

Attachment A



September 2, 2020

Kimberly D. Bose
Federal Energy Regulatory Commission
Office of the Secretary
888 1st Street NE
Washington, DC 20428

**Re: PennEast Pipeline Company, LLC, Docket No. CP20-47-000
Comment on PennEast 2020 Amendment Project Environmental Assessment**

Dear Ms. Bose,

The Delaware Riverkeeper Network (“DRN”), Clean Air Council (“CAC”), and PennFuture provide the following comments to be considered by the Federal Energy Regulatory Commission (“FERC” or “Commission”) to address errors and inconsistencies within FERC’s PennEast 2020 Amendment Project Environmental Assessment (the “EA”) and to assist FERC in its decision whether to amend the PennEast Pipeline Company, LLC’s (“PennEast’s”) January 19, 2018, certificate of public convenience and necessity at docket number CP15-558-000 (“2018 Certificate”).

In order to assist the reader, we include the following brief glossary of terms used throughout this comment to describe the proposed actions. While the described actions overlap in some contexts, we find that it is useful to be as specific as possible when discussing the different components of PennEast’s plan.

- **2020 Amendment Project** – PennEast’s proposal in its Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity in FERC Docket No. CP20-47-000.
- **Phase 1** – A pipeline running from MP 0.0 to MP 68.2R2 of the Original PennEast Pipeline, as modified by amendment in CP19-78-000, and terminating at the Church Road Facility with a capacity of 650,000 dekatherms per day (“Dth/d”), 338,000 Dth/d of which is currently contracted for.

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- **Phase 2** – Construction of the remaining pipeline route from MP 68.2R2 to MP 114.0 of the Original PennEast Pipeline, which, upon completion, will constitute the New PennEast Pipeline.
- **New PennEast Pipeline** – A pipeline running from MP 0.0 to MP 114.0 of the Original PennEast Pipeline route, as modified by amendment in CP19-78-000, plus the Church Road Facility, and interconnections with the Columbia Gas Transmission and Adelphia Gateway pipelines with a capacity of 1.1 million Dth/d.
- **Church Road Facility** – An interconnection with Adelphia Gateway Pipeline and Columbia Gas Transmission Pipeline, a metering and regulation facility, and a pig launcher/receiver.
- **PA Route Amendments** – Four amendments to the route of the Original PennEast Pipeline proposed by PennEast and approved by FERC in Docket No. CP19-78-000.
- **Original PennEast Pipeline** – The PennEast Pipeline as certificated in FERC Docket No. CP15-558-000.

The Commission’s EA fails to comply with the National Environmental Policy Act (“NEPA”)¹ because approval of PennEast’s 2020 Amendment Project is a “major Federal action[] significantly affecting the quality of the human environment,”² and accordingly, an environmental impact statement (“EIS”) is required. PennEast’s proposal is not a mere “phasing” of construction, but rather is a reconfiguration of the Original PennEast Pipeline—PennEast is asking FERC to approve a 68-mile greenfield pipeline to supply 380,000 Dth/d of natural gas to Adelphia Gateway Pipeline and Columbia Gas Transmission Pipeline in Bethlehem Township, Pennsylvania. Thus, although this pipeline shares the same route as the Original PennEast Pipeline, it serves an entirely different purpose. Because a project’s purpose is a fundamental component of any analysis under NEPA, the environmental impacts of Phase 1 must be reevaluated in light of its purpose.

PennEast also maintains that it intends to complete construction of the pipeline along the route originally certificated as “Phase 2” of the project, and that the original precedent agreements submitted in Docket No. CP15-558-000 remain intact for the full pipeline. FERC cannot ignore, however, that this New PennEast Pipeline will include interconnections with Adelphia Gateway and Columbia Gas Transmission—what role will these delivery points serve once the New PennEast Pipeline is complete? FERC must discern the New PennEast Pipeline’s purpose and need, and analyze the full pipeline’s environmental impact in light of that purpose and need.

The Commission’s EA is also factually deficient in several respects: it ignores acute health impacts from natural gas infrastructure; it utilizes outdated emissions information; it fails to meaningfully engage in an analysis of greenhouse gas emissions and the climate

¹ 42 U.S.C. §§ 4321–4370h.

