that lesson.

8. Beginning with *Sabal Trail*, the D.C. Circuit has held unambiguously that the Commission must identify and consider reasonably foreseeable downstream GHG emissions as part of its NEPA analysis.<sup>22</sup> Shortly after that decision, the Commission attempted to cabin *Sabal Trail* to its facts, taking the position that it was required to consider downstream GHG emissions *only* under the exact facts presented in *Sabal Trail*—i.e., where the pipeline was transporting natural gas for combustion at a particular natural gas power plant (or plants).<sup>23</sup> In *Birckhead*, the D.C. Circuit rejected that argument, admonishing the Commission that it must examine the specific record before it and that it may not categorically ignore a pipeline's downstream emissions just because it

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<sup>18</sup> See *supra* note 4.

<sup>19</sup> Certificate Order, 169 FERC ¶ 61,220 at P 255 (The Commission acknowledges the downstream GHG emissions associated with 22,500 dekatherms (Dth) per day of natural gas being delivered to the Kimberly-Clark gas-fired cogeneration facility as reasonably foreseeable, estimating that the combustion for this amount of natural gas will result in 0.44 million metric tons per year of GHG emissions.).

<sup>20</sup> Certificate Order, 169 FERC ¶ 61,220 at P 7 (explaining that the Project would facilitate *incremental* firm transportation service capacity of 250,000 Dth per day in the Zone South segment of the Project).

<sup>21</sup> See *Allegheny Def. Project*, 932 F.3d at 945-46; *Birckhead*, 925 F.3d at 518-19; *Sabal Trail*, 867 F.3d at 1371-72.

<sup>22</sup> *Sabal Trail*, 867 F.3d at 1371-72; see also *id.* at 1371 (“Effects are reasonably foreseeable if they are ‘sufficiently likely to occur that a person of ordinary prudence would take [them] into account in reaching a decision.’” (quoting *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016))).

<sup>23</sup> *Birckhead*, 925 F.3d at 518-19 (rejecting the “Commission[’s] conten[tion] [that *Sabal Trail*] . . . is narrowly limited to the facts of that case” (internal quotation marks omitted)).

does not fit neatly within the facts of *Sabal Trail*. Indeed, the Court expressly rejected the Commission’s argument “that downstream emissions are an indirect effect of a project only when the project’s ‘entire purpose’ is to transport gas to be burned at ‘specifically-identified’ destinations”—i.e., the facts of *Sabal Trail*.<sup>24</sup> Since *Birckhead*, the court has continued to turn aside the Commission’s efforts to ignore reasonably foreseeable downstream GHG emissions.<sup>25</sup>

9. Nevertheless, the Commission refuses to calculate or consider all of the downstream GHG emissions that will likely result from natural gas transported by the Project. Instead, the Commission continues takes the position that if it does not know the specific end-use of the natural gas, any associated downstream GHG emissions are not reasonably foreseeable.<sup>26</sup> That is nothing more than a warmed-over version of the policy that the D.C. Circuit rejected in *Birckhead*—i.e., that the Commission will simply ignore certain downstream GHG emissions because the end-use is “unknown.”<sup>27</sup> Until the majority starts taking the D.C. Circuit’s holding seriously, I will have no choice but to continue to dissent from Commission orders that ignore reasonably foreseeable GHG emissions.

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<sup>24</sup> *Birckhead*, 925 F.3d at 519 (citing the Commission’s brief in that case).

<sup>25</sup> See *Allegheny Def. Project*, 932 F.3d at 945-46 (holding that the petitioners are “correct that NEPA required the Commission to consider both the direct and indirect environmental effects of the Project, and that, despite what the Commission argues, the downstream greenhouse-gas emissions are just such an indirect effect”).

<sup>26</sup> Certificate Order, 169 FERC ¶ 61,220 at PP 248-249; see also Rehearing Order, 171 FERC ¶ 61,049 at PP 124-125. The Commission acknowledges the downstream GHG emissions associated with the natural gas being delivered to the known location of a Kimberly-Clark gas-fired cogeneration facility as reasonably foreseeable, estimating that the combustion for this amount of natural gas will result in 0.44 million metric tons per year of GHG emissions. See Certificate Order, 169 FERC ¶ 61,220 at P 255.

<sup>27</sup> Certificate Order, 169 FERC ¶ 61,220 at P 249. The Commission notes that *Birckhead* held that downstream GHG emissions are not categorically reasonably foreseeable. *Id.* P 248. That’s true. But the fact that the Commission does not have to consider downstream GHG emissions in *every* case hardly explains why it was justified in ignoring those emissions in *this* particular case. See *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971) (“NEPA compels a case-by-case examination . . . of discrete factors.”) (quoted in *Birckhead*, 925 F.3d at 519).

