

143 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Transcontinental Pipe Line Company, LLC

Docket No. CP12-30-001

ORDER DENYING REQUESTS FOR REHEARING AND STAY

(Issued May 16, 2013)

1. On November 2, 2012, the Commission issued an order granting Transcontinental Gas Pipe Line Company, LLC (Transco) a certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA) authorizing it to construct, operate, and abandon pipeline, compression, and meter facilities in Pennsylvania, New Jersey, and New York (Northeast Supply Link Project).¹ The Eastern Environmental Law Center on behalf of the New Jersey Highlands Coalition, Sierra Club – New Jersey Chapter, Food & Water Watch, Fight the Pipe, and Clinton Township (collectively referred to as EELC), as well as the North Carolina Utilities Commission (North Carolina Commission) and Mr. Andrew H. Shelofsky filed timely requests for rehearing. In addition, Mr. Shelofsky filed two requests for stay and EELC filed one request for stay of the November 2 Order. As discussed below, this order denies the requests for rehearing and the requests for stay.

I. Background

2. Transco operates an interstate natural gas pipeline that extends from Texas, Louisiana, and the offshore Gulf of Mexico area to its termini in the New York City metropolitan area. In its application, Transco requested authority to: (1) construct and operate approximately 5.39 miles of 42-inch-diameter pipeline loop on Leidy Line “D” in

¹ *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091 (2012) (November 2 Order).

Lycoming and Monroe Counties, Pennsylvania (the Muncy and Palmerton Loops)² and approximately 6.64 miles of 42-inch-diameter loop on Leidy Line “C” in Hunterdon County, New Jersey (Stanton Loop);³ (2) abandon approximately 0.46 miles of the existing 36-inch-diameter Caldwell “B” Loop in Essex County, New Jersey; and (3) increase the maximum allowable operating pressure (MAOP) of existing pipeline facilities in New Jersey, New York, and Pennsylvania.⁴ This MAOP increase includes the construction of Compressor Station 303 in Essex County, New Jersey.

3. The Northeast Supply Link Project will enable Transco to transport an additional 250,000 dekatherms (Dth) of gas per day from supply interconnections on its Leidy Line in Pennsylvania to its 210 Market Pool in New Jersey and the Manhattan, Central Manhattan, and Narrows delivery points in New York City. The Northeast Supply Link Project is fully subscribed under firm service agreements with four shippers.⁵ The November 2 Order approved Transco’s proposed incremental recourse rate for the project. The shippers agreed to pay negotiated rates for their transportation service.

4. On July 1, 2011, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). On August 1, 2012, Commission staff issued an environmental assessment (EA) for a 30-day comment period and placed it into the public record. The EA addressed geology and soils, water resources, fisheries and wetlands, vegetation and wildlife, land use, recreation and visual resources, socioeconomics, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and project alternatives; as well as the comments filed in response to the NOI and provided at the scoping meetings.⁶ The EA concluded that approval of the

² Leidy Line “D” extends from Monroe County, Pennsylvania to Transco’s Station 205 in Somerset County, New Jersey.

³ Leidy Line “C” extends from Transco’s Station 515 in Luzerne County, Pennsylvania to Hunterdon County, New Jersey.

⁴ The November 2 Order provides more detailed background information about Transco’s proposals.

⁵ Williams Gas Marketing, Inc. (Williams Gas), a subsidiary of Transco, subscribed to approximately 54 percent of the project’s capacity. Subsequently, Williams Gas changed its name to WPX Energy Marketing, LLC and became a separate company unaffiliated with Transco. This order will continue to refer to the company as Williams Gas.

⁶ Four public scoping meetings were held between July 18 and 21, 2011, in Hughesville and Bartonsville, Pennsylvania, and Clinton and East Hanover, New Jersey.

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proposed Northeast Supply Link Project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

5. The November 2 Order authorized Transco to construct and operate the Northeast Supply Link Project subject to 19 environmental conditions recommended by Commission staff, finding that the public convenience and necessity required approval of Transco's proposal, consistent with the criteria discussed in the Certificate Policy Statement.⁷ Specifically, the order found: (1) that Transco's proposal would not result in subsidization by any of Transco's existing customers; (2) that it would result in no adverse economic effects on existing customers, or on existing pipelines and their captive customers; and (3) that Transco had taken steps to minimize any adverse impacts on the economic interests of landowners and surrounding communities, noting that Transco would construct the proposed facilities primarily on existing rights-of-way and areas adjacent to existing rights-of-way.⁸ The November 2 Order also addressed the comments that were filed in response to the EA and adopted the EA's findings and recommendations.

II. Requests for Rehearing

A. Certificate Policy Statement

6. Under the Certificate Policy Statement, the Commission evaluates a proposed project by balancing the evidence of public benefits to be achieved against any potential adverse economic impacts. The threshold requirement is that the project must be able to proceed without subsidies from existing shippers.

7. The November 2 Order found that Transco satisfied the threshold requirement that its existing shippers will not subsidize the project because Transco proposed to charge incremental rates for the new construction. The order also found that Transco properly designed the proposed incremental rates based on project costs and on billing determinants that reflect the project's full capacity. The order dismissed the North

Transcripts from these meetings are available under accession numbers 20110718-4002, 20110719-4006, 20110720-4006, and 20110721-4028.

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified* 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁸ November 2 Order, 141 FERC ¶ 61,091 at PP 15-18.

Carolina Commission's contention that where the major shipper is an affiliate with negotiated rates filed under seal, the Commission should further analyze the rates to determine if Transco should be at risk for the under-recovery of project costs.⁹

8. The North Carolina Commission contends that the Commission's conclusion that Transco has met the no-subsidy requirement in the Certificate Policy Statement "appears to be based solely on the Commission's assertion that use of billing determinants equal to the new capacity is sufficient, without further analysis of the negotiated contracts' other important terms and conditions." The North Carolina Commission states that since an affiliate is a major shipper and that the negotiated contracts were filed under seal, a "harder look" is appropriate to determine if an at-risk condition is necessary. The North Carolina Commission contends that Transco should be at risk for the under-recovery of revenues in case of cost overruns or if shippers fail to fully perform under their contracts.

9. The Commission presumes that an incremental rate for firm service is appropriate when the incremental rate would be higher than the existing maximum system rate.¹⁰ Under incremental rates, the pipeline is required to recover a project's costs only from its project shippers and is barred from recovering those costs from existing shippers. Transco's proposed \$0.79074 per Dth incremental recourse reservation rate is higher than its current Zone 6 to Zone 6 reservation rate of \$0.11892 per Dth under Rate Schedule FT. Thus, an incremental rate is appropriate for the proposed project, and approving an incremental rate will insure that the project has no adverse economic impact on Transco's existing customers, since the expansion's full cost can be recovered only from the project's customers.