² 42 U.S.C. § 4332(C).

change effects thereof; the noise impacts and air quality impacts analyses are incomplete; public safety analyses are outdated and incomplete; the site-specific analysis of the Church Road Facility fails to account for a massive residential retirement community directly across the street; the karst geology and groundwater features at the Church Road Facility are insufficiently accounted for; the cumulative impacts analysis is flawed; and the alternatives analysis is flawed in several respects, primarily as a result of an ill-defined purpose and need statement.

Even based on this incomplete EA, the Commission should conclude that the adverse environmental consequences of constructing and operating Phase 1 and the New PennEast Pipeline outweigh the public benefits, and that an amended certificate is not warranted. Should the Commission decide, despite law and evidence to the contrary, that an amendment is warranted, it must not amend the certificate, allow construction, or allow tree felling prior to the Delaware River Basin Commission's ("DRBC's") approval, as both Phase 1 and the New PennEast Pipeline are projects within DRBC's jurisdiction.

I. Administrative and Overarching Issues

A. Extension of Comment Deadlines

In our March 4, 2020 Comment in Opposition to the Abbreviated Application for Amendment,³ we requested that FERC extend the public comment period due to the short notice given to the public—notice had been provided on February 12, 2020, and a deadline of March 4, 2020 was given, for a total of twenty-one days for the public to comment on this radical reconfiguration of the PennEast Pipeline. On March 20, 2020, when it became clear that the coronavirus was a major public health catastrophe that would alter everyone's daily life, we sent a letter to FERC, among other regulatory entities, requesting that FERC alter its processes to ensure that the public's ability to participate was not scuttled by the pandemic. In our March 30, 2020 National Environmental Policy Act Scoping Comment,⁴ which was submitted in the early throes of the coronavirus pandemic amid regional shut-downs, we specifically requested that FERC extend the scoping process to May 1, 2020, which was the date to which FERC had extended non-statutory deadlines for the regulated community.⁵

The Commission has responded to requests for an extension of the scoping period by stating: "It is our policy to review and consider comments received after the scoping period expiration date, up until the time the NEPA document is prepared for issuance. Accordingly, we have considered and addressed late filed comments in this EA to [the] extent practicable, and therefore we find extension of the scoping period unnecessary."⁶ This "consideration to the extent practicable" is cold comfort to commenters who, while enduring a global pandemic and government-ordered lockdowns, either scrambled to put together a comment after absorbing all the necessary information about the Project yet missed the deadline, or were so overwhelmed that they decided it would be impossible for them to make a timely

³ Accession No. 20200304-5296 (Mar. 4, 2020) at 2.

⁴ Accession No. 20200330

⁵ See *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (Mar. 19, 2020).

⁶ EA at 5.

submission and gave up their right to be heard. How are late commenters to determine whether their comments were actually considered or not? If a late filer seeks judicial review of the Commission's final decision, will the Commission tell the court that the late filer's arguments were not a part of the record because they were submitted after the deadline? The Commission's vague promise to "consider to the extent practicable" is not a solution to the problem of a too-short scoping period, and is therefore not a sufficient justification for failing to extend it.

Unfortunately for the communities who will bear the brunt of the PennEast Pipeline's impacts, the 2020 Amendment Project has been rushed through the NEPA process during a global pandemic. While it may be impossible to know exactly how many voices were shut out by FERC's refusal to extend the commenting deadline, it is abundantly clear that FERC chose to provide large energy companies with leeway that was denied to the public.