10. There are plenty of steps that the Commission could take to consider the GHGs associated with the Project's incremental capacity if it were actually inclined to take a 'hard look' at climate change and follow the court's directives. At a minimum, we know that the vast majority, 97 percent, of all natural gas consumed in the United States is combusted<sup>28</sup>—a fact that, on its own might be sufficient to make downstream emissions reasonably foreseeable, at least absent contrary evidence. Moreover, the record here makes this a relative easy case: Adelphia states that their Parkway Lateral extending from the Zone South segment of the Project will serve to directly connect the Project to two existing power plants owned by Calpine Corporation.<sup>29</sup> With such information in the record, it seems highly likely that a portion of the gas transported on the Zone South segment of the Project will ultimately be combusted, making the associated downstream GHG emissions reasonably foreseeable.<sup>30</sup> Yet, the Commission insists that Adelphia's own statements "do not provide evidence that it is reasonably foreseeable that the gas will be consumed in Calpine's power plants."<sup>31</sup> It is hard to imagine what would cause the Commission to plainly ignore these reasonably foreseeable downstream GHG emissions, particularly when the facts so closely align with *Sabal Trail*, except to exclude GHG emissions and their impact on climate change from its public interest determination.

11. In addition, even where the Commission quantifies the Project's direct and indirect GHG emissions,<sup>32</sup> it fails to "evaluate the 'incremental impact' that [those emissions] will

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<sup>28</sup> U.S. Energy Info. Admin., *September 2019 Monthly Energy Review* 22, 97 (2019) (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption), <https://www.eia.gov/totalenergy/data/monthly/archive/00351908.pdf>; see also Jayni Hein et al., Institute for Policy Integrity, *Pipeline Approvals and Greenhouse Gas Emissions* 25 (2019) (explaining that, in 2017, 97% of all natural gas consumed was combusted).

<sup>29</sup> Adelphia Response to July 12, 2018 Data Request at 1 ("The proposed interconnection on the Parkway Lateral will serve to directly connect the Adelphia system with two existing Calpine Corporation [] power plants to provide such Calpine power plants with an alternative source of gas.")

<sup>30</sup> See Delaware Riverkeeper Request for Rehearing and Stay at 111.

<sup>31</sup> Certificate Order, 169 FERC ¶ 61,220 at P 249. Although Adelphia has not executed precedent agreements at this time with Calpine Corporation, Adelphia states it is "discussing the terms of an interconnection agreement" which will serve to connect the Project with the two existing Calpine power plants. See Adelphia Response to July 12, 2018 Data Request at 1.

<sup>32</sup> See *supra* notes 4-5.

have on climate change or the environment more generally.”<sup>33</sup> In *Sabal Trail*, the court explained that the Commission was required “to include a discussion of the ‘significance’ of” the indirect effects of the Project, including its GHG emissions.<sup>34</sup> That makes sense. Identifying and evaluating the consequences that a project’s GHG emissions may have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed.<sup>35</sup> But in today’s order on rehearing, the Commission refuses to provide that discussion or even attempt to assess the significance of the Project’s direct GHG emissions, let alone indirect emission, or how they contribute to climate change.<sup>36</sup> It is hard to see how hiding the ball by refusing to assess the significance of the Project’s climate impacts is consistent with either of those purposes.

12. In addition, under NEPA, a finding of significance informs the Commission’s inquiry into potential ways of mitigating environmental impacts.<sup>37</sup> An environmental review document must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.<sup>38</sup> “Without such a discussion, neither the agency

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<sup>33</sup> See *Ctr. for Biological Diversity*, 538 F.3d at 1216 (“While the [environmental document] quantifies the expected amount of CO<sub>2</sub> emitted . . . , it does not evaluate the ‘incremental impact’ that these emissions will have on climate change or on the environment more generally . . . .”); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) (“A calculation of the total number of acres to be harvested in the watershed is a necessary component . . . , but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres.”).

<sup>34</sup> *Sabal Trail*, 867 F.3d at 1374.

<sup>35</sup> See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA’s purposes is to ensure that “relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision”); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (“The idea behind NEPA is that if the agency’s eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.”).

<sup>36</sup> Rehearing Order, 171 FERC ¶ 61,049 at PP 87-90, 93-97; see also Certificate Order, 169 FERC ¶ 61,220 at P 254-257.

<sup>37</sup> 40 C.F.R. § 1502.16 (2018) (NEPA requires an implementing agency to form a “scientific and analytic basis for the comparisons” of the environmental consequences of its action in its environmental review, which “shall include discussions of . . . [d]irect effects and their significance.”).