10. The Commission's incremental rate policy inherently places Transco at risk for cost overruns or revenue shortfalls.¹¹ As discussed in the November 2 Order, Transco's proposed incremental rates are properly designed based on the estimated construction

⁹ In a December 18, 2012 filing, the North Carolina Commission stated that the fact that Williams Gas is no longer affiliated with Transco is irrelevant, since they were affiliated when contract negotiations took place.

¹⁰ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,744 ("When a pipeline proposes to charge a cost-based incremental rate (establishing separate costs-of-service and separate rates for the existing and expansion facilities) higher than its existing generally applicable rates, the Commission usually approves the proposal.").

¹¹ See e.g., *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002) ("By proposing incremental pricing, Transco agrees to accept the risk of any under-recovery of revenues.").

costs and billing determinants that reflect the project's full capacity.¹² As a result, the pipeline bears the risk for any under-utilization of the new capacity unless the new customers have specifically contracted to share that risk under specific circumstances. Similarly, the risks of construction cost over-runs are borne by the pipeline unless such risks have been apportioned between the pipeline and the new customers in their service contracts.¹³ Thus, the Commission's incremental rate policy obviates the need for an at-risk condition.¹⁴

11. In addition, the Commission requires pipelines to keep separate books and accounting of costs attributable to incremental service. The books are maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.¹⁵ Such measures protect existing customers from cost overruns and from subsidizing new customers, if the incremental rates under-collect the project's incremental cost of service, as well as help the Commission and parties to rate proceedings determine the project costs.

12. The North Carolina Commission states that, because the negotiated rates were filed under seal, it is impossible to know the exact amount Transco will charge project shippers for transportation, the contracts' durations, who bears the risk for cost overruns or loss of supplies, whether the contracts fully pay for the new facilities, and whether Transco will keep the facilities on its books after the contracts end.¹⁶ The North Carolina Commission claims that allowing Transco to publicly file its negotiated rate contracts only after the project was approved prevents the Commission from finding whether Transco properly protected existing shippers.

¹² November 2 Order, 141 FERC ¶ 61,091 at P 16.

¹³ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,747.

¹⁴ In claiming that the Commission should take a harder look to determine if an at-risk condition is necessary when affiliates are involved, the North Carolina Commission cites *Brooklyn Union Gas Co. v. FERC*, 190 F.3d 369, 374 (5th Cir. 1999). *Brooklyn Union* is not relevant because the case presented only issues related to standing and ripeness.

¹⁵ 18 C.F.R. § 154.309 (2012).

¹⁶ North Carolina Commission Rehearing Request at 9-10.

13. This argument is without merit. In determining that Transco's proposal meets the no-subsidization requirement of the Certificate Policy Statement, the Commission's analysis assumes all service will be provided at recourse rates. The details of any agreement negotiated with an individual shipper are irrelevant to the Commission's analysis. To the extent a pipeline negotiates to accept a rate lower than its recourse rate from any project shipper, the pipeline bears the risk of any revenue shortfall. Executed negotiated rate agreements or tariff records describing the agreements must be filed for Commission review at least 30 days but not more than 60 days prior to commencement of service. Parties may pursue any issues regarding those agreements at that time. Moreover, pipelines are required to provide information in sufficient detail so that data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, consistent with Order No. 710.¹⁷

14. On rehearing, Mr. Shelofsky reasserts his contention that the record does not support a finding of need for the proposed project, asserting that over 50 percent of the contracted demand is with Transco's affiliate, Williams Gas.¹⁸ As discussed in the November 2 Order, marketing affiliates, like Williams Gas, are subject to the Commission's Standards of Conduct pursuant to 18 C.F.R. Part 358, which prohibits discriminatory behavior between the pipeline and its affiliate, requires the affiliate to maintain separate operations and personnel, and requires a transmission provider's employees to function independently of its marketing function employees.¹⁹ Absent evidence of affiliate abuse, we continue to see no reason not to view marketing affiliates like any other shipper for purposes of assessing the demand for capacity.²⁰ Mr. Shelofsky has not persuaded us to reach a different conclusion here.

15. Mr. Shelofsky also reasserts his claim that the Commission did not adequately address the possibility of overbuilding in light of Energy Information Administration (EIA) data for the Northeast, which shows that gas consumption in New England and the Middle Atlantic region will only increase slightly until 2020.²¹ Mr. Shelofsky asserts that the pipeline capacity being placed into service in 2012 and 2013 far exceeds the EIA's

¹⁷ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

¹⁸ Mr. Shelofsky Rehearing Request at 1-2.

¹⁹ 18 C.F.R. §§ 358.4 and 358.5 (2012).

²⁰ November 2 Order, 141 FERC ¶ 61,091 at P 21.

²¹ Mr. Shelofsky Rehearing Request at 2.

forecast increase in consumption. As discussed in the November 2 Order, four shippers have subscribed to all of the project's capacity and such service commitments for new capacity constitute "important evidence of demand for a project." As described in the Certificate Policy Statement, when "an applicant has entered into contracts or precedent agreements for the proposed capacity," we take this as "significant evidence of demand for the project."²² Accordingly, we reaffirm the November 2 Order's conclusion that Transco has provided adequate support of market demand for its proposed project.²³

16. Mr. Shelofsky contends that the November 2 Order is based on inaccurate information, citing discrepancies between Transco's and Mr. Shelofsky's estimates regarding fuel consumption.²⁴ We did not find that Transco submitted inaccurate information as to fuel consumption. Rather, the November 2 Order described Transco's and Mr. Shelofsky's different methods of estimating fuel consumption and determined that both estimates indicated decreases in total fuel consumption that would benefit existing system customers by reducing their average fuel rate. Accordingly, the November 2 Order granted Transco's request to charge its generally-applicable system fuel retention and electric power rates to the Northeast Supply Link shippers.²⁵

17. Mr. Shelofsky claims that Transco did not execute contracts for volumes and service terms equivalent to those in the precedent agreements prior to commencing construction, as required by Ordering Paragraph (B)(4) of the November 2 Order.²⁶ In a letter to the Secretary of the Commission filed on November 29, 2012, Transco states that on November 26, 2012, it "executed firm contracts for the volumes and service terms equivalent to those in the precedent agreements." The November 29 letter also states that Transco commenced construction of the authorized facilities on November 27, 2012. Thus, we find that Transco complied with the November 2 Order's conditions.

18. Mr. Shelofsky claims that "the use of eminent domain has not been fully evaluated," asserting that the pipeline route crosses lots with deed restrictions prohibiting multiple pipelines.²⁷ Under NGA section 7(h), a certificate of public convenience and

²² Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748.

²³ November 2 Order, 141 FERC ¶ 61,091 at P 20.

²⁴ Mr. Shelofsky Rehearing Request at 5.

²⁵ November 2 Order, 141 FERC ¶ 61,091 at PP 31-32.

²⁶ Mr. Shelofsky Rehearing Request at 5.

²⁷ *Id.* at 2.

necessity confers on a certificate holder, like Transco, the ability to acquire property rights by exercising the right of eminent domain in a court action, if the certificate holder cannot acquire the property rights by contract, or is unable to agree with the property owner on the amount of compensation. Transco is expected to make good faith efforts to negotiate with landowners for any needed property rights prior to exercising its right of eminent domain. However, if there are deed restrictions and the parties are unable to resolve the restrictions, issues related to property rights taken by Transco under the NGA's eminent domain provisions are matters for a state or federal court to decide.

B. Environmental Issues

1. Inaccuracies and Assessment of Impacts

19. Mr. Shelofsky contends that there were numerous errors and omissions in the information reported to the Commission throughout the environmental review process, and that other permitting agencies used inaccurate data to evaluate Transco's project.

20. Project design and data collection efforts are ongoing during the early stages of the Commission's environmental review process. Therefore, it is not uncommon for documents submitted during pre-filing or the early stages of a certificate proceeding to lack certain information or to contain information that changes over the course of the review. For this reason, based on staff review and input from other agencies and local stakeholders, the Commission's environmental staff issued comments on the draft resource reports and sent additional data requests to Transco in order to resolve inconsistencies or identify missing information. In addition, as stated on the record at each public scoping meeting, the Commission's environmental staff not only considered the information provided in Transco's application, as supplemented by responses to data requests, but also assembled information from a variety of other sources, including state, local, and federal agencies, and conducted its own independent field work and analysis. Further, many other local, state, and federal agencies participated throughout the environmental review process, and the U.S. Department of Transportation, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service (FWS) served as cooperating agencies in preparing the EA. Thus, the Commission's determination in this proceeding was based on the review of reference materials and information submitted by various parties to this proceeding, as well as field investigations and consultations with other agencies and stakeholders.

21. Regarding Mr. Shelofsky's concerns about authorizations from other federal and state agencies,²⁸ we have no authority over other agencies' permitting and/or review requirements. However, before authorizing construction, and consistent with Environmental Condition 8 of the November 2 Order, the Commission's environmental staff ensures that all necessary federal authorizations have been obtained, and that the facilities authorized have been reviewed for compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

22. EELC argues that the EA's conclusions that various impacts on natural resources are temporary, because the impacts would only occur during the construction phase and that resources are expected to return to their preconstruction condition, are not sufficiently supported. The EA analyzed the environmental impacts of Transco's proposal, and made findings based on Transco's proposed mitigation measures as well as the Commission staff's recommendations to further minimize impacts. The EA defined impacts as temporary, short-term, long-term, or permanent based on the Commission's years of experience siting pipeline projects, establishing proven and effective mitigation and best management practices to avoid or reduce impacts, monitoring construction to ensure compliance with the Commission's requirements.²⁹ EELC has provided no information to contradict the EA's analysis or the Commission's finding of no significant impact.

2. Wetland and Waterbody Crossings

23. Mr. Shelofsky notes that Wetland W-ST-12-002, which the Stanton Loop crosses, is classified as exceptional value in New Jersey and is a known habitat for the bog turtle, which is federally listed as threatened. In addition, the project will cross two tributaries of Grandin Stream that are classified as freshwater, trout maintenance, and Category 1 waters. Mr. Shelofsky requests that the direct pipe crossing method be reevaluated as an alternative crossing method at these three locations, as this method was evaluated for the Aquashicola Creek crossing in Monroe County, Pennsylvania.

24. The site-specific circumstances at the Aquashicola Creek crossing that drove the examination of the direct pipe crossing method in the EA (the presence both of bog turtle habitat and a Wetland Reserve Program conservation easement)³⁰ do not exist at the other

²⁸ Mr. Shelofsky Rehearing Request at 5.

²⁹ EA at 1-11.

³⁰ The Wetland Reserve Program, managed by the U.S. Department of Agriculture – Natural Resources Conservation Service, offers landowners an opportunity to establish long-term conservation and wildlife practices and protection. The goal of the program is

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three crossing locations. The EA did evaluate the horizontal directional drill (HDD) crossing method, which is similar to the direct pipe crossing method, as an alternative for these three locations.³¹ The EA found that an HDD was infeasible and/or impractical at these locations because of engineering limitations relating to tie-ins to mainline valves, the impact that pull back would have on area roads, and the fact that HDD entry or exit sites would be located in residential neighborhoods. As discussed below, Transco committed to implementing 15 mitigation measures to protect the threatened bog turtle at Wetland W-ST-12-002. These measures were developed in consultation with the FWS, which concurred with the EA's determination that the project is "not likely to adversely affect" the bog turtle, if these 15 mitigation measures are implemented together with an open-cut crossing method. Further, all wetland and waterbody crossings in New Jersey must be constructed in accordance with federal authorizations issued by the New Jersey Department of Environmental Protection (NJDEP).³² NJDEP issued Transco a permit for the open cut of this wetland and two tributaries on September 17, 2012. As discussed in the November 2 Order, the EA determined that an open-cut crossing, with the appropriate mitigation measures that Transco committed to, was acceptable and would not result in significant impact at these three locations.³³ Therefore, we find no basis for evaluating another alternative crossing method.

25. EELC contends that the Commission's finding that impacts on aquifers are minor, temporary, and localized is insufficient to comply with the National Environmental Policy Act of 1969 (NEPA) because at least one aquifer is identified as a sole source aquifer.³⁴ To reduce impacts at the South Branch Raritan River (a major source of drinking water within the sole source aquifer), Transco will use an HDD crossing method. As noted in the EA, Transco performed site-specific geotechnical analyses and engineering reviews that indicate favorable conditions for a successful HDD crossing.³⁵ As discussed in the November 2 Order, the EA also identified potential impacts to the aquifers, including increased turbidity levels if aquifers are intersected during a drill, overland water flow and recharge impacts to shallow aquifers, and potential water table

to achieve the greatest wetland functions and values, along with optimum wildlife habitat, on lands enrolled in the program.