B. Lack of Public Hearing

Further curtailing community input, the Commission cited the "limited scope" of the Project as a justification for not extending the comment period and for not holding any public hearings.⁷ In doing so, FERC ignores the major impact that the Church Road Facility will have on Bethlehem Township. When compared to the Project's total area of disturbance, the Church Road Facility is indeed insignificant in terms of the footprint. However, as Bethlehem Township noted in its scoping comment, PennEast's application proposing "an above ground facility with a terminal, interconnections with other pipelines and a [metering and regulation] station is a serious deviation from what Bethlehem Township residents understood to be the project's scope."⁸

In addition, as of the scoping comment deadline, PennEast had not submitted any applications for local approvals in Bethlehem Township, so the residents of Bethlehem Township were not familiar with the Church Road Facilities, and would have benefitted from a public hearing to explain the Project.⁹ In sum, the community being asked to bear the greatest burden was blindsided by PennEast's application, and was given only thirty days to provide input on major above-ground natural gas infrastructure that will be located directly across the street from a 200-plus-unit residential community and near three local schools.¹⁰ A public hearing and extended comment period is necessary to satisfy NEPA's requirement that the Commission "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures."¹¹

⁷ EA at 6.

⁸ Comment of Bethlehem Twp., Northampton Cty., Pa. and Bethlehem Twp. Bd. of Comm'rs under CP20-47, Accession No. 20200330-5149 (March 30, 2020).

⁹ See Bethlehem Twp. Comment at 2.

¹⁰ See Section IV.H.3, *infra*.

¹¹ 40 C.F.R. §1506.6 (2019).

C. Effects of the COVID-19 Pandemic on the Construction Process

The EA is inaccurate as to the anticipated construction time set forth in Section 6.1.¹² PennEast states it “anticipates that construction of the Church Road Facility would take approximately six months and require an estimated labor force of 25 workers during peak construction”¹³ and that construction would not commence until sometime in 2020 when the proper authorizations and approvals are obtained.¹⁴ However, this estimation comes from PennEast’s January 30, 2020 Abbreviated Application for Amendment,¹⁵ which precedes the COVID-19 pandemic. It is very unlikely that such anticipated construction dates and times are still accurate considering the pandemic has affected almost all forms of commerce since it began in early spring of 2020, including delaying construction projects. Thus, the information about when construction on PennEast would start and the duration of the project are most likely inaccurate. New estimates of start and project duration should be determined and noted in the EA.

D. The EA Misconstrues the Status of Permitting

Table A.10-1 of the EA is incomplete and misleading.¹⁶ It shows only four permits that are pending, applied for, or actually issued, but fails to list *all* the needed permits and authorizations. The explanatory language before the table does not make up for the failure to provide all permit information.¹⁷ This table does not include major outstanding or denied permits such as state water permits. A member of the general public may think only the four permits listed in this table are necessary, and thus, the table is misleading. This table should be updated to include all required permit information.

II. The “Phasing” of the Project is Unprecedented and Unsupported by Law

PennEast has styled its request as an amendment that simply seeks to construct the Original PennEast Pipeline in two phases—a request that the Commission has fielded from several natural gas pipeline companies in the past. Precedent shows, however, that phasing was typically approved due to changes in market demand, that pipelines were fully or near-fully subscribed, and that the environmental impacts of the pipelines did not increase. PennEast, on the other hand, proposes construction of Phase 1 based on a legal roadblock preventing it from building the Original PennEast Pipeline, has subscribed only 52% of Phase 1’s capacity, and has increased environmental impacts by constructing the Church Road Facility. This tenuous justification for the construction of Phase 1, combined with the likelihood that Phase 2 will never be built, demands that FERC treat PennEast’s proposal as

¹² EA at 25–26.

¹³ EA at 26.

¹⁴ See PennEast Pipeline, *Frequently Asked Questions*, <https://penneastpipeline.com/faq/> (accessed 9/2/2020).

¹⁵ Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity, CP20-47, Accession No. 20200130-5196 (Jan. 30, 2020) at Exhibit F-1: Environmental Report, at Section 1.4.2.

¹⁶ EA at 10.

¹⁷ See Section X, *infra* (discussing the role of DRBC in the review of Phase 1 and the New PennEast Pipeline).

a different project than the Original PennEast Pipeline, rather than a simple amendment thereof.

A. Prior “Phased” Projects Approved By FERC

PennEast has provided the Commission with examples of certificates of public convenience and necessity that were amended to allow phased construction.¹⁸ Those matters include *Tuscarora Gas Transmission Company*,¹⁹ *Gulfstream Natural Gas System, LLC*,²⁰ *Transcontinental Gas Pipe Line Corp.*,²¹ and *Bison Pipeline, LLC*.²² None of these instances are comparable to the phasing PennEast proposes.

PennEast argues that in “similar circumstances” to its own, FERC has routinely approved phasing of pipeline construction. PennEast focuses on *Tuscarora*, a pipeline project that cut through federal lands managed by the Bureau of Land Management (“BLM”), and, as originally proposed, would include a lateral to a proposed energy facility located on those public lands.²³ While BLM was prepared to approve the right-of-way for *Tuscarora*’s pipeline, the United States Fish and Wildlife Service (“FWS”) was still investigating the effects of the proposed energy facility.²⁴ Thus, BLM and FWS agreed to approve the facilities in two phases by first considering the pipeline, which would serve shippers other than the energy facility, and then by considering the energy facility separately.²⁵

Tuscarora requested an amendment to its certificate of public convenience and necessity to reflect this phasing and allow construction of the pipeline to go forward without the lateral.²⁶ An intervenor in the amendment process argued that “if the Phase 2 lateral facilities are not constructed, *Tuscarora* would have built mainline transmission facilities in excess of that under contract with Phase 1 expansion shippers” which would competitively harm other pipeline companies whose shippers may move to the *Tuscarora* pipeline.²⁷ The Commission concluded that the proposed amendment was in the public interest, specifically noting that “all the capacity proposed for construction in Phase 1 is under contract.”²⁸ Ultimately, Phase 2 and the corresponding energy facility never came to fruition.

In *Gulfstream I*, the pipeline company sought to phase construction based on its shippers requirements and market demands.²⁹ *Gulfstream* modified the timing of construction only, and did not change the scope or nature of the previously-authorized

¹⁸ See Supp. Answer of PennEast Pipeline Company, LLC to Comments on Application, Accession No. 20200417-5272 (Apr. 17, 2020) at 9-15.

¹⁹ 99 FERC ¶ 61,044 (2002).

²⁰ 98 FERC ¶ 61,349 (2002) (“*Gulfstream I*”), 105 FERC ¶ 61,052 (2003) (“*Gulfstream II*”), 119 FERC ¶ 61,250 (2007) (“*Gulfstream III*”).

²¹ 103 FERC ¶ 61,033 (2003).

²² 132 FERC ¶ 62,163 (2010).

²³ *Tuscarora* at 61,175.

²⁴ *Id.* at 61,177–78.

²⁵ *Id.* at 61,178.

²⁶ *Id.*

²⁷ *Id.* at 61,179.

²⁸ *Id.*

²⁹ *Gulfstream I* at 62,479.

facilities.³⁰ The Commission noted in approving the phasing amendment that the project was identical to the one already certificated, and that there were no additional environmental impacts.³¹ In *Gulfstream II*, FERC approved a further subdivision of Phase 2 for substantially the same reasons as the original phasing, and in *Gulfstream III*, FERC authorized minor modifications to the length and diameter of Phase 2I. All three modifications were based on market demands and involved no increase in environmental impacts.

In *Transcontinental Gas*, the pipeline company sought to reduce capacity and phase construction of its certificated pipeline based on changes in market demands.³² The Commission reasoned that because the amended project would be fully subscribed, and because it involved a reduction in environmental impacts, among other factors, the amendment was in the public interest.³³

Finally, in *Bison Pipeline, LLC*, Bison proposed an amendment to a previously-certificated 477 million cubic feet per day (MMcf/d) pipeline that would allow construction of the pipeline and appurtenant facilities in Phase 1, which would deliver 407 MMcf/d due to a decreased market demand. Phase 2 would involve construction of a single compressor station, which would modify the pipeline's capacity so that it could deliver the remaining 70 MMcf/d when market demand materialized.³⁴ Again, FERC emphasized that the proposed amendment would change only the timing of construction, that Phase 1 would provide the full contracted volumes of natural gas to its shippers, and that no additional environmental impact would occur.³⁵ Accordingly, the amendment was approved.

In the matters above cited by PennEast, FERC has focused on the reason for phasing construction, whether the first phase of each pipeline would be fully subscribed, whether the project has substantially changed from the certificated project, and whether environmental impacts have increased or decreased. PennEast is seeking an amendment to its certificate to phase construction not based on a changed market or a delay in environmental review, but because it failed to meet the conditions of its certificate.³⁶ NJDEP denied PennEast's request for a water quality certification, which is required by the federal Clean Water Act.³⁷ Additionally, Phase 1 of the proposed New PennEast Project is currently under contract for approximately only 52% of its total capacity. Furthermore, PennEast's project has substantially changed—there are new interconnections with two major pipelines. Environmental impacts have increased, due to the interconnection facility. Thus, PennEast's requested "amendment" is quite unlike the amendments requested in *Tuscarora*, *Gulfstreams I-III*, *Transcontinental Gas*, or *Bison Pipeline*. These differences mandate a more searching

³⁰ *Id.*

³¹ *Id.*

³² *Transcontinental Gas* at 61,152.

³³ *Id.*

³⁴ *Bison Pipeline, LLC* at 64,505-06.

³⁵ *Id.* at 64,506-07.

³⁶ See Order Issuing Certificates, PennEast Pipeline Company, LLC, CP15-558-000, 162 FERC P 61,053 (2018) at 85 (requiring receipt of "all applicable authorizations required under federal law (or evidence of waiver thereof)").

³⁷ 33 U.S.C. § 1341.

review from the Commission. Phase 1 should be evaluated as a proposed new project in lieu of the Original PennEast Pipeline.

B. Phase 1 Capacity is Only Half-Subscribed

On April 1, 2020, the Commission's Office of Energy Projects requested that PennEast explain the change in volume of gas to be moved by the Phase 1 Project.³⁸ On April 21, 2020, PennEast responded that Phase 1 is designed to provide 650,000 Dth/d of firm transportation capacity "based on the executed Phase 1 precedent agreements, ongoing negotiations with other shippers for Phase 1 service and the demand for natural gas in growing Northeast markets."³⁹ PennEast attempts to bolster its allegation of project need by referring to "ongoing negotiations" and generalized market trends.

Despite this thin justification, the Commission concludes in the EA that "[t]he purpose of the 2020 Amendment Project would be to allow Phase 1 delivery of up to 650,000 dekatherms per day (Dth/d) of firm transportation service to new delivery points"⁴⁰ The true purpose and need ostensibly demonstrated by PennEast's actually-existing precedent agreements is for delivery of 338,000 Dth/d, 52% of total Phase 1 capacity, or 30.7% of the originally-certificated 1.1 million Dth/d capacity.⁴¹ Phase 1 is by no means fully subscribed. In addition, the Commission should not rely on PennEast's assertions that the original precedent agreements for the Project's full capacity are still viable—especially considering that Phase 2 may never be constructed.

C. Future of Phase 2 is Extremely Uncertain

Last year, the Third Circuit blocked PennEast from condemning lands in which the State of New Jersey held an interest, ruling that the Natural Gas Act did not abrogate a state's Eleventh Amendment immunity, and it also did not delegate to private certificateholders the Federal government's exemption from that immunity.⁴² As a result, the New Jersey Department of Environmental Protection denied PennEast's application for various state permits and a Clean Water Act Section 401 water quality certificate, explaining that PennEast could not meet the administrative requirement of having the authority to submit the application with regard to the un-condemnable properties in question.⁴³ On February 18, 2020, PennEast petitioned the United States Supreme Court for a writ of certiorari.⁴⁴ As of the date of this comment, the petition has not yet been granted or denied. Absent a decision from the Supreme Court, the Third Circuit's ruling answers the question of whether Phase 2 will be constructed. The clear answer is no, with an uncertain possibility that the "no" might

³⁸ Environmental Information Request No. 2, Accession No. 20200401-3024 (Apr. 1, 2020) at 2.

³⁹ Response to April 1, 2020 Environmental Information Request, Accession No. 20200421-5192 (Apr. 21, 2020) at 22.

⁴⁰ EA at 3.

⁴¹ See Section IV.A, *infra*.

⁴² See *In re PennEast Pipeline Company*, 938 F.3d 96 (3d Cir. 2019).

⁴³ Letter from Diane Dow, Director, Division of Land Use Regulation, New Jersey Dept. of Env'tl. Prot. to Anthony C. Cox, V.P., PennEast Pipeline Co., LLC (Oct. 8, 2019).

⁴⁴ Petition for Writ of Certiorari, *PennEast Pipeline, LLC v. State of New Jersey*, No. 19-1039 (U.S.).

become a “yes” at some point in the future. While the Commission may believe that it makes sense to issue a certificate of necessity while state and local approvals are still pending, the NGA cannot be said to authorize a project *after* federally-required permits have been denied.

Recently, the North Carolina Department of Environmental Quality (“NCDEQ”) denied a Clean Water Act Section 401 Certification to Mountain Valley Pipeline LLC (“MVP”) for their Southgate project pipeline, because it depended on the completion of MVP’s Mainline project.⁴⁵ In that letter, NCDEQ acknowledged that “several federal permits necessary for the construction of the MVP Mainline project have been suspended or are pending, with some in litigation.” Accordingly, the “uncertainty of the MVP Mainline project’s completion presents a critical risk to the achievability of the fundamental purpose of MVP Southgate.”⁴⁶

Here, we are faced with the same dilemma, but in a single project. FERC must acknowledge the very likely outcome that Phase 2 of the PennEast Pipeline will never be constructed. In light of that possibility, FERC must start from scratch in its analysis of Phase 1—If PennEast had come to FERC with Phase 1 as a stand-alone project, would a certificate be warranted? Without answering this question via the NEPA and NGA process, FERC will be “[a]pproving construction activities and thereby allowing the most adverse environmental impacts . . . without certainty of the project’s utility upon completion”—a practice “inconsistent with principles of minimization.”⁴⁷

III. FERC Must Prepare an EIS

As it stands, PennEast will not be able to construct the Original PennEast Pipeline. Should the Commission choose to approve the 2020 Amendment Project, PennEast would be able to construct at least Phase 1. Thus, the Commission’s approval would be a “major Federal Action[] significantly affecting the quality of the human environment,” thus requiring a “‘detailed statement’ discussing and disclosing the environmental impact of the action.”⁴⁸ Even if the 2020 Amendment Project is styled as a simple amendment to an already-approved and ready-to-go pipeline project, the amendment warrants a supplemental EIS.

CEQ regulations provide that agencies “shall prepare supplements to . . . final environmental impact statements if . . . [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”⁴⁹ Here, there are four particularly relevant new circumstances: (1) PennEast is currently prohibited from constructing its pipeline in New Jersey; (2) PennEast is seeking to add the Church Road Facility, which includes interconnections with two major pipelines; (3) PennEast proposed to connect its pipeline with the new Adelpia Gateway pipeline; and (4)

⁴⁵ See Letter to Kathy Salvador, Mountain Valley Pipeline LLC, from S. Daniel Smith, Director, Div. of Water Res. N.C. Dept. of Env’tl. Quality (Aug. 11, 2020) (Attached as Exhibit A).

⁴⁶ *Id.*

⁴⁷ See *id.*

⁴⁸ *Sierra Club v. Fed. Energy Regulatory Comm’n*, 867 F.3d 1357, 1367 (D.C. Cir. 2017) (quoting 42 U.S.C. S 4332(2)(C)); see also 40 C.F.R. S 1508.18(b)(4) (federal actions include approval of specific projects).

⁴⁹ 40 C.F.R. § 1502.9(c)(1)(ii).

PennEast has provided evidence of market demand for a much lesser amount of natural gas at 338,000 Dth/d.

These circumstances significantly alter the PennEast Pipeline from what the Commission initially approved and certificated in CP15-558-000. “It would be incongruous with . . . the Act’s manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval.”⁵⁰ Thus, “[i]f there remains ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner of to a significant extent not already considered, a supplemental EIS must be prepared.”⁵¹

When courts review an agency’s environmental analysis, decision not to prepare an analysis, or decision not to supplement an existing EIS, a “rule of reason” is used.⁵² “The overarching question is whether . . . deficiencies are significant enough to undermine informed public comment and informed decisionmaking.”⁵³ NEPA requires informed public comment and informed decisionmaking by “focusing Government and public attention on the environmental effects of proposed agency action,” and “ensur[ing] that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.”⁵⁴ Without a proper framing of the 2020 Amendment Project within the structure of NEPA, there is a substantial risk that the Commission will act on incomplete information, and both the Commission and the public may regret the decision to allow a 68-mile greenfield pipeline to be constructed to deliver only 338,000 Dth/d, when other system alternatives were available to handle that demand.

IV. FERC’s EA Is Arbitrary and Capricious in Several Respects

A. FERC’s Statement of Purpose and Need is Unsupported by the Record

A “purpose and need” statement under NEPA “briefly specif[ies] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”⁵⁵ It also “defines the goals of the project to allow for the review of an appropriate range of alternatives.”⁵⁶ As we pointed out in our Comment in Opposition to the Abbreviated Application, an accurate statement of purpose and need should “include

⁵⁰ *Marsh v. Or. Nat. Res. Coun.*, 490 U.S. 360, 371 (1989).

⁵¹ *Id.* at 374 (quoting 42 U.S.C. S 4332(2)(C)).

⁵² *Mayo v. Reynolds*, 875 F.3d 11, 20 (D.C. Cir. 2017).

⁵³ *Id.* (quoting *Sierra Club*, 867 F.3d at 1368).

⁵⁴ *Marsh*, 490 U.S. at 371.

⁵⁵ 40 C.F.R. § 1502.13 (2019).

⁵⁶ *Stop the Pipeline v. White*, 223 F. Supp. 2d 957, 971 (S.D. Ohio 2002) (citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195-96 (D.C. Cir. 1991)).

information such as ‘where the gas must come from, where it will go, [and] how much it will deliver[.]’⁵⁷

In crafting the statement of purpose and need, the Commission correctly recognized that PennEast is proposing two projects: (1) the Phase 1 Project, and (2) a new and expanded version of the PennEast project that includes the interconnection with the Adelpia and Columbia pipelines (“New PennEast Project”). However, the Commission has taken at face value PennEast’s assertion that Phase 1 requires a capacity of 650,000 Dth/d, and that Phase 2/the New PennEast Project will be exactly like the originally-certificated project in every way.

The Commission defines the purpose and need of Phase 1 as “allow[ing] Phase 1 delivery of up to 650,000 dekatherms per day (Dth/d) of firm transportation service to new delivery points with existing Columbia Gas Transmission, LLC (Columbia) and Adelpia Gateway, LLC (Adelpia) at the proposed new Church Road Interconnects facility.”⁵⁸ PennEast has provided evidence, in the form of precedent agreements, of the need for only 52% percent of this capacity—338,000 Dth/d. In support of the remaining capacity, PennEast vaguely refers to “ongoing negotiations,” which have apparently not produced contracts in the seven months since PennEast submitted its abbreviated application. Accordingly, the statement of purpose and need should be revised to reflect a lesser capacity. The Commission should also clarify whether delivery to Adelpia is truly a necessary component of the project, as both PennEast and FERC have alternately claimed that it is, in the context of the purpose/need and alternatives analysis,⁵⁹ and that it is not, in claiming that Adelpia is not a “connected action.”⁶⁰ Both cannot be true.

The purpose and need of Phase 2/the New PennEast Pipeline is then defined as “the same purpose and need reflected in the Final Environmental Impact Statement (FEIS) issued in Docket No. CP15-558-000, as supplemented by the EA in CP19-78-000.”⁶¹ The purpose and need of Phase 2/the New PennEast Pipeline requires additional clarification. As an initial matter, it is unclear what role the interconnection with Columbia Gas Transmission and Adelpia Gateway pipelines will serve once Phase 2 is completed. Will 650,000 Dth/d (or 338,000 Dth/d) continue to be delivered to those points while 1.1 million Dth/d are delivered to the original terminus—Transco’s Mainline Pipeline in New Jersey? Will the contracts for Phase 1 terminate and the New PennEast Pipeline operate exactly as contemplated in CP15-558-000 regardless of the new interconnections? Will PennEast seek to add compressor stations to increase the capacity of the pipeline to deliver gas to all three delivery points—Columbia Gas Transmission, Adelpia Gateway, and Transco’s Mainline? The purpose and need statement for Phase 2/the New PennEast Pipeline should accurately reflect exactly how PennEast plans to operate the completed pipeline with the new

⁵⁷ Comment of Del. Riverkeeper Network, et al. in Opposition of PennEast Pipeline Company, LLC’s Abbreviated Application for Amendment under CP20-47, Accession No. 20200304-5296 (Mar. 4, 2020) at 5 (quoting *Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582, 599 (4th Cir. 2008)).

