

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In the matter of:)
)
Atlantic Coast Pipeline, LLC)
Docket Nos. CP15-554-000)
 PF15-6-000)
)
Dominion Transmission, Inc.)
Docket Nos. CP15-555-000)
 PF15-5-000)
)
Atlantic Coast Pipeline, LLC and)
Piedmont Natural Gas Company)
Docket No. CP15-556-000)
_____)

November 13, 2017

REQUEST FOR REHEARING, RESCISSION OF CERTIFICATE,
AND STAY OF PROJECT BY THE PUBLIC INTEREST GROUPS

PURSUANT TO Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.713, now come the Public Interest Groups, by and through the undersigned counsel, with a request for a rehearing and rescission of the Commission’s Order Issuing Certificates (“Order”), October 13, 2017, granting a conditional certificate to Dominion Resources and the other members of the joint venture (collectively, “Dominion.”), under authorization under sections 7(b) and 7(c) of the NGA and Part 157 of the Commission’s regulations to construct and operate the Atlantic Coast Pipeline (“ACP”).¹ As part of this request, the Public Interest Groups seek a stay of the project.

¹ The ACP includes three compressor stations and at least 564 miles of pipeline across West Virginia, Virginia, and North Carolina. The ACP is owned by a joint venture of Dominion Resources, Inc., Duke

The Public Interest Groups seek rehearing, rescission, and stay of the Commission's Order because the environmental review underlying the conclusions in the Order fail to meet the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 ff., its implementing regulations, 40 C.F.R. Parts 1500 – 1508, NEPA guidance documents, and related Commission guidance documents, PURSUANT TO Commission Rule 212 at 18 C.F.R. § 385.212, NEPA at 42 U.S.C. § 4332, and the NEPA regulations at 40 C.F.R. § 1502.9, the Public Interest Groups further renew their motions to the Draft Environmental Impact Statement ("DEIS") on the ACP issued on December 30, 2016 in the above captioned dockets.

STANDING

The Public Interest Groups are not-for-profit corporations under the laws of North Carolina and Virginia law acting in the public interest, and community groups organized to protect the family and property of their members. The Public Interest Groups are North Carolina Waste Awareness and Reduction Network ("NC WARN"); Clean Water for North Carolina; the Blue Ridge Environmental Defense League ("BREDL"), and its chapters, Protect Our Water! (Faber, VA), Concern for the New Generation (Buckingham, VA), Halifax & Northampton Concerned Stewards (Halifax and Northampton, NC), No Pipeline Johnston County (Johnston, NC), Nash Stop the Pipeline (Spring Hope, NC), Wilson County No Pipeline (Kenly, NC), Sampson County Citizens for a Safe Environment (Faison, NC), No Fracking In Stokes (Walnut Cove, NC), and Cumberland County Caring Voices (Eastover, NC); Concerned Citizens of

Energy Corporation, Piedmont Natural Gas Company, Inc. (now a wholly owned subsidiary of Duke Energy), and AGL Resources, Inc.

Tillery; the NC Alliance to Protect the People and the Places We Live; Beyond Extreme Energy; Triangle Women's International League for Peace and Freedom; Haw River Assembly; Winyah Rivers Foundation, Inc.; River Guardian Foundation; 350.org Triangle; and the Chatham Research Group.

The Public Interest Groups and their members will be significantly affected and aggrieved by the proposed ACP. Many of the economic concerns and environmental impacts affecting the Public Interest Groups and their members have not been taken into consideration by the Commission in its issuance of the Certificate.

Several of the Public Interest Groups, including but not limited to NC WARN and BREDL, are intervenors in this proceeding pursuant to Commission Notice Granting Late Interventions, November 8, 2016. As intervenors they have the ability to make motions to the Commission pursuant to Commission Rule 212, 18 C.F.R. § 385.212, and the present request for rehearing.

Although the interests of the intervenors are more clearly stated in their respective motions to intervene, those same interests are held by each of the Public Interest Groups.² On April 5, 2017, the Public Interest Groups filed Joint Comments by Public Interest Groups on Draft Environmental Impact Statement detailing flaws in the DEIS.³ Those comments and the comments from many other parties demonstrate the fundamental flaws in the Dominion application, the environmental documents, and the resulting Order.

² FERC Accession Nos. 20160411-5055 and 20151109-5041.

³ Adopted herein by reference, FERC Accession No. 20170405-5307.

Fundamental due process demands an open and transparent comment process, one which is based on all the facts. The Public Interest Groups have further made several motions to supplement the DEIS based on new filings and new information.⁴ These motions are adopted herein by reference.

STATEMENT OF RELEVANT FACTS

On September 18, 2015, the ACP LLC filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own, and operate the ACP, including three compressor stations and at least 564 miles of pipeline across West Virginia, Virginia, and North Carolina. The ACP is owned by a joint venture of Dominion Resources, Inc., Duke Energy Corporation, Piedmont Natural Gas Company, Inc. (now a wholly owned subsidiary of Duke Energy), and AGL Resources, Inc.

On October 2, 2015, the Commission filed its Notice of Application, providing additional details about the application and outlining the review process, and opportunities for public comment.

The Commission has authority under NGA Section 7 (Interstate Natural Gas Pipelines and Storage Facilities) to issue a Certificate of Public Convenience and Necessity to construct a natural gas pipeline. As described in the Commission guidance manuals, environmental documents are required to describe the purpose and commercial need for the project, the transportation rate to be charged to customers,

⁴ Joint Motion to Rescind or Supplement DEIS, January 23, 2017, FERC Accession No. 20170124-5017; Supplement to Joint Motion To Rescind Or Supplement DEIS Based on New Filings, February 15, 2017, FERC Accession No. 20170215-0507; Joint Public Interest Groups 2nd Supplement to Motion to Rescind or Supplement DEIS Based on New Filings, July 17, 2017, FERC Accession No. 20170717-5145; Public Interest Groups' New Motion to Supplement DEIS Based on New Filings, October 9, 2017, FERC Accession No. 20171010-5108.

proposed project facilities, and how the company will comply with all applicable regulatory requirements.⁵ The applicants must evaluate project alternatives, identify a preferred route, and complete a thorough environmental analysis – including consultation with appropriate regulatory agencies, data reviews, and field surveys. The Commission is required to analyze the information provided by Dominion to determine if the project is one of public convenience and necessity. The purpose of the Commission’s review is to reduce overbuilding of pipeline capacity in order to protect consumers and property owners.

As part of its review process, the Commission prepares environmental documents, and in this case, a DEIS was prepared and released on December 30, 2016. As part of the release, the Commission provided a public comment period until April 6, 2017. Subsequently, the Commission scheduled “public comment sessions” in ten locations along the ACP route to allow for public comments.