<sup>38</sup> *Robertson*, 490 U.S. at 351

nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.<sup>39</sup>

13. Instead, the Commission continues to insist that it need not assess the significance of the Project’s GHG emissions because it lacks a “scientifically-accepted methodology” to “correlate specific amounts of GHG emissions to . . . physical effects on the global environment.”<sup>40</sup> But that does not excuse the Commission’s failure to evaluate these emissions. As an initial matter, the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. The Commission has several tools to assess the harm from the Project’s contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary “hard look” at the Project’s environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a project’s climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harms from climate change in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its

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<sup>39</sup> *Id.* at 352. The discussion of mitigation is especially critical under today’s circumstances where the Commission prepared an EA instead of an Environmental Impact Statement to satisfy its NEPA obligations. The EA relies on the fact that certain environmental impacts will be mitigated in order to ultimately find that the Project “would not . . . significantly affect[] the quality of the human environment.” EA at 194. Absent these mitigation requirements, the Project’s environmental impacts would require the Commission to develop an Environmental Impact Statement—a much more extensive undertaking. *See Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (“If *any* ‘significant’ environmental impacts might result from the proposed agency action then an [Environmental Impact Statement] must be prepared *before* the action is taken.”).

<sup>40</sup> *See* EA at 172. (“Currently, there is no scientifically-accepted methodology available to correlate specific amounts of GHG emissions to discrete changes in average temperature rise, annual precipitation fluctuations, surface water temperature changes, or other physical effects on the global environment or the Northeast region.”).



disposal, relying on deeply flawed reasoning that I have previously critiqued at length.<sup>41</sup>

14. Regardless of tools or methodologies available, the Commission also can use its expertise to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a significant effect on issues such as "prime farmland,"<sup>42</sup> "vegetation,"<sup>43</sup> and "wildlife."<sup>44</sup> Notwithstanding the lack of any "scientifically-accepted methodology" or objective metrics to assess these impacts, the Commission uses its judgment to conduct a qualitative review, and assess the significance of the Project's effect on those considerations.<sup>45</sup> The Commission's

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<sup>41</sup> See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

<sup>42</sup> EA at 41 ("Due to the availability of prime farmland and farmland of statewide importance in the vicinity of the Project and the lack of cultivated agricultural land in the Project area, we conclude impacts on prime farmland and farmland of statewide importance from the Project would be permanent, but minor and not significant.").

<sup>43</sup> *Id.* at 72 ("Based on the types and amounts of vegetation affected by the Project and Adelphia's proposed avoidance, minimization, and mitigation measures to limit Project impacts, we conclude that impacts on vegetation from the Project would not be significant.").

<sup>44</sup> *Id.* at 77 ("[W]e conclude that construction and operation of the Adelphia Gateway Project would not have population-level impacts or significantly measurable negative impacts on wildlife.").

<sup>45</sup> The Commission directly responds to this argument by countering that it does apply "standard methodologies and established metrics" to assess significance, pointing to wetlands as an example where the project would have temporary and short-term effects. Rehearing Order, 171 FERC ¶ 61,049 at P 96. Yet, the Commission does not provide any specific metric that was used to determine the significance of this impact. Furthermore, the Commission fails to explain the numerous other instances in which there are no established metrics for assessing significance but where the Commission seems to conjure up the ability to make a significance determination such as the referenced environmental impacts on prime farmland, vegetation, and wildlife. See *supra* notes 42-44.

refusal to, at the very least, exercise similar qualitative judgment to assess the significance of GHG emissions here is arbitrary and capricious.

15. That refusal is even more mystifying because NEPA “does not dictate particular decisional outcomes.”<sup>46</sup> NEPA “‘merely prohibits uninformed—rather than unwise—agency action.’”<sup>47</sup> In other words, taking the matter seriously—and rigorously examining a project’s impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

16. Even if the Commission were to determine that a project’s GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project is not in the public interest. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that, when a project may cause potentially significant environmental impacts, the relevant environmental impact statement must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.<sup>48</sup> The Court explained that, “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.<sup>49</sup> The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA,<sup>50</sup> which could encompass measures to mitigate a project’s GHG emissions.

17. Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against adverse effects. By refusing to assess significance, however, the Commission short

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<sup>46</sup> *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

<sup>47</sup> *Id.* (quoting *Robertson*, 490 U.S. at 351).

<sup>48</sup> *Robertson*, 490 U.S. at 351.

<sup>49</sup> *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

<sup>50</sup> 15 U.S.C. § 717f(e); Certificate Order, 169 FERC ¶ 61,220 at P 264 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . .”).

circuits any discussion of mitigation measures for the Project's GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

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18. Today's order on rehearing is not the product of reasoned decisionmaking. Its analysis of the Project's contribution to climate change is incomplete and its conclusion that the Project will not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges that GHG emissions contribute to climate change, but refuses to consider whether the Project's contribution might be significant before proclaiming that the Project will have no significant environmental impacts. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the Projects' consequences for climate change does not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner