

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Transcontinental Pipe Line Company, LLC

Docket No. CP15-138-000

**COMMENTS OF WILD VIRGINIA AND FRIENDS OF NELSON, INTERVENORS, ON
DEIS FOR ATLANTIC SUNRISE PROJECT**

The following comments are provided on behalf of Wild Virginia and Friends of Nelson regarding the Federal Energy Regulatory Commission's ("FERC") draft environmental impact statement ("DEIS") for Transcontinental Pipe Line Company's ("Transco") proposed Atlantic Sunrise Project ("Atlantic Sunrise" or "Project"). Transco proposes to (i) construct 183.7 miles of 30- and 42-inch-diameter greenfield known as the Central Penn Line ("CPL") North and CPL South in Pennsylvania; (ii) construct 11.5 miles of new 36- and 42-inch diameter loops known as Chapman and Unity Loops in Pennsylvania; (iii) replace 2.5 miles of 30-inch pipeline in Virginia; (iv) construct two new compressor stations ("CS") in Pennsylvania; (v) increase compression at three existing CSs in Pennsylvania and Maryland; (vi) construct two new meter stations and three new regulator stations in Pennsylvania; and (vii) modify existing aboveground facilities in Pennsylvania, Virginia, North Carolina, and South Carolina to allow for bi-directional flow and the installation of supplemental deodorization, odor detection, and/or odor masking/deodorization equipment.

Friends of Nelson is a non-for-profit membership corporation, incorporated in the Commonwealth of Virginia with the mission to protect property rights, property values, rural heritage and the environment for all the citizens of Nelson County, Virginia. Because the project serves a similar purpose and need as does the Atlantic Coast Pipeline (ACP) (Docket#CP15-554

et.al.) these projects are inextricably linked. The ACP is proposed to cross through Nelson County and would have significant environmental, social and economic impacts to members of Friends of Nelson. Friends of Nelson is an intervenor in Docket#CP-554. Because any decision to issue a Certificate of Convenience and Necessity on the ASP would directly affect the purpose and need for the ACP, Friends of Nelson and its membership would be directly impacted by such a decision.

Wild Virginia is a non-profit corporation, incorporated in the Commonwealth of Virginia, whose mission is to protect and defend the wild forest ecosystems of Virginia. Wild Virginia's members have an interest in any federal actions that might impact or influence management of the George Washington and Jefferson National Forests. Because the project serves a similar purpose and need as both the proposed Atlantic Coast Pipeline (ACP) (Docket#CP15-554 et.al.) and the proposed Mountain Valley Pipeline (MVP) (Docket#CP16-10) these projects are inextricably linked. Both the proposed ACP and MVP projects would cross land under the jurisdiction of the United States Forest Service and National Park Service in Virginia which would result in significant environmental impacts to these public lands. A FERC decision to grant a certificate to construct the Atlantic Sunrise Project would directly influence and affect the purpose and need of both the ACP and MVP. Wild Virginia is an intervenor in Dockets#CP15-554 et.al. and #CP16-10 and Wild Virginia and its membership would be, therefore, directly impacted by a decision to issue a Certificate of Convenience and Necessity on the ASP.

COMMENTS

A FERC decision to grant a certificate to construct the Atlantic Sunrise Project would constitute a “major Federal action” within the meaning of the National Environmental Policy Act

(NEPA), and it must, therefore, be preceded by the preparation of an Environmental Impact Statement (EIS). (42 U.S.C. § 4332). FERC's EIS must address:

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between the local short-term uses of the project as compared to the long term use of the land, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. (42 U.S.C. § 4332).

Under NEPA, "agencies [must] take a 'hard look' at the environmental effects of their planned action." (*Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374, 1989). Pursuant to the Administrative Procedure Act (APA), reviewing courts are to set aside as arbitrary and capricious any major Federal action that is taken without the requisite "hard look" at the relevant factors in an EIS. (5 U.S.C. § 706(2)(A)). FERC's analysis in the DEIS for the Atlantic Sunrise Project fails to meet NEPA's requirements for the following reasons:

I. Failure to address the purpose and need of the project

The Council on Environmental Quality's ("CEQ") regulations implementing NEPA require FERC to "specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." (40 C.F.R. § 1502.13). Yet the DEIS states that "[w]hile this EIS briefly describes Transco's stated purpose, it will not determine whether the need for the Project exists, because this will later be determined by the Commission." DEIS at 1-2. This is in direct violation of the plain language of the CEQ regulation, which requires FERC to "specify the underlying purpose *and need*" for the project in the EIS. (40 C.F.R. § 1502.13, emphasis added).

It is arbitrary and capricious for FERC to refuse to analyze the purpose and need for the project in the DEIS. In fact, any environmental impacts are predicated on the basic necessity, redundancy or frivolous nature of the project.

The absence of any purpose and need analysis also precludes any analysis of whether existing infrastructure could, in fact, fulfill the proposed purpose and need. Indeed, if existing infrastructure could fully meet the needs of the shippers that propose to use the capacity created by the Atlantic Sunrise Project, then FERC could not possibly conclude that the project serves the “public convenience and necessity,” as is required to grant a certificate under the Natural Gas Act.

II. Failure to analyze the purpose and need for the project

There is no independent analysis in the DEIS on the purpose and need for the project. Without performing an assessment of the need for the project, FERC cannot determine the reasonable range of alternatives that must be analyzed in the DEIS. In particular, without determining the need for the project, FERC cannot reasonably assess the desirability of the required “no action” alternative.

It is reported that FERC and the gas industry are engaged in a rapid overbuilding of infrastructure in the Appalachian basin. (Institute for Energy Economics and Financial Analysis, *Risks Associated With Natural Gas Pipeline Expansion in Appalachia*, p. 4 (Apr. 2016) (“IEEFA Report”), available at http://ieefa.org/wp-content/uploads/2016/05/Risks-Associated-With-Natural-Gas-Pipeline-Expansion-in-Appalachia-_April-2016.2.pdf.) In considering the impact of new construction projects, FERC’s policy considers, among other factors, the possibility of overbuilding natural gas infrastructure. (*Certification of New Interstate Natural Gas Pipeline*

Facilities, 88 FERC ¶ 61,227, p. 2 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (“Certificate Policy Statement”). FERC must consider and address the potential for overbuilding before it may issue a certificate for the Atlantic Sunrise Project.

FERC has set precedent for undertaking this analysis as FERC has recently notified affiliates of Energy Transfer Partners LP and Columbia Pipeline Group Inc. that two major Appalachian pipeline projects cannot be approved until an overlapping 13-mile section of the proposed routes in Monroe and Noble counties, OH, is redesigned. This letter is clear evidence of FERC having analyzed and considered the purpose and need of these projects. However, this analysis belongs in the DEIS for these projects so that the public will have access to this information and can submit substantive comments on the environmental effects of duplicative projects with a similar purpose and need of if they contain elements that are duplicative. It is a violation of NEPA to withhold such evidence from the DEIS.

III. Failure to provide sufficient and complete information for substantive public comment

FERC’s decision not to undertake and include analysis of purpose and need in the DEIS denies the public its right to be fully informed on all aspects of the DEIS, and therefore, has restricted the ability and the right of the public to formulate and file informed comments on the purpose and need for the project.

IV. Failure to expand analysis beyond the applicant’s stated objectives for the project

Not only did FERC completely fail to provide a statement of need for the Project, but it also framed its statement of purpose far too narrowly. FERC primarily relies on “Transco’s stated objectives for the Project” which are to:

- Provide an incremental 1.7 MMDth/d of year-round firm transportation capacity from the Marcellus Shale production area in northern Pennsylvania to its existing market areas, extending as far south as its Station 85 Pooling Point in Choctaw County, Alabama; and
- Provide its customers and the markets that they serve with greatly enhanced access to Marcellus Shale supplies, including new north-to-south delivery capability.

DEIS at 3-1. By relying almost exclusively on Transco’s ambitions for the project to frame its statement of purpose, FERC impermissibly “restrict[ed] its analysis to just those ‘alternative means by which a particular applicant can reach his goals.’” (*Simmons*, 120 F.3d at 669, *quoting Citizens Against Burlington*, 938 F.2d at 209; *see also Nat’l Parks & Cons. Ass’n*, 606 F.3d at 1072.)

Courts have found that the FERC “cannot restrict its analysis to those ‘alternative means by which a particular applicant can reach his goals.’” (*Id.*, *quoting Van Abbema v. Fornell*, 807 F.2d 633, 638, 7th Cir. 1986; *see also Nat’l Parks & Cons. Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072, 9th Cir. 2009 - finding a purpose and need statement that included the agency’s goal to address long-term landfill demand, and the applicant’s three private goals was too narrowly drawn and constrained the possible range of alternatives in violation of NEPA).

IV. Failure to analyze reasonable alternatives

The DEIS states that “because the purpose of the Project is to transport natural gas,” the consideration of alternatives that do not transport natural gas “are not considered or evaluated further in this analysis.” (DEIS at 3-2). As a result, FERC excluded consideration of meeting

any of the Project's purpose from "the generation of electricity from renewable energy sources or the gains realized from increased energy efficiency and conservation." (*Id.*) Not only did FERC limit consideration of alternatives that do not involve transporting natural gas, FERC refused to consider alternatives that did not involve transportation of natural gas from the Marcellus Shale region, explaining that alternatives that do not "provide enhanced access to Marcellus Shale gas supplies . . . would not fulfill the purpose and need of the project" (DEIS at 3-2).

FERC's categorical refusal to consider alternative energy and increased energy efficiency alternatives is at odds with other recent statements. For example, in the Constitution Pipeline DEIS, FERC considered energy conservation/efficiency and renewable energy alternatives. (*See* Constitution Pipeline DEIS at 3-3 – 3-12, Docket CP13-499-000). While FERC ultimately decided against considering these alternatives in greater detail, it at least considered them in some detail. That is in stark contrast to the Atlantic Sunrise DEIS where alternatives that would not "provide enhanced access to Marcellus Shale gas supplies" were excluded from any analysis. FERC's narrowing of the range of alternatives to just those alternatives that would "provide enhanced access" to a particular shale basin means that energy conservation and renewable energy alternatives will never be considered, even if they are economically and technologically feasible and serve the broader public interest.

Therefore, FERC must prepare a DEIS that includes an independent assessment of both "purpose and need", taking into account not only the applicant's stated purpose but also the broader public purpose and need, and put the complete DEIS out for public comment.

V. Failure to provide sufficient and complete information from the applicant in the DEIS

Throughout the DEIS, FERC indicates that information provided by Transco is incomplete. This incomplete information forms the basis for many of the proposed conditions that FERC staff recommends be attached to any certificate authorizing the Atlantic Sunrise Project. (DEIS at 5-21 – 5-32). Much of this information should have been included in the DEIS so that the public had an opportunity to review it and provide comments.

The NEPA EIS requirement “guarantees that the 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.” (*Department of Transportation v. Public Citizen*, 541 U.S. 752, 768, 2004). This “informational role” assures the public that the agency has considered environmental concerns in the decisionmaking process and provided a “springboard for public comment” in that decisionmaking process. (*Id.*) “The purpose here is to ensure that the ‘larger audience[]’ . . . can provide input as necessary to the agency making the relevant decisions.” (*Id.*) Courts have held that “informed public participation in reviewing environmental impacts is essential to the proper functioning of NEPA”(*League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 761, 9th Cir. 2014).

In reviewing an EIS, courts look at “whether the EIS’s form, content and preparation foster both informed decisionmaking and informed public participation.” (*California v. Block*, 690 F.2d 753, 761, 9th Cir. 1982). Here, FERC decided to publish a DEIS knowing that it lacked information that is critical for public review and comment.

For example, regarding Transco’s proposed additional temporary workspace (“ATWS”) within 50 feet of waterbodies and wetlands, FERC asks Transco to submit “additional justification” for dozens of locations identified in bold in Table K-5 of Appendix K (waterbodies) and in Table L-2 of Appendix L (wetlands). (*See* DEIS at 5-27.) Appendix K

identifies at least 58 instances in which FERC is requesting “additional justification” for ATWS within 50 feet of waterbodies. (See DEIS, App. K, Table K-5.) Appendix L identifies at least 36 instances in which FERC is requesting “additional justification” for ATWS within 50 feet of wetlands. (See DEIS, App. L, Table L-2.) In numerous instances, FERC says that it needs “additional site-specific information and mitigation measures” to justify ATWS in wetlands, including exceptional value wetlands. (See DEIS, App. L at L-11-15, 18, 31-32, 34, 39-43.)

This lack of information is pervasive throughout the DEIS. For example, FERC requests that Transco provide:

- An updated list of water wells and springs within 150 feet of construction workspaces based on completed surveys and indicating any water wells and springs that are within areas of known karst. (DEIS at 4-41).
- Any updates to Transco’s Abandoned Mine Investigation and Mitigation Plan regarding proposed mitigation measures to manage and dispose of contaminated groundwater. (DEIS at 4-47).
- Proposed mitigation measures that Transco would implement to protect all Zone A source water protection areas. (DEIS at 4-51).
- All outstanding geotechnical feasibility studies for HDD crossing locations and the mitigation measures that Transco would implement to minimize drilling risks. (DEIS at 4-66).
- The locations where Transco proposes to use biocides, the name of the specific biocide(s) to be used, material safety data sheets for each biocide, copies of relevant permits, and a description of the measures that would be taken to neutralize the effects of the biocides upon discharge of the test water. (DEIS at 4-67).
- A final copy of the PRM Plan, including any comments and required approvals from the USACE and PADEP. (DEIS at 4-75).
- Complete results of noxious weed surveys and the final Management Plan. (DEIS at 4-83).
- All documentation of Transco’s correspondence with the PGC and the PADCNr and any avoidance or mitigation measures developed with these agencies regarding the SGL and Sproul State Forest crossings. (DEIS at 4-88).
- Any updated consultations with the FWS regarding migratory birds and a revised Migratory Bird Plan incorporating any additional avoidance or mitigation measures. (DEIS at 4-94).
- All fall 2015 hibernacula survey results for the Indiana bat, and any avoidance and mitigation measures developed based on the results. (DEIS at 4-107).
- All fall 2015 hibernacula survey results for the northern long-eared bat, and any avoidance and mitigation measures developed based on the results. (DEIS at 4-108).

- All survey results for the bog turtle, including any FWS comments on the surveys and their conclusions. (DEIS at 4-112).
- All survey results for the northeastern bulrush, including any FWS comments on the surveys and their conclusions, and proposed mitigation that would substantially minimize or avoid the potential impacts. (DEIS at 4-114).
- All survey results for the Allegheny woodrat, permit requirements, agency correspondence, and avoidance or mitigation measures developed in consultation with the PGC. (DEIS at 4-119).
- All documentation of Transco's correspondence with the PGC and any avoidance or mitigation measures developed with the agency regarding the eastern small-footed bat. (DEIS at 4-120).
- All survey results for timber rattlesnake, permit requirements, agency correspondence, and avoidance or mitigation measures developed in consultation with the PFBC. (DEIS at 4-121 – 4-122).
- The results of any mussel surveys conducted within the Susquehanna River and any additional avoidance or mitigation measures included in Transco's site-specific HDD contingency crossing plans. (DEIS at 4-123).
- All documentation of Transco's correspondence with the VDGIF and any avoidance or mitigation measures developed with this agency regarding state-listed mussels in Virginia. (DEIS at 4-123).
- Revised site-specific residential plans for all residences located within 10 feet of the construction work area. (DEIS at 4-134).
- An update of the status of the development of the site-specific crossing plans for each of the recreation and special interest areas listed as being crossed or otherwise affected in table 4.8.6-1. (DEIS at 4-152).
- Updated information regarding the identified landfill adjacent to the CPL South right-of-way near MP 66.8, including any mitigation measures that Transco would implement to avoid the landfill site or address any contamination that is encountered. (DEIS at 4-159).

This information is relevant to FERC's evaluation of "reasonably foreseeable significant adverse effects" and it should have been included in the DEIS. (40 C.F.R. § 1502.22). The sheer volume of incomplete information indicates that FERC issued a legally deficient DEIS. By publishing the DEIS without the required information, FERC denied the public an opportunity to participate in the decisionmaking process (*Public Citizen*, 541 U.S. at 768; *League of Wilderness Defenders*, 752 F.3d at 761).

VI. Failure to consider and evaluate the direct and indirect effects of the Atlantic Sunrise Project

FERC must take a “hard look” at the direct and indirect effects of the Atlantic Sunrise Project. (*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 1989). Direct effects are “caused by the action and occur at the same time and place.” (40 C.F.R. § 1508.8(a)). Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” (40 C.F.R. § 1508.8(b)).

Indirect effects would include the environmental impacts of related projects in time and in physical proximity and those with similar or interrelated purpose and need. The proposed Atlantic Coast Pipeline and the Mountain Valley Pipelines are just such related projects. All three of these projects are primarily vehicles for transporting large volumes of natural gas from the Appalachian Basin of Ohio, West Virginia and Pennsylvania to the Williams Transco Main Line. Since the permitting (or denial of such permit) of any one of these projects would directly affect the likelihood, analysis and environmental impacts of the others, these projects need to be considered linked in any environmental analysis.

To satisfy the “hard look” requirement, FERC must ensure that it has “adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious.” (*Nevada v. Dep’t of Energy*, 457 F.3d 78, 93, D.C. Cir. 2006 - *Balt. Gas & Elec. Co.*, 462 U.S. 87, 98, 1983). The DEIS for the Atlantic Sunrise Project fails to provide the requisite “hard look” at both the direct and indirect effects of the proposal.

VII. Failure to consider the indirect effects of shale gas development that is both causally related to, and a reasonably foreseeable consequence of, the Atlantic Sunrise Project

In analyzing the potential impacts of its approval of the Atlantic Sunrise project, FERC must consider the indirect effects of shale gas development. Indirect effects are “caused by the

action and are later in time or farther removed in distance, but are still reasonably foreseeable.” (40 C.F.R. § 1508.8(b)). “Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use . . . and related effects on air and water and other natural systems, including ecosystems.” (*Id.*)

The Atlantic Sunrise Project would induce further shale gas development, the impacts of which must be considered in FERC’s indirect effects analysis for the Project. The mere presence of the pipeline would influence the supply that producers and extractors would be able to get to market. This would put pressure on producers to extract more and more natural gas. It would increase the likelihood that more sites be developed and eventually that less productive sites would be developed.

Courts have said that an agency must consider something as an indirect effect if the agency action and the effect are “two links of a single chain.” (*Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400, 9th Cir. 1989). It cannot be disputed that gas development and infrastructure that transports that gas are “two links of a single chain.” FERC has admitted as much in the liquefied natural gas (LNG) context, where it stated that “it is axiomatic that natural gas exports require natural gas supplies.” (*See Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244, at P 231, 2014). Similarly, it is axiomatic that the proposed Atlantic Sunrise Project requires natural gas supplies – otherwise, it would be irrational to construct nearly 200 miles of new, large-diameter pipeline, two new compressor stations, and reverse the flow of the Transco longhaul pipeline.

Transco’s own filings reveal the close causal relationship between the Atlantic Sunrise Project and shale gas drilling. For example, Transco says that the Atlantic Sunrise Project, if

constructed, will “provide [its] customers and the markets they serve with *greatly enhanced access* to Marcellus Shale supplies.” (Resource Report 1 at 1-2, emphasis added).)

It is duly noted that the corollary to “more pipelines will lead to more drilling” is that fewer pipelines may lead to less drilling.

VIII. Failure to consider and evaluate the cumulative environmental impacts, including those impacts associated with gas development and the use/burning of this gas

A cumulative impact is 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 regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 C.F.R. § 1508.7).

FERC’s cumulative impact analysis in the DEIS is impermissibly restrictive and does not satisfy NEPA’s “hard look” standard.

FERC’s cumulative impacts analysis is fatally flawed because it substantially limited the analysis area. For example, FERC states that “[f]or the most part, the area of potential cumulative impact is limited to the area *directly affected by the Project* and, depending on the resources, in the *adjacent areas*.” *Id.* (emphasis added). Based on this limited analysis area, FERC concluded that, “as a whole, minimal cumulative effects are anticipated when the impacts of the [Atlantic Sunrise] Project are added to the identified ongoing actions *in the immediate area*.” (*Id.* at 4-290, emphasis added). Such a limited cumulative impacts analysis is plainly inconsistent with both the Council on Environmental Quality’s (“CEQ”) and Environmental Protection Agency’s (“EPA”) guidance on cumulative impacts.

The CEQ guidance recommends significantly expanding the cumulative impacts analysis area beyond the “immediate area of the proposed action” that is often used for the “project-specific analysis” related to direct and indirect effects:

For a project-specific analysis, it is often sufficient to analyze effects within the immediate area of the proposed action. When analyzing the contribution of this proposed action to cumulative effects, however, the geographic boundaries of the analysis *almost always should be expanded*. These expanded boundaries can be thought of as differences in hierarchy or scale. Project-specific analyses are usually conducted on the scale of counties, forest management units, or installation boundaries, *whereas cumulative effects analysis should be conducted on the scale of human communities, landscapes, watersheds, or airsheds*. (CEQ, Considering Cumulative Effects under the National Environmental Policy Act, p. 12, 1997, emphasis added).

EPA’s guidance states that “[s]patial and temporal boundaries should not be overly restrictive in cumulative impact analysis.” (EPA, Consideration of Cumulative Impacts in EPA Review of NEPA Documents, p. 8 ,1999). EPA specifically cautions agencies to not “limit the scope of their analyses to those areas over which they have direct authority or to the boundary of the relevant management area or project area.” *Id.* Rather, agencies “should delineate appropriate geographic areas including *natural ecological boundaries*” such as ecoregions or watersheds. (*Id.* ,emphasis added). Therefore, FERC’s assertion that, “for the most part, the area of potential cumulative impact is *limited to the area directly affected by the Project* and, depending on the resources, in the *adjacent areas*,” is plainly inconsistent with CEQ’s and EPA’s guidance on cumulative impacts. As a result, the cumulative impacts analysis is fatally flawed and cannot support FERC’s conclusion that there will be “minimal cumulative effects” upon construction and operation of the Atlantic Sunrise Project.

FERC did expand the region of influence (“ROI”) to analyze cumulative impacts for certain “major actions,” such as large commercial, industrial, transportation and energy development projects, including “natural gas well permitting and development projects.” (DEIS

at 4-259). However, FERC only expanded the ROI for such actions to “within 10 miles of the Atlantic Sunrise Project.” (*Id.*) FERC provides no explanation for selecting such a restrictive analysis area which not only had the effect of excluding thousands of existing shale gas wells from the cumulative impacts analysis but also hundreds, if not thousands, of reasonably foreseeable future shale gas wells. Thus, FERC’s selection of the 10-mile ROI for the above-referenced projects was arbitrary and capricious and renders the DEIS deficient.

Moreover, FERC is required to consider the cumulative impacts of “past, present, and reasonably foreseeable future actions.” (40 C.F.R. § 1508.7). By only considering “ongoing Marcellus shale development,” FERC necessarily excluded past actions from consideration. These restrictive parameters obfuscate the significant and long-term land use impacts that have already occurred and may continue to occur in this region, especially if FERC continues authorizing pipeline projects without ever taking a comprehensive region-wide analysis.

FERC’s approval of the Project would expand the capacity of Transco’s Leidy Line. A likely consequence of that decision would be increased shale gas drilling on nearby state forest lands, threatening significant damage to their wild character.

VIII. FERC must prepare a programmatic EIS for infrastructure projects related to increasing takeaway capacity from the Appalachian Basin

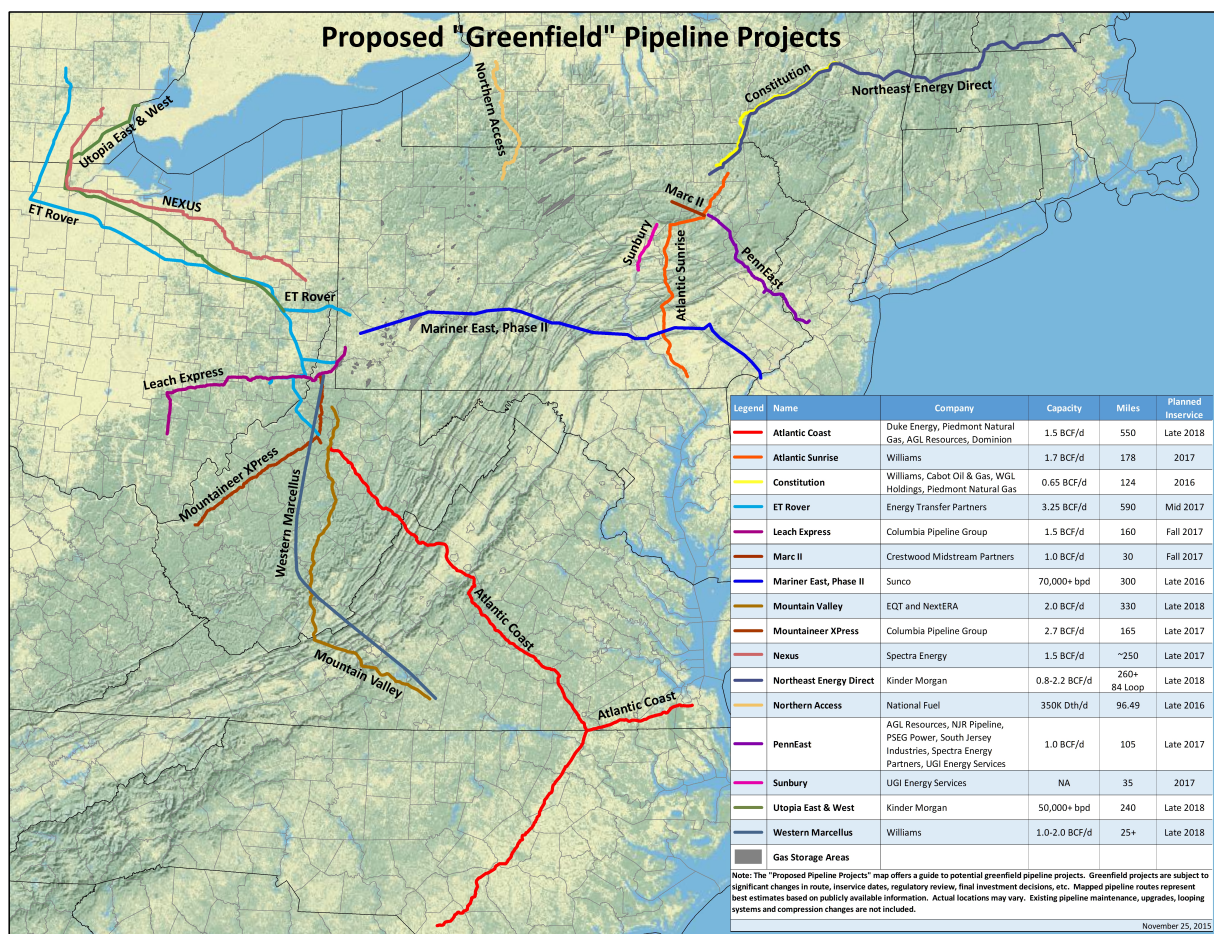
A programmatic EIS (“PEIS”) is sometimes required for “broad Federal actions.” (40 C.F.R. § 1502.4(b)). The Supreme Court has recognized that NEPA requires a PEIS “in certain situations where several proposed actions are pending at the same time.” (*Kleppe v. Sierra Club*, 427 U.S. 390, 409, 1976). The Court explained that:

when several proposals . . . that will have cumulative or synergistic environmental impacts upon a region are pending concurrently before an agency, their environmental

impacts must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action. (*Id.* at 410).

Here, FERC is well aware that there are more than “several proposed actions are pending at the same time . . . that will have cumulative or synergistic environmental impacts upon a region.” Figure 3 below identifies current proposed “greenfield” pipeline projects impacting the Appalachian basin.

Figure 3: Proposed “Greenfield” Pipeline Projects Impacting the Appalachian Basin.



Source: Penn State – Marcellus Center for Outreach and Research, Nov. 25, 2015. (Attachment). See also Attachment , which is the same map as Figure 3 but with gas wells.

As Figure 3 shows, there are at least nine greenfield pipeline projects totaling over 2,500 miles targeting shale gas supplies in the OH-PA-WV tri-state area. This would expand gas capacity out of this region by 13.45 Bcf/d and NGL capacity by 120,000 bpd. This clearly indicates that there are “several proposed actions are pending at the same time . . . that will have cumulative or synergistic environmental impacts upon a region.” (*Kleppe*, 427 U.S. at 409-410). FERC cannot stick its head in the sand and ignore the cumulative impacts of these projects while it incrementally authorizes this massive infrastructure build-out.

In December 2014, CEQ published guidance for when agencies should prepare a PEIS. According to this guidance, “[a] well-crafted programmatic NEPA review” provides a basis for “identifying broad mitigation and conservation measures that can be applied to subsequently tiered reviews.” (CEQ, *Effective Use of Programmatic NEPA Reviews*, p. 10 (2014), available https://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_at_reviews_18dec2014.pdf.) Additionally:

Programmatic NEPA reviews may also support policy- and planning-level decisions when there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of subsequent implementing action(s). For example, in the absence of certainty regarding the environmental consequences of future proposed actions, agencies may be able to make broad program decisions and establish parameters for subsequent analyses based on a programmatic review that adequately examines the reasonably foreseeable consequences of a proposed program, policy, plan, or suite of projects.” (*Id.* at 11.)

In other words, just because future gas-related infrastructure projects may not be certain does not mean that FERC cannot “establish parameters for subsequent analyses.” In fact, this may assist FERC (and the public) in understanding the broader reasonably foreseeable consequences of jurisdictional and non-jurisdictional natural gas infrastructure projects in the Appalachian Basin.

The 2014 guidance recommends preparing a PEIS when “several energy development programs proposed in the same region of the country [have] similar proposed methods of

implementation and similar best practice and mitigation measures that can be analyzed in the same document.” (*Id.* at 21). Additionally, CEQ says that “broad Federal actions may be implemented over large geographic areas and/or a long time frame” and “must include connected and cumulative actions, and the responsible official should consider whether it is helpful to include a series or suite of similar actions.” (*Id.* at 22).

According to CEQ, the benefit of a PEIS is obvious:

When the public has a chance to see the big picture early it can provide fresh perspectives and new ideas before determinations are made that will shape the programmatic review and how those determinations affect future tiered proposals and NEPA reviews. Early outreach also provides an opportunity to develop trust and good working relationships that may extend throughout the programmatic and subsequent NEPA reviews and continue during the implementation of the proposed action. (*Id.* at p. 25).

Furthermore:

Programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning, best management practices, and standard operating procedures, as well as monitoring strategies into the Federal policymaking process at a broad or strategic level. These analyses can promote sustainability and allow Federal agencies to advance the nation’s environmental policy as articulated in Section 101 of NEPA.

By identifying potential adverse impacts early during the broad programmatic planning, programmatic NEPA reviews provide an opportunity to modify aspects of the proposal and subsequent tiered proposals to avoid or otherwise mitigate those impacts. A thoughtful and broad-based approach to planning for future development can include best management practices, standard operating procedures, adaptive management practices, and comprehensive mitigation measures that address impacts on a broad programmatic scale (e.g., program-, region-, or nation-wide). (*Id.* at 35).

All of this supports the need for FERC to prepare a PEIS for gas-related infrastructure projects in the Appalachian Basin so that the public has a chance to see the big picture.

In July 2012, the Department of Energy (“DOE”) and Bureau of Land Management (“BLM”) published a final PEIS for Solar Development in southwestern United States. (*See* BLM, Final PEIS for Solar Energy Development in Six Southwestern States, *available at*

<http://solareis.anl.gov/documents/fpeis/index.cfm>.) DOE and BLM prepared the EIS as co-lead agencies in consultation with cooperating agencies. (*See id.* at Exec. Summ., Cover Page, available at http://solareis.anl.gov/documents/fpeis/Solar_FPEIS_ExecutiveSummary.pdf.) For DOE, the Solar FPEIS “includes the evaluation of developing new guidance to further facilitate utility-scale solar energy development and *maximize the mitigation of associated environmental impacts.*” (*Id.* at ES-1, emphasis added).

This is precisely what FERC should be doing for gas-related infrastructure that is intended to connect Appalachian Basin shale gas to market areas. As Figure 3 shows, there are “several proposals . . . that will have cumulative or synergistic environmental impacts upon [the Appalachian] region [and they] are pending concurrently before [FERC],” (*Kleppe*, 427 U.S. at 410.), including the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the WB Express and the Appalachian Connector. Therefore, “their environmental impacts must be considered together” in a comprehensive PEIS. *Id.* By preparing a PEIS, FERC could employ a more “thoughtful and broad-based approach to planning for future development” and “maximize the mitigation of associated environmental impacts” on a multitude of resources, including waterbodies and wetlands, forests, wildlife habitat, threatened and endangered species, public lands, air quality and noise.

IX. Failure to analyze and consider the direct and indirect effects of the project on climate change

The courts have held that there is a “pressing need” for agencies to account for climate change in performing their duties under NEPA. (*Conservation Nw. v. Rey*, 674 F. Supp. 2d 1232, 1253, W.D. Wash. 2009). As a result, it has become relatively routine practice to account

for indirect greenhouse gas (GHG) emissions from proposed federal actions. FERC, however, concludes “that neither construction nor operation of the Project would significantly contribute to GHG cumulative effects or climate change.” The analysis falls short in at least three ways.

First, FERC’s quantification of the direct GHG emissions from the Project, (DEIS at 4-196), have been underestimated. The DEIS understates the Project’s direct GHG emissions, by understating the impact of methane emissions. The primary component of natural gas is methane, and methane is also a potent GHG. The DEIS does not identify the Project’s methane emissions. Instead, it reports GHG emissions in terms of carbon dioxide equivalents (“CO₂e”). This does not represent best available science since the timeframe that methane operates as a potent greenhouse gas is much different than CO₂.

Moreover, The Commission’s assessment of indirect GHG emissions is limited to the combustion of the natural gas. FERC cannot ignore the effects on the climate from production and transport.

Indirect effects “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” (40 C.F.R. § 1508.8). In draft guidance, CEQ, the agency charged with overseeing NEPA, has asked FERC to assess both “downstream” and “upstream” emissions. CEQ’s draft guidance states:

When assessing direct and indirect climate change effects, agencies should take account of emissions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions) should be accounted for in the NEPA analysis. (CEQ Guidance at 11)

Note that the EPA has asked the Commission to discuss “emissions associated with the production, transport, and combustion of the natural gas.” (EPA, Comments on the Draft Guidance Manual for Environmental Report Preparation for Applications Filed Under the Natural Gas Act, Jan. 19, 2016). Natural gas production, processing, and transmission are a significant source of GHGs, particularly methane. Methane is the primary component of natural gas. Methane can be directly vented into the atmosphere or can escape from the wells, the gathering pipelines at the well pads and the larger pipelines in the distribution system, and the compressor stations that shuttle the gas through the distribution system. Estimates vary about the quantities of methane leaked into the atmosphere during the natural gas lifecycle, but some estimates range from 1.4 to over 15 percent of the total produced gas. EPA has identified natural gas systems as the “single largest contributor to United States anthropogenic methane emissions,” with emissions from the oil and gas industry amounting to over 40 percent of total methane emissions. (EPA, Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 76 Fed. Reg. 52,738, 52,792, Aug. 23, 2011).

Even when using an estimate of total methane emissions that many recent studies have criticized as too low, and a GWP that has been superseded by recent higher estimates, EPA concluded that methane emissions from the oil and gas industry constituted five percent of all CO₂e emissions in the country (*Id.* at 52,791–92).

As discussed above, the climate change impacts of methane are of particular concern because methane has 86 times the GWP of CO₂ over 20 years, when considering the potential for positive climate carbon feedbacks. The latest IPCC Report also found that methane has 70 times the global temperature change potential, the change in global mean surface temperature resulting

from emissions, of CO₂. (PCC AR5 at 714) Emissions of methane therefore will have a greater and more immediate effect on the climate than emissions of CO₂.

FERC's analysis, therefore, underestimates the emissions from the transport of the gas and upstream production. It further completely fails to quantify the emissions from upstream production and transportation, giving the public and decision makers no information with which to form a decision.

FERC failed entirely to quantify emissions from upstream production and transport. That is because, according to FERC, upstream production activities are not under FERC's jurisdiction. The DEIS states that "FERC's authority under the NGA review requirements relate only to natural gas facilities that are involved in interstate commerce. Thus, the facilities associated with the production of natural gas are not under FERC jurisdiction." (DEIS at 4-263.) However, just because upstream production is not under FERC's jurisdiction does not mean that it can avoid considering these impacts as part of the cumulative impacts analysis in the DEIS. (40 C.F.R. § 1508.7). Consequently, FERC's conclusion that "neither construction nor operation of the Project would significantly contribute to GHG cumulative effects or climate change" is not based on a hard look at the lifecycle GHG emissions from this Project.

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I, Ernest Reed, hereby certify that I have this day served the foregoing document upon each person designated on this official list compiled by the Secretary in this proceeding.

Dated: June 27, 2016

Respectfully submitted,

/s/ Ernest Reed

Ernest Reed

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