The public comment sessions and comment period were not on the completed application. The application was supplemented some eighteen times after the comment period on the DEIS was ended, another five times after the Final Environmental Impact Statement (“FEIS”) was issued, and at least three times after Commission issued the Certificate.⁶ Many of these supplemental filings are not simply *de minimus* changes but are significant modifications to routes and impact analysis, including but not limited to:

⁵ Both the FERC Guidance Manual for Environmental Report Preparation (August 2002) and the Draft Guidance Manual for Environmental Report Preparation (December 2015) provide the minimum analysis required by the agency in preparing environmental documents. Neither guidance manual discusses the requirement to supplement environmental documents so the Commission must rely on NEPA guidance.

⁶ See Appendix A to Public Interest Groups’ Second Supplement to Joint Motion to Rescind or Supplement DEIS Based on New Filings, July 17, 2017, FERC Accession No. 20170717-5145, for the 18 filings subsequent to the issuance of the DEIS. The additional

- a. route changes;
- b. archaeologic and cultural sites;
- c. historic properties in West Virginia, Virginia, and North Carolina;
- d. supplemental updates on compressor stations, metering and regulation station;
- e. steep slopes in West Virginia and Virginia;
- f. impacts of forest fragmentation on bird species;
- g. aquatic species removal;
- h. maps and analysis of non-jurisdictional facilities;
- i. engineering updates on horizontal directional drilling;
- j. river crossings;
- k. hydrofracture risks;
- l. cultural resources in West Virginia, including cemeteries;
- m. restoration plans for wetlands;
- n. considerations of soil, erosion, steep slopes;
- o. direct impacts on forested sites in West Virginia, Virginia, and North Carolina;
- p. impacts on streams and biotic resources;
- q. removal and relocation of aquatic species; and
- r. correspondence with state agencies and between state and federal agencies on water quality, air quality, wildlife resources, threatened and endangered species, and mitigation.

This new information in multiple filings clearly supplements the information in the original application, the information supplied to FERC staff for their review, and any information available to intervenors and the public.

The FEIS was issued on July 21, 2017.⁷

The conditional Order *sub judice* was issued on October 13, 2017.⁸ Appendix A to the Order contains 73 conditions, ranging from ministerial to substantive requirements.

CONCISE STATEMENT OF ALLEGED ERRORS

I. The Commission failed to supplement its environmental documents as required by Federal statutes, implementing regulations, and guidance documents.

II. The Commission in its Order fails to adequately justify the need for the project contrary to its own Certificate Policy Statement.

III. The Commission in its Order utilizes an invalid standard for consideration of necessary state-issued permits and permissions.

IV. The Commission in its Order and supporting environmental documents fails to adequately assess reasonably foreseeable greenhouse gas emissions and climate change impacts from the Project.

V. The Commission in its Order fails to find that low-income, African-American, and Native American families in North Carolina will bear a disproportionate impact from the proposed pipeline.

VI. The Commission in its Order and supporting environmental documents fails to adequately consider all reasonable direct and indirect impacts and cumulative

⁷ FERC Accession No. 20170721-3017.

⁸ 161 FERC ¶ 61,042; FERC Accession No. 20171013-4003.

impacts, including the upstream and downstream impacts associated with gas development and compressor stations.

VII. The Commission in its Order ignores planned and reasonably foreseeable major expansions of the pipeline route and capacity, including the Piedmont Pipeline, expansion into South Carolina, and other route and capacity expansions.

STATEMENT OF ISSUES

The Public Interest Groups maintain that the Project is not in the public interest and that the Commission failed to meet its obligations under NEPA by authorizing the Project without properly preparing and evaluating environmental documents that appropriately assessed the Project's potentially significant impacts on the economy, human health, quality of life, and the environment. The Commission continues to err in concluding that the Project will not have a significant impact on the quality of the human environment; discounting the economic consequences; continuing to reject alternatives, including the no action alternative; and in failing to ensure the implementation of necessary measures to avoid significant adverse impacts from the Project.

The Commission has not accurately assessed many factors that would affect this Project, including but not limited to the fundamental need for the pipeline, environmental justice considerations, impacts on climate, the impacts of expanding fracking, the cumulative impacts, and eminent domain. It is also evident that the approval of potentially devastating impacts does not take into account the significant damage that would be done over the long term even with the attempt to mitigate individual, immediate environmental concerns. Specifically, this is contrary the purpose of the

NEPA review, i.e., “to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.” *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97-98, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983).

The Commission’s decision to grant a certificate to construct the ACP is a “major Federal action” within the meaning of the National Environmental Policy Act (“NEPA”), and any consideration of the certificate must be preceded by the preparation of an Environmental Impact Statement (“EIS”). Pursuant to 42 U.S.C. § 4332, environmental documents, including the DEIS under consideration, 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.”

The principal case on the adequacy of environmental documents, *Marsh v. Oregon Natural Resources Council*, provides that under NEPA, “agencies [must] take a ‘hard look’ at the environmental effects of their planned action.”⁹ As discussed throughout these comments, the Commission’s analysis in the DEIS for the proposed ACP fails to meet NEPA’s standards in numerous ways: it fails to address all of the environmental impacts of the Project, effects that cannot be avoided, the alternatives to the proposed action, short-term versus long term impacts, and commitments of resources.

The Public Interest Groups and other members of the public, and state and Federal agencies have raised substantial questions as to whether the Project will have

⁹ 490 U.S. 360, 374, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989).

significant impacts on the human environment. The Order's lack of critical consideration of the deficient analysis in the DEIS and FEIS demonstrates that the Commission failed to take the requisite "hard look" at the Project's impacts, as required by NEPA.

Each issue in support of the request for rehearing is provided below:

I. The Commission failed to supplement its environmental documents as required by Federal statutes, implementing regulations, and guidance documents.

In the Order, ¶¶ 200-202, the Commission denied the motions of several commenters and intervenors, including those of the Public Interest Groups, claiming the massive, substantive new filings by Dominion significantly supplementing required the DEIS to be supplemented and reissued. The purported two-prong test used by the Commission is summarized in ¶ 202:

202. As shown in the final EIS, the additional information submitted by the applicants between the issuance of the draft EIS and final EIS did not cause the Commission to make "substantial changes in the proposed action," nor did it present "significant new circumstances or information relevant to environmental concerns." The final EIS analyzed the relevant environmental information and recommended environmental conditions, which we are imposing in this order, that must be satisfied before the applicants may proceed with their projects.

As noted above, the application was supplemented some eighteen times after the comment period on the DEIS was ended, another five times after the Final Environmental Impact Statement ("FEIS") was issued, and at least three times after Commission issued the Certificate. As shown below, the Commission's unsupported assertion that the additional information was not significant and did not cause the Commission to make changes to the project does not respond to the legal standard

whether the additional information required the Commission to supplement the environmental documents under NEPA.

Pursuant to NEPA at 42 U.S.C. § 4332, and the rules promulgated under it implementing its procedural provisions, and specifically 40 C.F.R. § 1502.9(c)(1)(ii), the test is whether “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” As such, the Commission is required to supplement the DEIS after receiving the new filings. Rules promulgated by the Council on Environmental Quality pursuant to NEPA provide mandatory guidance to all Federal agencies on the preparation of environmental statements. 40 CFR 1502.9(c)(1)(ii) specifically addresses the obligation of the agencies to supplement to the environmental statements, stating:

(c) Agencies:

(1) **Shall** prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) ***There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.***

(emphasis added). Granted there may no doubt be filings with only *de minimus* changes, but this has not been the case herein. As shown above, the new filings by Dominion throughout the application review process are squarely within the mandates of this rule. The information is significant and directly relevant to environmental concerns and impacts addressed in the DEIS, and after review by the agency staff, and

public and state and Federal agency review, the information in the new filings are likely to have a bearing on the Commission's action.

The information in new filings is both substantive and relevant, fitting clearly under the provisions of 40 CFR 1502.9(c)(1)(ii). Therefore, agency staff and the Commission are required to review the new information and supplement the DEIS, with a new public comment process, including new public comment sessions. Case law on the agency's requirement to supplement an environmental document is clear. New information causes environmental documents to be supplemented, even after the environmental document has been completed and the agency action taken. In its review of one action, the Court found there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004) (new study of use of park lands). Of course, not all new information is significant or relevant; but the Commission is required to take a "hard look" at the new information and after review, incorporate the new information into the relevant environmental documents. As discussed in *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989),

The parties are in essential agreement concerning the standard that governs an agency's decision whether to prepare a supplemental EIS. They agree that an agency should apply a "rule of reason," and the cases they cite in support of this standard explicate this rule in the same basic terms. These cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made. On the other hand, and as the petitioners concede, NEPA does require that agencies take a "hard look" at the environmental effects of their planned action, even after a proposal has received initial approval.

The Court endorsed the “hard look” at new information even after a proposal had received its initial approval, and permit, from the agency. “When new information is presented, the agency is obligated to consider and evaluate it and to make a reasoned decision as to whether it shows that any proposed action will affect the environment in a significant manner not already considered.”¹⁰

The Public Interest Groups believe the mandate for a full analysis of the “public convenience and necessity” for pipelines involves public and state and Federal agency comments on a complete application. The new, late-filed information from Dominion is relevant and significant, directly concerning many of the environmental issues the Commission is required to review and fully analyze. The burden is on the Commission to allow the full investigation of the environmental risks and costs associated with the ACP, including all new and supplemental information. This goes far beyond the “we didn’t change our mind” rationale provided in the Order. It is apparent Dominion’s practice is to frequently supplement its application without regard for an orderly process and by flaunting Commission and NEPA rules. This has been condoned by the Commission in its failure to supplement its environmental documents, and allow public review and comment.

II. The Commission in its Order fails to adequately justify the need for the project contrary to its own Certificate Policy Statement.

In its needs determination, the Commission relies almost completely on precedent agreements as generally the best evidence for determining market need. The

¹⁰ *Ibid.*, 490 U.S. at 374; also endorsed by the Court in *Arkansas Wildlife v. U.S. Army Corps*, 431 F.3d 1096 (Fed. 8th Cir., 2005).

Commission’s rationale for the need for the Project is almost entirely based on affiliate transaction, one of the owners of the Project selling to itself. This is contrary to the Commission’s own policy statement regarding new natural gas pipelines, which established a policy determining economic need that allowed the applicant to demonstrate need relying on a variety of factors, including “environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure.”¹¹ As Commissioner LaFleur notes in her dissent, “the Commission’s implementation of the Certificate Policy Statement has focused more narrowly on the existence of precedent agreements.”¹²

The end use of the natural gas is a crucial measure of need. In the present matter, Dominion “estimates that 79.2 percent of the gas will be transported to supply natural gas electric generation facilities, 9.1 percent will serve residential purposes, 8.9 percent will serve industrial purposes, and 2.8 percent will serve other purposes such as vehicle fuel.”¹³ Dominion and Duke Energy, and its affiliate Piedmont, are the major owners and investors in the Project, yet will at the same time be the major beneficiaries of it.

¹¹ Statement of Policy, PL99-3-000 88 FERC ¶ 61,227, www.ferc.gov/legal/maj-ord-reg/PL99-3-000.pdf, as clarified in PL99-3-001, www.ferc.gov/legal/maj-ord-reg/PL99-3-001.pdf, and PL99-3-002 www.ferc.gov/legal/maj-ord-reg/PL99-3-002.pdf

¹² Certificate, Dissent, page 4.

¹³ ACP FEIS at 1-3.

In their Joint Comments, pages 17 – 53, the Public Interest Groups present arguments the Commission’s approval of the need for the project.¹⁴ In summary, the Commission failed because:

- a. it did not compare the expressed needed for the project to the “no action” alternative;
- b. it did not rigorously explore or objectively evaluate reasonable alternatives;
- c. it failed to provide a higher level of scrutiny for the affiliate transactions; and
- d. it condoned the shifting of all economic risk from shareholders to ratepayers.

In addition the Commission failed to include in its analysis that:

- e. natural gas companies have a history of overearning on pipelines;
- f. natural gas companies have a history of overbuilding pipelines; and
- g. existing pipelines are underutilized.

One of the crucial alternatives to the gas transmission pipeline, renewable energy, was summarily dismissed by the Commission in its Order, ¶ 57:

With respect to the use of existing infrastructure or new renewable generation to meet the project’s need, our environmental review considered the potential for energy conservation and renewable energy sources, and the availability of capacity on other pipelines, to serve as alternatives to the ACP Project and concluded that they do not presently serve as practical alternatives to the project. Thus, contrary to commenters’ assertions, we are not persuaded that authorization of the ACP Project would lead to the overbuilding of pipeline infrastructure.

As shown below, all upstream and downstream impacts, such as impacts on the climate, families living along the line, and the environment were demonstrably flawed in the Commission’s environmental documents it relied on to issue the Certificate. In

¹⁴ It is the understanding of the Public Interest Groups at least one of the other intervenors are presenting more complete arguments on the Order’s failure to adequately address the need for the project. The Public Interest Groups join in those arguments by reference.

assessing the need for the project, the Commission selectively chose beneficial data points supporting its conclusion, with analysis or due consideration.

III. The Commission in its Order utilizes an invalid standard for consideration of necessary state-issued permits and permissions.

The Order *sub judice* is conditional on future actions by North Carolina and the other states on various state-issued permits and permissions. The Commission's erroneous standard for necessary state-issued permits and permissions is both problematic and overreaching. The Order, ¶324, attempts to assert an extremely broad range of Federal preemption over matters that clearly are within the various state's jurisdictions:

324. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this order. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

The authorities cited by the Commission in footnote 464 in support of this assertion are not germane to the decisions North Carolina and the states are required to make regarding the 401 water quality certification, erosion and sedimentation permits, and air quality permits.

The relevant case giving North Carolina and the other states the ability to make permit decisions which may have the effect of stopping a pipeline is *Constitution Pipeline Co. v. New York State Department of Environmental Conservation*, No. 16-1568 (2d Cir. 2017) in which the court makes it clear a state can deny a 401 water quality certification of a pipeline if the project does not meet state standards. The

Commission ignores this case and maintains its decision is the only decision that matters. To the contrary, the Commission can only issue a permit for a pipeline project until after the state makes its decisions on water quality, erosion control, and crucial to this project, the air quality permit for the proposed compressor station in North Carolina.

IV. The Commission in its Order and supporting environmental documents fails to adequately assess reasonably foreseeable greenhouse gas emissions and climate change impacts from the Project.

As demonstrated in April 5, 2017 Joint Comments by Public Interest Groups on Draft Environmental Impact Statement, pages 87 – 101, and through comments from many other parties, the application, the environmental documents, and the Order were flawed as each discounted the greenhouse gas emissions and impact on the climate crisis from the proposed pipeline.¹⁵ In its Order, ¶ 296, the Commission acknowledges this:

296. Interveners and commenters also assert that the Commission must consider the impacts on climate change as a result of the end-use consumption of the natural gas transported by the pipeline.

The Commission then proceeds to outline its inadequate analysis of the impacts of the proposed pipeline on the climate and addresses Sierra Club's motion regarding the inadequacies in the analysis.¹⁶

However, in light of the recent decision by the D.C. Circuit Court of Appeals in *Sierra Club v. FERC*, (D.C. Cir. 2017), the Commission must revisit its superficial

¹⁵ FERC Accession No. 20170405-5307.

¹⁶ The Public Interest Groups support the Sierra Club's motion on September 18, 2017, Notice of New Authority and Request for Supplemental Environmental Impact Statement for the Atlantic Coast Pipeline and Supply Header Project. FERC Accession No. 20170918-5043. Discussed in the Order, ¶¶ 299-304, 307.

impacts analysis to fully address the greenhouse gas emissions and climate impacts. In that case, the Court concluded

We conclude that the EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so. As we have noted, greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate. See 15 U.S.C. § 717f(e). The EIS accordingly needed to include a discussion of the “significance” of this indirect effect, see 40 C.F.R. § 1502.16(b), as well as “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions,” see *WildEarth Guardians*, 738 F.3d at 309 (quoting 40 C.F.R. § 1508.7).

Quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals. Without such comparisons, it is difficult to see how FERC could engage in “informed decision making” with respect to the greenhouse-gas effects of this project, or how “informed public comment” could be possible.

The Commission’s analysis does not provide the quantified comparisons to provide it with enough information for “informed decision making.”

The environmental documents the Commission relies on are inadequate and do not provide the climate impacts from methane leaking and venting throughout the natural gas infrastructure, from well head to burn point, including the pipeline and the compressor stations. In its Order, the Commission does not adequately evaluate the potential impacts of, alternatives to, and mitigation measures for the proposed project on greenhouse gas (“GHG”) emissions, public health, and the impacts of climate change. In its environmental documents, the Commission utilizes an outdated global warming potential (“GWP”) value for methane. Due to its short lifetime in the atmosphere - 12.4 years - the GWP of methane should be calculated using the 20-year

timeframe, which makes it 86 times as potent as carbon dioxide. Thus, relative to carbon dioxide, methane has much greater climate impacts in the near term than in the long term, and yet the Commission does not address it in any way in its Order.

The Commission has promulgated its own in-house guidance on the preparation of environmental documents. The most recent is the 2017 guidance document and it begins to add issues relating to climate change into the environmental analysis of a project.¹⁷ In preparing environmental documents, FERC staff are required to assess GHG emissions and:

GHG emissions should include the emission categories and/or methodologies described in the most current version of the CEQ's guidance on GHG emissions and climate change, as applicable.

Guidance Document, p. 4-123. It is clear from the Order and the supporting application and environmental documents, the Commission did not demand this analysis from Dominion or its own staff, and did not follow the tenets of the 2017 guidance document.

As acknowledged by the Commission in its DEIS (and surprisingly dropped in the Order), the White House Council on Environmental Quality ("CEQ") issued its "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," ("CEQ final guidance") on August 1, 2016, which outlines the analyses and documentation of GHG emissions and climate change impacts that agencies should include to facilitate compliance with existing NEPA requirements. In the DEIS, the Commission states that "[a]s recommended in this new guidance, to the extent

¹⁷ February 2017 Draft Guidelines: <https://www.ferc.gov/industries/gas/enviro/guidelines/guidance-manual-volume-1.pdf> ; August 2002 Guidelines: <https://www.ferc.gov/industries/gas/enviro/guidelines/guidance-manual-volume-1.pdf>

practicable, the FERC staff has presented the direct and indirect GHG emissions associated with construction and operation of the projects and the potential impacts of GHG emissions in relation to climate change." In the Order, the Commission abandons this position and provides only a thin rationale for its conclusion.

The CEQ final guidance, which addresses compliance with existing NEPA obligation, explicitly states that this purported reasoning - that a particular project has a small contribution to emissions relative to global emissions - is not an appropriate excuse to avoid fully assessing the GHG impacts of a project, as follows:

Climate change results from the incremental addition of GHG emissions from millions of individual sources, which collectively have a large impact on a global scale. CEQ recognizes that the totality of climate change impacts is not attributable to any single action, but are exacerbated by a series of actions including actions taken pursuant to decisions of the Federal Government. Therefore, a statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations because this approach does not reveal anything beyond the nature of the climate change challenge itself: the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large impact.¹⁸

The CEQ final guidance also lists various appropriate methodologies for analyzing the greenhouse gas emissions of a project, stating that "[q]uantification tools are widely available, and are already in broad use in the Federal and private sectors, by state and local governments, and globally." In fact, CEQ provides a compilation of GHG accounting tools, methodologies, and reports, none of which were apparently utilized by the Commission in preparing its Order.

¹⁸ CEQ final guidance at 10-12.

Additionally, even if "no standard methodology" is available, as the Commission claims, the CEQ final guidance states that this is not a valid excuse for failing to assess impacts and that, at a minimum, a qualitative analysis must be performed. It states as follows:

“When an agency determines that quantifying GHG emissions would not be warranted because tools, methodologies, or data inputs are not reasonably available, the agency should provide a qualitative analysis and its rationale for determining that the quantitative analysis is not warranted.”¹⁹

The CEQ final guidance also states that agencies should quantify a proposed agency action's projected direct and indirect GHG emissions. The final guidance explains how the scope of the proposed action should be considered:

“In order to assess effects, agencies should take account of the proposed action – including “connected” actions – subject to reasonable limits based on feasibility and practicality. (Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously, or; (iii) Are interdependent parts of a larger action and depend on the larger action for their justification). Activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for a proposed agency action or as a consequence of a proposed agency action, should be accounted for in the NEPA analysis.”

In the Order, the Commission fails to follow the requirements of NEPA as explained in the directives of the CEQ final guidance and its own 2017 guidance document. The Commission states that "induced or additional natural gas production is not a 'reasonably foreseeable' indirect effect resulting from the proposed ACP and the EEP, and this topic need not be addressed in this EIS," and that "the environmental effects resulting from natural gas production are not linked to or caused by a proposed

¹⁹ CEQ final guidance at 13.

pipeline project.” In fact, the CEQ final guidance provides an example of the types of impacts that should be considered specifically for resource extraction projects:

For example, NEPA reviews for proposed resource extraction and development projects typically include the reasonably foreseeable effects of various phases in the process, such as clearing land for the project, building access roads, extraction, transport, refining, processing, using the resource, disassembly, disposal, and reclamation.²⁰

More broadly, the Commission must analyze the possibility that additional natural gas infrastructure will lock-in fossil fuel use for decades to come and discourage or prevent the construction of carbon-free energy sources, which has significant implications for the climate. Because the construction and operation of new interstate natural gas infrastructure approved by Commission ultimately contributes to, or facilitates, increased GHG emissions into the atmosphere, the Commission must fully evaluate these impacts, compare alternatives, and develop mitigation measures to address such emissions. The Commission's duty to analyze the lifecycle GHG emissions and the climate change implications of such emissions is required by NEPA, and is supported by recent case law interpreting NEPA in the context of climate change, CEQ's recently issued final guidance, and the Commission's own 2017 guidance document.

The Order fails by not adopting a full suite of mitigation measures analyzed to determine the ultimate impact of the project. The Commission must therefore revise its Order and require Dominion to include specific actions that will be taken to reduce or prevent GHG emissions, with the detailed plans for carrying out those actions, including proposed timelines, and the ultimate impacts. As stated above, the new environmental

²⁰ CEQ final guidance at 14.

document is required to take a much broader range of direct, indirect, and cumulative impacts resulting from the ACP project to fully comply with NEPA, and it must use this information to develop alternatives and implement mitigation strategies for those impacts.

V. The Commission in its Order fails to find that low-income, African-American, and Native American families in North Carolina will bear a disproportionate impact from the proposed pipeline.

The Commission in its Order does not adequately address sociological and demographic issues related to environmental justice.²¹ The Commission even begins its discussion in ¶¶ 253 – 257 with an unsupported statement that it does not to comply with the Executive Order 12898²² requiring it to do so.

253. Executive Order 12898 requires that specified federal agencies make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human or environmental health effects of their programs, policies, and activities on minorities and low income populations. The Commission is not one of the specified agencies and the provisions of Executive Order 12898 are not binding on this Commission. Nonetheless, in accordance with our usual practice, the final EIS addresses this issue.

The Order purports to include an environmental justice analysis supported by the FEIS, pages 4-511 – 4-515, but offers no factual basis for its conclusion. Most of its summary analysis centers on the impacts of air emissions and dust near the compressor station. More important, the Commission fails to provide

²¹ The U.S. Environmental Protection Agency (“EPA”) defines “environmental justice” as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” www.epa.gov/environmentaljustice/learn-about-environmental-justice

²² Executive Order 12898, “Environmental Justice for Low Income & Minority Populations,” 1994. www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf

any factual support for its conclusion in ¶ 257, that the minority communities will not be significantly impacted by the project:

257. In response to comments regarding specific environmental health concerns of minority communities, including African-American populations, the final EIS considered in greater detail the potential risks of impacts falling on these communities, and what those effects would be. Due to construction dust and compressor station emissions, African-American populations near ACP and Supply Header projects could experience disproportionate health impacts due to higher rates of asthma within the overall African-American community. However, health impacts from construction dust would be temporary, localized, and minor. Health impacts from compressor station emissions would be moderate because, while they would be permanent facilities, air emissions would not exceed regulatory permissible levels. While the final EIS discusses the potential for the risk of impacts to fall disproportionately on minority communities, it further notes that, in relation to comments received regarding Compressor Station 2's effects on African-Americans, the census tracts around the station are not designated as minority environmental justice populations. Therefore, by following the methodology outlined above, the final EIS concludes, and we agree, that the projects will not result in disproportionately high and adverse impacts on environmental justice populations as a result of air quality impacts, including impacts associated with the proposed Compressor Station 2. Further, no disproportionately high and adverse impacts on environmental justice populations as a result of other resources impacts will be expected as a result of the projects.

Contrarily, the Public Interest Groups in their Joint Comments, pages 65 – 71, produced quantified, fact-based analysis showing the proposed pipeline would have a disproportionate impact on low-income, African-American, and Native American families in North Carolina. This is supported by the determination in the FEIS that acknowledges that more than half of North Carolina counties are below the median income for the state, and notes that “[t]wenty-seven of the 42 census tracts in North Carolina within a 1-mile radius of ACP facilities have a higher percentage of persons living below poverty-level when compared to the state.” This fact, by itself, indicates that the route chosen creates disproportionate impact of the pipeline on low income residents, and therefore

contradicts the DEIS conclusion that “no environmental justice populations are impacted.”

Similarly in its mention of environmental justice impacts at the compressor station in Buckingham County, Virginia, the Commission failed to analyze the impacts on the African-American population in close proximity to the station. Order¶ 255 concludes that since the adverse impacts affect everyone along the route, it does not matter that some of the affected communities around the compressor station are predominately African-American:

255. The construction and operation of the proposed facilities would affect a mix of racial/ethnic and socioeconomic areas in the ACP and Supply Header project area. However, not all impacts identified in the final EIS would affect minority or low-income populations. The primary adverse impacts on the environmental justice communities associated with the construction of projects would be the temporary increases in dust, noise, and traffic from project construction. These impacts would occur along the entire pipeline route and in areas with a variety of socioeconomic background. We also received numerous comments expressing concern about minority and low income communities near the proposed Compressor Station 2 in Buckingham County, Virginia. Based on the methodology used in the final EIS, of the three census tracts within one mile of Compressor Station 2, one is a designated low-income community, and none of the tracts were designated as minority environmental justice populations.

The Commission, relying on the FEIS, page 4-513, just scanned the three census blocks around the compressor station site, ignoring the immediate community of Union Hill. Data shows 85 per cent of adjoining landowners are African-American but the use of census blocks dilutes the impact on these families. On the other end, reliance on adjacent census blocks does not adequately address the health and safety impacts on all the families within the several-mile radius affected by the compressor station.

The FEIS analysis of minority populations is remarkable in its contorted logic used minimize the relative impact on people of color. It notes that “[i]n North Carolina, minorities comprise 30.5 percent of the total population. The percentage of minorities in the North Carolina census tracts within one mile of ACP ranges from 12.5 to 95.5 percent. In 13 of the 42 census tracts, the minority population is meaningfully greater than that of the county in which it is located.” The Commission uses this result to reinforce its conclusion that there are no disproportionate impacts on environmental justice populations.

Remarkably, unlike using poverty data in census tracts within one mile of the pipeline corridor to compare to the state as a whole, the Commission’s study only compares minority population percentages in census tract near pipeline with the percentage of minorities in the county in which this occurs. As most of the North Carolina counties along the proposed ACP corridor have minority populations significantly above the state average this greatly minimizes the apparent disproportionality in minorities impacted. As noted in the Joint Comments of the Public Interest Groups, Northampton County, for instance, is 58 percent African-American, compared to a state average of 22 percent. A comparable analysis to disproportionate impacts on low income residents would use a comparison to state minority populations, and would result in a dramatically different conclusion.

Environmental justice analyses are mandatory in Federal environmental documents, but there is no standard method for computing disproportionate impacts. As such, the research community has long raised concerns about potential misapplication

of methods or tailoring of methods to support a predetermined outcome.²³ The environmental justice section of the FEIS that the Commission uses as its rationale for its conclusions is an example of such misapplication.

The Commission fails to conduct any serious credible analysis of environmental justice without any basis or even minimal quantification. In its lack of understanding of the simple term “disproportionate,” the Commission asserts that because impacts may be happening in low population areas, fewer people would be hurt and therefore they cannot see evidence of disproportionate impact. As noted above, the Commission in Order ¶ 255 concludes “[t]hese impacts would occur along the entire pipeline route and in areas with a variety of socioeconomic background.” Just because there is a low population concentration does not mean that people of low income or people of color would not be disproportionately impacted. In fact, in comparing the current ACP corridor to earlier proposed ACP routes, it is clear that the pipeline has been moved to areas of greater poverty and more people of color.

In addition to the fundamental flaws in the methodology used by the Commission, the analysis fails to identify the major impacts on Native American populations living along the preferred pipeline route. As noted in the Joint Comments, data shows that in North Carolina alone, approximately 30,000 Native Americans live in census tracts along the route. This number represents one quarter of the state’s Native American

²³ Rose, L., et al., *Environmental Justice Analysis: How Has It Been Implemented in Draft Environmental Impact Statements?*, *Environmental Practice* 7, 235-245 (2005); Hartell, A. *Methodological challenges of environmental justice assessments for transportation projects*, *Transportation Research Record: Journal of the Transportation Research Board*, 21-29 (2007); Holifield, R. *Environmental Reviews and Case Studies: Accounting for Diversity in Environmental Justice Screening Tools: Toward Multiple Indices of Disproportionate Impact*, *Environmental Practice* 16, 77-86 (2014); Liang, J. *Defining Environmental Justice Communities for Regulatory Enforcement: Implications from a Block - Group - Level Analysis of New York State*, *Review of Policy Research* 33, 666-685 (2016).

population and one percent of the entire Native American population of the U.S. The Commission's environmental justice analysis is silent on this issue, but instead concludes that the preferred route has no disproportionate impacts on minority communities. It draws this conclusion by counting up the number of census tracts with "meaningfully greater" minority populations than the county in which they are located. Failure of the environmental justice analysis to detect these impacts is based on at least two flaws in the method.

The Commission apparently recognized the inadequacies in the environmental documents by including a condition on the Certificate requiring consultation between Dominion and four of the Indian tribes with significant populations along the route.

Condition 56. Atlantic and DETI shall **not begin** construction of the ACP and Supply Header projects facilities or use of contractor yards, ATWS, or new or to-be-improved access roads **until**:

- a. Atlantic files with the Secretary documentation of communications with the Lumbee Indian Nation, Coharie Tribal Council, Haliwa-Saponi Tribe, and the Meherrin Tribe regarding traditional tribal sites, including natural resources gathering locations in the project area;
- b. Atlantic and DETI file with the Secretary:
 - i. all survey reports, evaluation reports, reports assessing project effects, and site treatment plans, and cemetery avoidance treatment plans;
 - ii. comments on all reports and plans from the Pennsylvania, West Virginia, Virginia, and North Carolina SHPOs, the MNF, GWNF, and NPS, as well as any comments from federally recognized Indian tribes, and other consulting parties, as applicable; and
 - iii. revised *Unanticipated Discovery Plans* that include tribal contact information for those tribes that request notification following postreview discovery of archaeological sites, including human remains, during project activities;
- c. the ACHP is afforded an opportunity to comment if historic properties will be adversely affected; and
- d. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Atlantic and DETI in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed. All material filed with the Commission that contains **location, character, and ownership** information about cultural resources must have the cover and

any relevant pages therein clearly labeled in bold lettering “**CUI//PRIV – DO NOT RELEASE.**” (*Section 4.10.7*)

This consultation on tribal sites, and cultural and environmental resources known both profoundly and intimately by the members of the Indian tribes should have occurred as part of the review process, not as an afterthought. 18 C.F.R. § 2.1c(e) states

(e) The Commission, in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources.

The consultation should have taken place between the tribal councils and the Commission, or at least with FERC staff, rather than with the developers of the project. As noted above, the insights by the tribal councils as well as comprehensive “unanticipated discovery” plans should have been included in the application, and become a consideration in the preparation of the DEIS.

The summary analysis in the environmental documents takes a single, interstate project and breaks it down into a series of county-level projects for evaluating impacts on minorities. In doing so, the analysis masks large disproportionate impacts on minority populations, particularly Native American and African-Americans populations along the route. Regardless if the Commission maintains the public benefits of the Project are realized at the regional scale and not necessarily in the counties or census tracts adjoining the pipeline route, the impacts are localized. For these reasons, the Commission should demand a new environmental justice analysis based on demographic data that considers the nature of this pipeline as a single, interstate project and considers reference populations more carefully. This analysis should become part of the supplement DEIS, and open for public review and comment.

VI. The Commission in its Order and supporting environmental documents fails to adequately consider all reasonable direct and indirect impacts and cumulative impacts, including the upstream and downstream impacts associated with gas development and compressor stations.

In addition to the environmental justice and climate impacts described above the Order fails to adequately consider all reasonable direct and indirect impacts and cumulative impacts, including those impacts associated with fracking gas development and compressor stations. In analyzing the potential impacts of its approval of the ACP, the Commission 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. ... Indirect effects are defined broadly, to ‘include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.’”²⁴

For several years, however, the Commission has categorically refused to consider induced gas development as an indirect effect of pipeline projects such as the ACP. The Commission first claims that gas drilling and pipeline projects are not “sufficiently causally related” to warrant a detailed analysis.²⁵ Then the Commission claims that even if gas drilling and pipeline projects are sufficiently causally related, the potential environmental impacts of the gas development are not “reasonably

²⁴ *Natural Res. Def. Council v. U.S. Army Corps of Eng'rs*, 339 F. Supp. 2d 386, 404 (S.D.N.Y. 2005) (quoting 40 C.F.R. § 1508.8(b)).

²⁵ *Nat'l Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at P 44 (2015).

foreseeable” as contemplated by CEQ’s NEPA regulations. The Commission’s erroneous position is reiterated in the Order, ¶ 289:

289. With respect to the argument that the Commission must analyze the environmental impacts associated with the upstream production of natural gas that may be induced by the approval of ACP and Supply Header projects, as we have previously concluded, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations. A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas). To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas.

Given the comments in this docket, this position is irrational, arbitrary, and capricious. In their Joint Comments, pages 108 - 114, the Joint Intervenors cite government and industry sources showing how the development of a new pipeline leads to additional fracking.

It is clear the activities permitted under the Certificate plausibly induce new natural gas production since new pipelines will be made available to transport fracked gas, an indirect impact related to the issuance of the Certificate. Therefore, it seems reasonable for the Commission to conduct NEPA analyses of the upstream development that would likely occur due to its certificate approvals. 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.”²⁶ It cannot be disputed that gas development and infrastructure that transports

²⁶ *Sylvester v. U.S. Army Corps of Eng’rs*, 884 F.2d 394, 400 (9th Cir. 1989).

that gas are “two links of a single chain.” If new infrastructure is not built, prices drop, new production slows, well shut-ins occur, and the attendant environmental and social impacts of drilling are reduced or eliminated.

Shale gas development is not only causally related to construction of the ACP, but is also reasonably foreseeable. An indirect effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”²⁷ “[W]hen the *nature* of the effect is reasonably foreseeable but its *extent* is not, [an] agency may not simply ignore the effect.”²⁸ “Agencies need not have perfect foresight when considering indirect effects, effects which by definition are later in time or farther removed in distance than direct ones.”²⁹ Here, additional shale gas drilling is sufficiently likely to occur that a person of ordinary prudence would take it into account when assessing the impact of the project on the environment. Moreover, the Commission is well aware of the nature of the effects of shale gas development and, therefore, may not ignore those effects.

In addition to considering the direct and indirect effects of the project, the Commission must also consider cumulative impacts, especially in the Marcellus play in Pennsylvania and West Virginia.³⁰ 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

²⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

²⁸ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003) (emphasis in original); see also *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010).

²⁹ *WildEarth Guardians v. U.S. Office of Surface Mining*, 104 F. Supp. 3d 1208, 1230 (D. Colo. 2015).

³⁰ 40 C.F.R. § 1508.7.

such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

Cumulative impact analyses that contain “cursory statements” and “conclusory terms” are insufficient.³¹ The Commission’s cumulative impact analysis for the ACP is insufficient because it is needlessly and impermissibly restrictive both in terms of time and geography and relies on cursory statements and conclusory terms that seek to minimize impacts to an array of environmental resources. Conclusory statements are not analysis of the impacts.

The Commission’s cumulative impacts analysis is fatally flawed because it substantially limited the analysis area to the vicinity of the ACP pipeline and associated facilities. The Commission should have broadened the scope to consider cumulative impacts on water resources and wetlands. The Commission also should have selected analysis areas for vegetation, land use, and wildlife that were rationally connected to those particular resource areas. Demographic data of the ACP route and alternative routes would have provided the necessary information to make conclusions on the cumulative and disproportionate impacts on sensitive populations.

The cumulative impacts of the pipeline include impacts in the blast zone³², the evacuation zone, and any local government zoning on public and private property. The blast zone is also referred to as the “incineration zone” or “potential impact radius.” Surprisingly the 660-foot blast zones used by Dominion in its application, and adopted

³¹ *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1319-20 (D.C. Cir. 2014); see also *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988) (although “FEIS contains sections headed ‘Cumulative Impacts,’ in truth, nothing in the FEIS provides the requisite analysis,” which, at best, contained only “conclusory remarks”).

³² See Stephens, M. J., *A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines*, C-FER Technologies, (2000).

by the Commission in the Order are significantly narrower than the 943 foot radius as determined by established modelling procedures. This draws into serious question the accuracy of the high consequence areas (“HCAs”) designations, and their scope and impact.

Compressor stations are of particular concern because of their impacts. The Order fails to address the cumulative impacts of compressor stations and related control stations and further fails to acknowledge the presence of an existing compressor station at Pleasant Hill in close proximity to the proposed Compressor Station 3 in Northampton County. In addition, there are two major Title V facilities close by releasing significant particulate and formaldehyde emissions, the Georgia-Pacific paper plant, less than two miles west of the proposed Compressor Station 3, and the Enviva Wood Pellet Plant approximately four miles to the southwest of the proposed compressor station.

One of the major sources of GHG emissions is from the compressor stations, along with metering and regulating stations and valve control stations. Compressor stations generally run 24 hours per day, 365 days a year, and are not very efficient, with the majority of fuel burned producing only pollution and heat. Problems include:

- High amounts of pollution are emitted, including sulfur dioxide, carbon monoxide, hazardous air pollutants, greenhouse gases, and particulates, including high amounts of formaldehyde and other toxic air pollutants
- In cold weather, compressor stations can emit up to 13 times more pollution
- Excessive noise and stress for persons living nearby
- Lack of pollution control devices

- Serious environmental justice issues, since they are often located in lower income areas and communities of color.

The toxic emissions from the compressor stations, and other points in the infrastructure where natural gas is vented or leaking, directly cause health impacts on the surrounding population. People who live near compressor stations experience skin rashes, gastrointestinal, respiratory, neurological, and psychological problems. Air samples show elevated levels of many toxics, including volatile organic compounds, particulates and gaseous radon. Areas surrounding compressor stations are known in the gas industry as "sacrifice zones" - for good reason.

CEQ's guidance on cumulative impacts 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*.³³

(emphasis added). CEQ further says that it may be necessary to look at cumulative effects at the "ecosystem" level for vegetative resources and resident wildlife, the "total range of affected population units" for migratory wildlife, and an entire "state" or "region" for land use.

³³ CEQ, Considering Cumulative Effects under the National Environmental Policy Act, 1997, p. 12. (emphasis added)

EPA guidance on cumulative impacts states that “[s]patial and temporal boundaries should not be overly restrictive in cumulative impact analysis.”³⁴ 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.” Rather, agencies “should delineate appropriate geographic areas including natural ecological boundaries” such as ecoregions or watersheds.

Because the Commission unreasonably restricted the extent of its cumulative impacts analysis, failed to quantify many of the effects that it does acknowledge, and repeatedly relied on conclusory statements to dismiss significant impacts, the resulting Order, depending on flawed environmental documents, does not meet the requirements of NEPA. The Commission must remedy those defects in a revised DEIS and provide that analysis for public comment.

VII. The Commission in its Order ignores planned and reasonably foreseeable major expansions of the pipeline route and capacity, including the Piedmont Pipeline, expansion into South Carolina, and other route and capacity expansions.

A major deficiency in the DEIS is the failure to include environmental and socioeconomic impacts from the approximately 26-mile spur line from Junction A in Robeson County to the Smith Energy Complex near Hamlet in Rockingham County (the “Piedmont Pipeline”).³⁵ The Order, ¶ 8, mischaracterizes this pipeline as an existing pipeline even though that pipeline has yet to be constructed. The pipeline extension goes directly to two natural gas combined-cycle units, with a capacity of 1,084 MW, and

³⁴ EPA, Consideration of Cumulative Impacts in EPA Review of NEPA Documents, 1999, p. 8.

³⁵ Dominion Resource Report 1 (General Project Description), pp. 1-69 – 1-72.

five natural gas combustion turbine units. The burning of the natural gas by these plants has been used by Dominion to justify the need for the ACP; it is one of the long-term contracts discussed above. The Piedmont Pipeline is part and parcel to the Project. The sole purpose of the Piedmont Pipeline is to carry the natural gas flowing on the ACP to one of its major end users. The ACP does not end at Junction A but continues on to the Smith Energy Complex, making it a link in the ACP corridor. The ACP terminates at the Smith Energy Complex rather than the Junction A interconnect. The Commission has failed to claim its authority over the Piedmont Pipeline as part of the Project.

In their October 9, 2017 motion³⁶, the Public Interest Groups brought to the attention of the Commission Dominion's plans to expand the Project into South Carolina.³⁷ This new information, i.e., Dominion's plans to extend the ACP into South Carolina, demonstrates the application for the ACP was intentionally misleading in terms of the scope of the project and the overall need for the project.

Order, ¶¶ 124, 125, and 127, in the Commission's discussion of the need for the Project acknowledges future expansion of the Project, and seemingly without any further review. ¶127 summarizes contract rights given certain Project sponsors will lead to future expansion capacity:

127. The Commission has found that giving project sponsors certain priority rights to future expansion capacity is a permissible material deviation from the pro forma service agreement because such provision reflects the unique circumstances of the initial project. As the Commission discussed in Transcontinental Gas Pipeline Co., LLC, "where a subsequent expansion is envisioned that will be less costly due to the anchor shipper's subscription, such capacity priority is reasonable when an anchor shipper is committing to both projects and the provision was

³⁶ FERC Accession No. 20171010-5108.

³⁷ Rankin, S., "Disputed East Coast Pipeline Likely to Expand," September 29, 2017, (widely report in other news outlets). www.apnews.com/d9e1216747d642abb025dedb0043462f

offered to all potential shippers in the open season.” We find Atlantic's provision to offer optional capacity to Foundation and Anchor Shippers, via an expansion, to be a contractual incentive for obtaining each shipper's binding commitments to the project. We find these rights are permissible because Atlantic offered all Anchor and Foundation shippers the expansion rights in its open season, and the expansion rights do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.

The Order allows for “material deviations” of the Project, including route changes and volume expansions.

The environmental documents should be supplemented to include the financial costs, environmental and socioeconomic costs, and environmental justice impacts from the Piedmont Pipeline, the South Carolina extension, and all other reasonably foreseeable expansions of pipeline routes or capacity. Additional shipment of natural gas in the pipeline will increase pressure within the pipeline, putting more pressure on compressor stations (including a new station required for North or South Carolina), and expanding the blast zones³⁸ and evacuation zones. New corridors will have many of the same environmental impacts as does the rest of the ACP, such as impacts on stream crossings, water quality, wildlife habitat, and farms and families. The Piedmont Pipeline will have a disproportionate impact on the Lumbees, Native American tribe primarily in Robeson County.

The piecemealing of projects – eliminating a major component of a project -- is discouraged by NEPA. “From a procedural standpoint, NEPA “provides the vehicle for agency [and public] consideration of overall project-related impacts prior to the permit decision. Ideally, EISs present comprehensive, rather than piecemeal, environmental

³⁸ The inadequacies of the HCA designations are discussed above. See also footnote 32 above.

impact and regulatory analysis.”³⁹ All of these impacts should be analyzed and presented for review and comment in supplement environmental documents.

REQUEST FOR STAY

The Public Interest Groups have raised substantial questions in this Request for Rehearing related to whether the issuance of the Certificate was in the public interest. As demonstrated in their Joint Comments and above, the Public Interest Groups and their members, and the public at large, will suffer irreparable harm if the Project is allowed to go forward. Families and communities along the route will face immediate harm through the destruction of the environment and forcible taking of their property through eminent domain from a Project that may not be allowed to go forward once the issues raised by this Request are properly and fully resolved.

The Permit on its face is conditional; many of the 73 conditions are requirements to be fulfilled before the Project can go forward. As noted above, the Permit is further conditional on the granting of state-issued permits and permissions. Dominion has not completed, or in many instances even begun, its condemnation of property along the route. Therefore, any delay in the proceeding with the construction of the Project should be only minimal. In weighing the minimal delay caused to Dominion against the irreparable harm that will occur to the Public Interest Groups and other members of the public, the balance tips decisively in favor of issuing a stay until the Commission finally decides the issues raised in the Request.

³⁹ 40 CFR 1502.9(c)(1)(ii); see also www.yalelawjournal.org/note/nepa-eiss-and-substantive-regulatory-regimes

Therefore, the Commission should issue a stay prohibiting Dominion from pursuing any action that might be authorized by the Certificate in this matter, including, without limitation, any construction activity or activities related thereto and any condemnation proceedings, until the Commission issues a final decision.

RELIEF REQUESTED

For the above reasons, the Public Interest Group respectfully request the following relief:

- a. Grant the Request for Rehearing;
- b. Stay Dominion from taking any action authorized by the Certificate, including all construction activities and condemnation proceedings pending the Commission's final action on this Request;
- c. Within 30 days of the filing of this Request, rescind the Certificate;
- d. Conduct a proper assessment of all environmental impacts pursuant to NEPA, and supplement the environmental documents as put forth in this request; and
- e. Grant any other relief to which the Public Interest Groups may be entitled.

This is the 13th day of November 2017.

FOR THE PUBLIC INTEREST GROUPS

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