³¹ EA at 3-17.

³² EA at 2-15 and 2-26.

³³ November 2 Order, 141 FERC ¶ 61,091 at P 101.

³⁴ EELC Rehearing Request at 12-13.

³⁵ EA at 2-17.

elevation changes during project construction.³⁶ The EA determined, however, that Transco's construction methods and erosion and sediment control plans would adequately minimize these impacts (which would be minor, temporary, and localized to construction areas). As stated previously, this conclusion was based on the Commission staff's considerable experience with the impacts of pipeline construction. The November 2 Order found that the EA considered these issues in depth and satisfied our responsibility to take a hard look at the project's impacts in concluding that impacts would be minimal. EELC has presented no new arguments or information requiring the Commission to change its conclusion or require additional mitigation.

26. EELC states that one of Tennessee Gas Pipeline Company's (Tennessee) projects in New Jersey has been cited numerous times for violations of erosion control measures that directly impacted surface water quality. EELC also contends that the Commission presents no evidence as to why this project will be different from Tennessee's, and the project will result in violations of New Jersey's Surface Water Quality Standards, adversely impacting the protected Category 1 waterways at three New Jersey waterbody crossings.³⁷

27. The Commission takes matters of non-compliance seriously, but such matters must be addressed in the proper venue. The non-compliance issues that EELC raises here involve completely different proceedings and are properly addressed in those proceedings. As discussed in the November 2 Order, the EA indicated that use of Transco's project-specific Wetland and Waterbody Construction and Mitigation Procedures (Procedures), Erosion and Sediment Control Plan, and Restoration Plan, together with compliance with all other federal requirements, will adequately minimize impacts on waterbodies.³⁸ Our findings are based on Transco's commitment to comply with these best management practices, as developed pursuant to the Commission's requirement regarding the use of the Commission's Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and Procedures, with approved modifications for site specific conditions and other measures outlined in the EA. Therefore, we do not believe that authorizing Transco's Project will result in violations of New Jersey's Surface Water Quality Standards at the Category 1 waterbody crossings.

³⁶ November 2 Order, 141 FERC ¶ 61,091 at P 96.

³⁷ EELC Rehearing Request.

³⁸ November 2 Order, 141 FERC ¶ 61,091 at P 100.

3. New Jersey Highlands Region

28. EELC raises concerns regarding project impacts on the New Jersey Highlands Region, which is defined under New Jersey's Highlands Water Protection and Planning Act (Highlands Act). EELC contends that, although the project does not require an exemption from the Highlands Act's provisions, the Commission is still required to consider impacts the project would have on the resources in the Highlands Region. Specifically, EELC states that commenters on the EA, including the U.S. Environmental Protection Agency (EPA), questioned the effectiveness of protective measures identified in Transco's construction plans and Procedures. EELC argues that the effectiveness of Transco's construction plans and Procedures are in question and may result in potential impacts to the Highlands Region and on drinking water supplies which is itself significant.

29. Contrary to EELC's assertion, in its comments on the EA, the EPA did not state that Transco's measures were inadequate or ineffective. EPA asked that site-specific justification for various alternate measures proposed by Transco, which were different from the Commission's Procedures, be available for public comment. The November 2 Order states that the site-specific justifications were provided in the EA.

30. Regarding the potential impacts on the Highlands Region, the EA discussed land use, ground and surface waters, wetlands, invasive species, soil and erosion, and traffic, and stated that Transco would minimize impacts on resources in the Highlands Region through its project-specific Erosion and Sediment Control Plan, and its Plan and Procedures. The Commission's environmental staff reviewed Transco's construction and restoration plans and found them acceptable.³⁹ Further, the Highlands Council, which was established by the NJDEP to develop and oversee guidelines for adherence to the rules and regulations of the Highlands Act, determined that the Northeast Supply Link Project does not require an exemption from the Highlands Act's provisions. As noted in the EA, Transco will continue to coordinate with the NJDEP regarding other construction and mitigation measures in the Highlands Region. EELC presents no new information to contradict the analyses or conclusions presented in the EA.

4. Impacts on the Bog Turtle

31. EELC renews its concerns about project impacts on the bog turtle and its habitat near the Stanton Loop.⁴⁰ Specifically, EELC contends that: (1) Transco did not agree to

³⁹ *Id.* P 46.

⁴⁰ EELC Rehearing Request at 19-21.

limit construction activities to periods when bog turtles are not active; (2) the EA does not explain what would happen if bog turtle hibernacula were discovered in the construction path; (3) the EA does not contain a protocol that tells construction workers what to do if they discover a bog turtle; (4) there is no extreme weather emergency plan in case the silt fencing fails; and (5) the restoration plan does not specify what species would be used to re-vegetate disturbed areas or how to deal with non-native species.

32. As discussed previously in this order and in the November 2 Order, Transco, in consultation with the FWS, agreed to a detailed plan of 15 site-specific construction and monitoring methods to minimize impacts on the bog turtle at the Stanton Loop location. Transco's plan includes: (1) using a FWS-recognized qualified biological monitor to look for hibernacula and bog turtles during construction and installation of silt fences; (2) stopping work if a bog turtle is found; and (3) promptly restoring the areas with native species following disturbances. In this Stanton Loop bog turtle wetland area, Transco is also required to maintain double silt fences buried six inches into the ground to minimize silt fence failure during rain.⁴¹ The November 2 Order states that the EA documented Transco's commitment to seed all disturbed areas in accordance with the written recommendations for seed mixes, rates, and data from the local soil conservation authority, or as requested by the land owner or land management agency.⁴² In addition, one of the 15 mitigation measures identified in the EA includes thoroughly washing construction equipment offsite before use to prevent the introduction of invasive species.⁴³ Transco also developed an invasive species management plan, as identified in the EA, which incorporated this protocol.

33. The EA documents the environmental staff's consultation and cooperation with the FWS in developing these methods. Thus, the EA concluded that the project is not likely to adversely affect the bog turtle.⁴⁴ As indicated previously, the FWS concurred with this determination. We continue to believe that implementation of these measures will minimize impacts on the bog turtle and its habitats.

⁴¹ EA at 2-48.

⁴² November 2 Order, 141 FERC ¶ 61,091 at P 90.

⁴³ EA at 2-49.

⁴⁴ EA at 2-48.

5. Air Quality, Noise, and Safety

34. EELC believes that NEPA requires the Commission to publicly disclose Transco's Construction Emission Plan, specifically with respect to reduction or elimination of nitrogen oxides, and make the plan available for public comment.

35. The EA fully disclosed the project's air impacts, including nitrogen oxide emissions, based on projected best estimates.⁴⁵ Although emissions were below the Clean Air Act (CAA) General Conformity Thresholds, the estimated levels were within 0.2 tons of the threshold. Therefore, Environmental Condition 17 required Transco to file a Construction Emission Plan to monitor actual emissions and to provide the documentation necessary for completion of a General Conformity Determination if General Conformity thresholds are exceeded during construction. Transco filed its plan on November 8, 2012.

36. The Construction Emission Plan itself is not designed to reduce, eliminate, or offset air emissions, as EELC suggests, but is an accounting measure to monitor emissions. Its purpose is to enable the Commission to fulfill its responsibilities under the CAA. As stated in the EA, the CAA⁴⁶ requires the Commission to prepare a General Conformity Determination if actual project emissions exceed the threshold at any point during construction. Changes that could affect emissions include extending the length of the construction period or the final selection of equipment.⁴⁷ Transco is required to file this information with the Commission and it will be available for public review. If a General Conformity Determination is required, the Commission would issue a draft determination for public comment and include the appropriate mitigation measures.

37. EELC contends that constructing Compressor Station 303 next to the Essex County Environmental Center in West Essex Park could significantly harm the aesthetic, recreational, and educational enjoyment of the Environmental Center. EELC cites the EPA's comments on the EA regarding noise to support its contention that, although estimated background levels are below the Commission day-night sound level (Ldn) threshold of 55 decibels on the A-weighted scale (dBA), noise from the compressor station will cause unacceptable impacts. EELC believes that the Commission should have considered alternative compressor station sites where noise impacts would not be as significant.

⁴⁵ EA at 1-103 through 2-119.

⁴⁶ EA at 2-114.

⁴⁷ *Id.*

38. As discussed in the November 2 Order, the EPA expressed concern regarding existing background noise levels at the Environmental Center and the alternative sites evaluated.⁴⁸ However, the EPA did not dispute the EA's conclusion that noise from operation of the compressor station would be below the Commission's criterion of 55 dBA Ldn⁴⁹ at noise sensitive areas (NSAs) and would not be considered significant. To ensure that the actual noise from the new compressor station meets the Commission criterion, Environmental Condition 18 of the November 2 Order requires Transco to conduct post-construction noise surveys at identified NSAs to ensure that the noise contribution from Compressor Station 303 does not exceed 55 dBA Ldn. Further, as noted in the November 2 Order, eight alternative compressor station sites were evaluated in the EA, which concluded that the alternatives were not preferable to the proposed site.⁵⁰ We considered all environmental factors, in addition to environmental feasibility, when evaluating site alternatives for Compressor Station 303, and conclude that no further analysis is required.

39. Mr. Shelofsky states that it is premature to allow Transco to construct additional pipeline facilities when the Integrity Verification and Remediation Plan's (IVRP) impact on its existing pipelines is unknown.⁵¹ He cites to a Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) Corrective Action Order associated with a December 3, 2011 pipeline failure on Transco's system in Marengo County, Alabama. The November 2 Order acknowledges that Transco continues to work under PHMSA oversight to complete an accurate and complete IVRP of its system.⁵² However, Transco's past safety record and compliance with PHMSA's Corrective Action Order for a specific incident are outside the scope of our review in this proceeding. The November 2 Order and the EA clearly state that Transco is required to design, install, inspect, test, construct, operate, replace, and maintain the facilities approved as part in accordance with PHMSA's *Minimum Federal Safety Standards* in 49 C.F.R. Part 192.⁵³ Therefore, we find that it is not premature to authorize the proposed construction herein.

⁴⁸ EPA comments on EA at 2. Accession Number 20120906-0005.

⁴⁹ The Environmental Center is considered an NSA due to its teaching capacity.

⁵⁰ November 2 Order, 141 FERC ¶ 61,091 at P 142.

⁵¹ Mr. Shelofsky Rehearing Request at 4-5.

⁵² November 2 Order, 141 FERC ¶ 61,091 at P 125.

⁵³ EA at 2-126.

40. EELC states that under NEPA the Commission should disclose the results of Transco's hydrostatic testing for the Caldwell and Long Island Uprates in order to make an informed decision regarding environmental consequences. As stated in the EA, Transco will conduct the hydrostatic testing as part of its required Integrity Management Program for operating pipelines to ensure that its existing facilities comply with PHMSA's regulations.⁵⁴ These uprated facilities are included as part of the Northeast Supply Link Project because the addition of the resulting new capacity requires Commission authorization. Because the hydrostatic testing can be performed at any time and will be conducted as part of Transco's ongoing operations, the results of the testing are not subject to environmental review in this proceeding. Transco must be able to document that the Caldwell and Long Island Uprate segments can safely operate at the increased MAOP prior to implementing the uprates in accordance with PHMSA regulations.⁵⁵

6. Need for an Environmental Impact Statement

41. EELC asserts that the Commission should have prepared an Environmental Impact Statement (EIS) because the decision not to treat Transco's proposals here as a major new project will have a precedential effect on environmental considerations and decision-making in future proceedings.⁵⁶

42. As stated in the November 2 Order, preparing an EA for the project at issue in this proceeding establishes no precedent. We further emphasized that each project is unique and causes different impacts on different resources. In determining whether to prepare an EIS or an EA, the Commission's environmental staff, pursuant to the Commission's regulations, makes an individual determination for each new proposal. The Commission's decision whether to prepare an EA or an EIS for a particular project is based on independent review of the unique circumstances of that individual project and lacks precedential value with respect to decisions whether to prepare an EA or an EIS for any other project.⁵⁷

⁵⁴ EA at 1-6 and November 2 Order, 141 FERC ¶ 61,091 at P 124.

⁵⁵ November 2 Order, 141 FERC ¶ 61,091 at P 124.

⁵⁶ EELC Rehearing Request at 17-19.

⁵⁷ November 2 Order, 141 FERC ¶ 61,091 at P 81.

43. EELC seeks to distinguish *Presidio Golf Club v. Nat'l Park Service (Presidio)*⁵⁸ and *Town of Cave Creek v. FAA (Cave Creek)*,⁵⁹ contending that the reason the preparation of EAs in those proceeding was not precedential was because projects in *Presidio* and *Cave Creek* were unique and responded to particular circumstances. EELC claims that recent pipeline construction in New Jersey, New York, and Pennsylvania, including Transco's proposals herein, are not unique or responding to particular circumstances. *Presidio* involved the National Park Service's proposal to construct a golf clubhouse on public property close to an existing clubhouse on private property. *Cave Creek* involved the Federal Aviation Administration's proposal to change the high-altitude arrival and departure procedures to the north, northwest, and northeast at the Phoenix Sky Harbor International Airport. In each case, plaintiffs challenged the EAs and as relevant here, the courts in both cases held without extensive discussion that the decisions to prepare EAs, as opposed to EISs, did not establish precedent. However we find no language in the *Presidio* and *Cave Creek* cases that would preclude us from concluding that construction proposals before the Commission are not similarly unique or developed to address particular circumstances.

44. In the November 2 Order, in response to the EELC's arguments regarding the precedential effect of EA vs EIS decisions, the Commission noted that it had prepared an EIS for the Texas Eastern Transmission, LP's (Texas Eastern) New York-New Jersey Expansion Project.⁶⁰ EELC claims this citation is of little value considering that the Commission only prepared an EA in Tennessee Gas Pipeline, LLC's (Tennessee) Northeast Upgrade Project,⁶¹ EELC contends that the Commission lacks clear governing standards and applies precedent inconsistently when a pipeline project constitutes a major federal action requiring an EIS.

45. We reiterate: the decision on whether to prepare an EA or an EIS is an individual one, made on the basis of the particular circumstance presented by each individual proposal. Texas Eastern's New York-New Jersey Expansion involved the construction of 15.2 miles of 30-inch-diameter greenfield pipeline, 4.8 miles of 42-inch-diameter pipeline that replaced existing pipeline, and appurtenant facilities such as meter and

⁵⁸ 155 F.3d 1153 (9th Cir. 1998).

⁵⁹ 325 F.3d 320 (D.C. Cir. 2003).

⁶⁰ *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, *reh'g denied*, 141 FERC ¶ 61,043 (2012).

⁶¹ *Tennessee Gas Pipeline Co., LLC*, 139 FERC ¶ 61,161, *reh'g denied*, 142 FERC ¶ 61,025 (2012).

regulating stations and pig launchers and receivers. Tennessee's Northeast Upgrade Project involved the construction of five pipeline loop segments totaling 40.3 miles of 30-inch-diameter pipeline, as well as modifications and upgrades to four compressor stations and one meter station. The Commission in both cases examined the environmental issues raised. After hard looks at the environmental issues presented, environmental staff prepared an EIS for Texas Eastern's proposal because it involved a new greenfield pipeline that would have significant environmental impacts. In *Tennessee*, however, staff prepared an EA to determine if the proposed project would have significant impacts necessitating the preparation of an EIS. The EA concluded that the Tennessee's project would not have a significant impact on the quality of the human environment. Thus, an EIS was not prepared. If there are no significant impacts, an EIS is not required. Hence, we conclude that our actions were not inconsistent.

46. EELC contends that the Commission should have prepared an EIS because the noise from Transco's proposed Compressor Station 303 would have a significant impact on the adjacent Essex County Environmental Center, which EELC claims is a unique cultural and scientific resource that educates adults and children about environmental systems. EELC contends that courts have "recognized impacts on protected resources as significant, requiring the preparation of an EIS" and cites *Anglers of Au Sable v. U.S. Forest Service (Au Sable)*.⁶²

47. In *Au Sable*, the plaintiffs requested a preliminary injunction to stop a company from conducting exploratory oil and gas drilling near a state-designated "natural area," a state-designated "natural river," and an area of old growth forest. Even though the environmental groups urged the Forest Service to prepare an EIS, the Forest Service prepared an EA that found no significant impact on the surrounding environment. The court stated that an EIS must be prepared if substantial questions are raised about the project's effect on environmental quality. After examining the declarations in support of the injunction, the court granted the injunction to preserve the *status quo*, holding that the plaintiffs raised substantial questions about the project's adverse environmental impact that may undermine the EA's finding of no significant impact.⁶³ The court returned the case to a magistrate judge for review of the Forest Service's actions.

48. We do not dispute that significant, unmitigable environmental impacts may be a factor in determining whether to prepare an EIS. Here, however, the EA examined construction noise at Compressor Station 303 and found that construction would last between three and six months and would consist of clearing and grading, earthwork, and

⁶² 402 F.Supp. 2d 826 (E.D. Mich. 2005).

⁶³ *Id.* 832.

installation of compressor units, piping, and associated buildings. The EA concluded that construction activities at the station “would not be expected to cause any significant impact on noise quality in the area.”⁶⁴ As previously discussed, the EA also examined noise from Compressor Station 303 after it goes into operation and found that noise attributable to Compressor Station 303 would remain below our criterion of 55 dBA Ldn. Further, the EA found that the noise increase at the nearest environmental center building (NSA 3) would increase by 0.3 dBA and that noise would increase at a second environmental building (NSA 4) an additional 200 feet from the compressor station by 0.5 dBA.⁶⁵ These increases are below the 3 dBA threshold of noticeable difference for humans. Thus, the EA concluded, and the November 2 Order agreed, that the noise impact attributable to Compressor Station 303 would not be significant.⁶⁶ Unlike *Au Sable*, where the court found that the plaintiffs raised substantial issues potentially calling into question the Forest Service’s determination of no significant impact, we concur, based on the analysis in the EA, that the noise attributable to the compressor station would not be significant. EELC has presented no information that would require us to reach a different conclusion. Thus, an EIS is not required.⁶⁷

7. Cumulative Impacts

49. EELC contends that the project will have cumulatively significant impacts on the environment, and that the Commission should have prepared an EIS, rather than an EA.⁶⁸ Specifically, EELC asserts that the Commission erred in considering only the general development of Marcellus Shale drilling and in stating that “more specific analysis is outside the scope of the cumulative impact analysis in the EA because the exact location, scale, and timing of future Marcellus Shale activities is unknown.” EELC contends that the Commission’s analysis amounted to a notation of how many wells were drilled in

⁶⁴ EA at 2-120 and 2-121.

⁶⁵ EA at 2-123 Table 2.8.2-1

⁶⁶ November 2 Order, 141 FERC ¶ 61,091 at PP 119-120. The November 2 Order also attached Environmental Condition 18, which required Transco to conduct post-construction noise surveys at identified NSAs to ensure that the noise contribution from Compressor Station 303 did not exceed the Commission’s Ldn of 55 dBA.

⁶⁷ *Citizens Against Pellissippi Parkway Extension, Inc. v. Mineta*, 375 F.3d 412, 414 (6th Cir. 2004) (holding that there is no need for an EIS, if the EA determines that the proposed action will have no significant impact).

⁶⁸ EELC Rehearing Request at 4-11.

Pennsylvania in 2011 and how many permits were issued in the state through April 2012, without any justification as to why more definitive information could not be provided. EELC avers that by accessing readily available public information, the Commission could have ascertained the location of wells drilled near the project, including access roads, gathering lines, and compressor stations, as well as the location of potential future wells. EELC concludes that the Commission did not include quantified and detailed information, as required by NEPA.

50. In addition, EELC contends that the Commission erred in finding that Marcellus Shale development was not causally related to the proposed project or reasonably foreseeable. EELC asserts that Transco's project would not exist absent the development of Marcellus Shale and Marcellus Shale would not continue to be developed unless projects such as the one proposed herein were constructed. In the alternative, EELC states that a close causal relationship is not required for such actions to be considered together in a cumulative impact analysis because Marcellus Shale drilling will impact the same area as Transco's proposed project.

51. As noted in the November 2 Order, the Council on Environmental Quality's (CEQ) regulations require agencies to consider three kinds of impacts: direct, indirect, and cumulative.⁶⁹ The regulations state that "direct effects" of a proposed action are "caused by the action and occur at the same time and place."⁷⁰ "Indirect effects" are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."⁷¹ "Cumulative impact" is defined as the "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."⁷²

52. The EA analyzed the cumulative impacts of related past, present, and reasonably foreseeable activities in the project area.⁷³ With respect to the EA's cumulative impact analysis of Marcellus Shale development, we disagree with EELC's suggestion that the EA merely considered the number of wells drilled in Pennsylvania in 2011 and the number of well permits issued through April 2012. As discussed in the November 2

⁶⁹ 40 C.F.R. § 1508.25 (2012).

⁷⁰ 40 C.F.R. § 1508.8(a) (2012).

⁷¹ 40 C.F.R. § 1508.8(b) (2012).

⁷² 40 C.F.R. § 1508.7 (2012).

⁷³ EA at 2-136-151.

Order, the EA identified the project facilities closest to the active Marcellus Shale drilling activities, including the proposed Muncy Loop in southeastern Lycoming County, Pennsylvania and the existing Leidy Interchange Hub in northwestern Clinton County, Pennsylvania. The EA concluded that drilling would likely continue through the project's construction period, but that the extent of the drilling was unknown.⁷⁴

53. Further, the EA addressed the cumulative impacts of Marcellus Shale development on a number of resources in the project area, including impacts to soil; groundwater, surface water, and wetlands; vegetation and wildlife; land use, recreation and special interest areas and visual resources; socioeconomics; and air quality and noise.⁷⁵ The EA also analyzed the cumulative impacts of existing and pending jurisdictional natural gas pipelines and unrelated projects, including the general development of the Marcellus Shale resources near the project.⁷⁶

54. The Supreme Court held in *U.S. Dep't of Transp. v. Public Citizen (Public Citizen)*,⁷⁷ that when looking at project impacts, NEPA requires a "reasonably close causal relationship" between the environmental effect and the alleged cause similar to "the familiar doctrine of proximate cause from tort law."⁷⁸ The November 2 Order correctly found that there was not a reasonably close causal relationship between the development of natural gas production in the Marcellus Shale formation in Pennsylvania and our approval of Transco's Northeast Supply Link Project. Denying authorization for Transco's proposed natural gas transmission project would not prevent impacts from the construction and operation of natural gas production facilities like well pads, access roads, gathering lines, and compressor stations that EELC is concerned about.

⁷⁴ EA at 2-141.

⁷⁵ See, e.g., EA at 2-144 through 2-149.

⁷⁶ EA at 2-136 through 2-141.

⁷⁷ 541 U.S. 752, 767 (2004).

⁷⁸ *Public Citizen*, 541 U.S. at 767 (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)). The Court upheld the Federal Motor Carrier Safety Administration's decision not to consider the potential environmental impacts of an increased number of Mexican trucks on U.S. roads in its EA assessing new safety regulations governing Mexican motor carriers. The court based its decision on the agency's finding that the relationship between the increased number of trucks and the safety regulations was not a reasonably close causal relationship.

55. Moreover, while Transco states that the project will provide shippers access to natural gas supplies being produced in the Marcellus Shale supply area, there is no way to relate any specific Marcellus Shale production and gathering activities to Transco's project. As discussed in the November 2 Order, we find that this does not constitute the "close causal relationship" described in *Public Citizen*.⁷⁹

56. The EA cites Transco's stated purpose to expand the natural gas delivery capacity to the northeast U.S. and to provide its customers with access to new sources of natural gas. Transco believes the project will also enhance national energy security by transporting more gas to market and will reduce overall natural gas transportation costs. Further, Transco cites increasing natural gas demand in the region, referencing New Jersey Governor Christie's 2011 Energy Master Plan, which encourages increased natural gas use for power generation and calls for the expansion of New Jersey's existing natural gas pipeline infrastructure. As a high-pressure, high-capacity pipeline, Transco's project is designed to transport natural gas in interstate commerce and support Transco's entire transmission system – it is not a gathering system for gas produced in the Marcellus Shale region.⁸⁰

57. As further discussed in the November 2 Order, the Commonwealth of Pennsylvania regulates new permits, wells, gathering lines, and other facilities, and therefore determines whether gas will be developed in Pennsylvania. The development of natural gas resources in the Marcellus Shale region will continue with or without Transco's proposed project, which, as discussed in the November 2 Order, will only transport a very small percentage of the projected growth in natural gas production from the Marcellus Shale area. Developers, who are not subject to the Commission's jurisdiction, will continue to drill new wells and construct gathering systems to extract and move the Marcellus Shale gas.⁸¹

58. The November 2 Order also notes that future Marcellus Shale drilling activities and the potential associated environmental impacts are not reasonably foreseeable. As explained in the EA, the exact location, scale, and timing of future actions are unknown.⁸² EELC disagrees, noting that publicly available maps prepared by the Pennsylvania Department of Environmental Protection provide quantitative and

⁷⁹ November 2 Order, 141 FERC ¶ 61,091 at PP 44-45.

⁸⁰ *Id.* PP 45-46.

⁸¹ *Id.* PP 44-46.

⁸² EA at 2-140.

geographic data on the location of permitted gas wells in Pennsylvania and show the locations of existing and proposed wells in the counties crossed by the project. EELC maintains that the location and development of the wells is sufficiently certain to justify a more detailed NEPA analysis.⁸³

59. The maps cited by EELC indicate locations of permitted, yet unconstructed, wells; the maps do not indicate locations of gathering lines, access roads, and other associated infrastructure and related facilities. In addition, although Pennsylvania has issued thousands of well permits and continues to issue new permits, it is unknown when, or even which, of these wells will actually be drilled, much less the nature of the associated infrastructure and related facilities for drilled wells.

60. NEPA does not require an agency to “engage in speculative analysis” or “do the impractical, if not enough information is available to permit meaningful consideration.”⁸⁴ As discussed in the November 2 Order, the EA provided general information on the number and general location of permitted wells, as well as the general cumulative impacts of Marcellus Shale development to a number of resources in the project area. However, given the significant uncertainties with respect to the timing and location of wells which may ultimately be drilled, a quantitative analysis of potential impacts from the wells and associated facilities would require considerable speculation and hypothesizing. Accordingly, we agree with the EA’s finding that the specific information necessary for a meaningful analysis of when, where, and how Marcellus Shale development will ultimately occur is unknowable at this time.

61. Mr. Shelofsky contends that the Commission was required to evaluate the cumulative impacts of Transco’s future expansion into Readington and Raritan Townships, New Jersey,⁸⁵ claiming that the Stanton Loop in Clinton Township “miraculously ends at the border of Clinton and Readington Townships.” He also claims that Transco has acquired easements through Readington and Raritan Townships, and that neither the EA nor the November 2 Order evaluated the cumulative impact of such future expansion.

⁸³ EELC Rehearing Request at 7-9.

⁸⁴ *N. Plains Res. Council v. Surface Transportation Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011); *see also Natural Res. Defense Council, Inc. v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not “consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative.”).

⁸⁵ Mr. Shelofsky Rehearing Request at 3-4.

62. In a subsequent filing on January 22, 2013, Mr. Shelofsky states that Transco filed a request to initiate the pre-filing review process for its Leidy Southeast Expansion Project (LSE Project) on January 14, 2013 (Docket No. PF13-5), which includes a pipeline loop in Readington and Raritan Townships. This loop is contiguous to the Northeast Supply Link Project's Stanton Loop. In the pre-filing request, Transco states that the LSE Project paths are a subset of Transco's Atlantic Access Project, which began initial development in 2007.⁸⁶ Mr. Shelofsky asserts that Transco had future plans to expand the Leidy Line from Union Township, New Jersey through Readington and Raritan Townships to Compressor Station 505 in Somerset County, New Jersey. Mr. Shelofsky requests that the entire scope of projects proposed by Transco be evaluated for cumulative impacts.

63. As discussed above, the CEQ defines "cumulative impact" as the "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."⁸⁷ The EA included an analysis of the cumulative impacts of reasonably foreseeable future actions expected to affect similar resources in the geographic area during similar time periods.⁸⁸

64. Commission staff prepared a proper cumulative impacts analysis in the EA for the Northeast Supply Link Project. While there is some general information currently available regarding Transco's potential LSE Project, and while it may ultimately prove to be the case that that project results in environmental impacts that are cumulative to those of the Northeast Supply Link Project, there is not sufficient specific data available now for staff to analyze cumulative impacts resulting from the LSE Project. As noted, the LSE Project is in the pre-filing stage, during which proposed projects often change substantially, and which does not necessarily result in applications. Should Transco file an application for the LSE Project, however, the environmental analysis of that project will include a full review of cumulative impacts, including, to the extent appropriate, the impacts of the Northeast Supply Link Project.

⁸⁶ Transco initiated the pre-filing process for the Atlantic Access Project (Docket No. PF12-1) on November 21, 2011, identifying new pipeline and compression facilities in southern Pennsylvania and a 10.5 mile existing pipeline uprate in Bergen County, New Jersey. Transco proposed no additional pipeline looping in New Jersey as part of this project. On May 1, 2012, Transco withdrew the Atlantic Access Project from the pre-filing process, stating that it was adjusting its schedule and revising the project's scope with a new anticipated in-service date of 2015.

⁸⁷ 40 C.F.R. § 1508.7 (2012).

⁸⁸ EA at 2-136-137.

C. Requests for Stay

65. On February 25, 2013, EELC filed a request for stay, contending that absent a stay Transco will be able to complete extensive construction work causing irreparable harm in advance of a decision on rehearing about the adequacy of the project's impacts on the environment. EELC also contends that Transco will not be harmed by a stay.

66. On November 3, 2012, Mr. Shelofsky requested a stay of the November 2 Order, stating that the Commission should not allow Transco to commence construction activities or initiate eminent domain proceedings until the areas impacted by Hurricane Sandy have returned to normal. Mr. Shelofsky's request for rehearing also included a request for a stay of the November 2 Order, pending the issuance of an order on rehearing.⁸⁹

67. The Commission's standard for granting a stay is whether justice so requires.⁹⁰ Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest, the most important element being the showing of irreparable injury.⁹¹

68. EELC makes no showing that it will be irreparably harmed other than generally asserting that harm to the environment is almost always irreparable; that environmental impacts will include tree clearing, soil compaction, reduced air quality, increased noise levels, and increased run-off and reduced water quality. Mr. Shelofsky also makes no showing of irreparable harm. In our environmental review, we fully considered and addressed Mr. Shelofsky's and EELC's comments, as well as other individuals and entities. The EA in this proceeding took a hard look at the environmental impacts and concluded that the proposed action would not have a significant impact on the human environment. Under these circumstances, the Commission will deny Mr. Shelofsky's and EELC's requests for stay. In any event, this order addresses the requests for rehearing and affirms the Commission's findings in the November 2 Order that the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

⁸⁹ Mr. Shelofsky Rehearing Request at 6.

⁹⁰ Administrative Procedure Act, 5 U.S.C. § 705 (2006); *Duke Energy Carolina, LLC*, 124 FERC ¶ 61,254, at P 8 (2008).

⁹¹ *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 6 (2005).

69. Mr. Shelofsky does not explain how construction of the project would exacerbate the impacts of Hurricane Sandy. We believe that sound construction techniques and the measures we have required will provide adequate protection to the environment. Also, the Commission will be conducting construction inspections of the project. If issues arise during construction, we retain the authority to deal with them.

The Commission orders:

The requests for rehearing and stay of the November 2 Order are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.