⁵⁸ EA at 3.

⁵⁹ See EA at 3, 76-79; Section IV.J.6, *infra*.

⁶⁰ See EA at 7; Section IV.B, *infra*.

⁶¹ EA at 3.

interconnections. If Phase 1 is simply a placeholder, and the Church Road Facility and interconnections have no purpose after the completion of Phase 2, then FERC's consideration of the public benefits of Phase 1 should be reduced in proportion to this temporal limitation.⁶²

B. FERC Has Improperly Segmented its Review of the Project

The scope of a NEPA analysis “consists of the range of actions, alternatives, and impacts to be considered” including connected, cumulative, and similar actions, as well as direct, indirect and cumulative impacts.⁶³ “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”⁶⁴

Here, the Commission has segmented its review of Phase 1 by excluding the construction and operation of the pipeline from MP 0.0 to MP 68.2R2 with the amendments approved in CP19-78-000, as well as by excluding the construction and operation of the Adelpia Gateway pipeline. The Commission also segmented its review of Phase 2/the New PennEast Pipeline by relying on the FEIS for the Original PennEast Pipeline and not considering those impacts in conjunction with the impacts of the Church Road Facility, interconnections with Columbia Gas Transmission and Adelpia Gateway pipelines, and construction and operation of the Adelpia Gateway pipeline itself.

In the EA for the 2020 Amendment Project, FERC defines the scope of its analysis as primarily “limited to potential impacts from construction and operation of the proposed new aboveground facility—the Church Road Interconnects.”⁶⁵ With regard to “air quality, socioeconomics, and cumulative impacts,” however, FERC “also consider[s] impacts from the proposed phasing of pipeline construction where those impacts could differ from the impacts evaluated under Docket Nos. CP15-558-000 and CP19-78-000.”⁶⁶ By adopting this narrow scope of review, FERC has impermissibly segmented its review of the project. The appropriate scope of FERC's analysis must include the following actions for review with regard to Phase 1 as a stand-alone project: construction and operation of the pipeline through MP 68.2R2 in accordance with the amended route described in CP19-78-000, construction and operation of the Church Road Facility, and construction and operation of the Adelpia Gateway pipeline. The appropriate scope of FERC's analysis of Phase 2/the New PennEast Pipeline must incorporate all of the above, plus construction and operation of the remainder of the pipeline.

In its response to scoping comments, PennEast repeatedly claims that commenters are asking the Commission to “dismiss” or “discard” the FEIS prepared in CP15-558-000 and

⁶² See Section V, *infra*.

⁶³ 40 C.F.R. S 1508.25.

⁶⁴ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

⁶⁵ EA at 4.

⁶⁶ *Id.*

the EA prepared in CP19-78-000.⁶⁷ These analyses need not be discarded, but must be incorporated and updated in a new EIS that provides a comprehensive analysis of the PennEast Pipeline as it will actually exist on the ground. If PennEast is asking FERC to approve a different pipeline than that certificated in CP15-558-000 and amended by CP19-78-000, then it is reasonable for FERC’s environmental analysis to evaluate that different pipeline.

PennEast goes on to correctly point out that the Council on Environmental Quality (“CEQ”) regulations implementing NEPA direct agencies to supplement an EIS when there are substantial changes to a proposed action relevant to environmental concerns.⁶⁸ However, PennEast’s response gets it wrong by claiming that there are no significant new circumstances warranting a supplementation.⁶⁹ As explained in Section III of this comment, *supra*, there are at least four significant new circumstances that dramatically alter the project. The FEIS prepared in CP15-558-000 still contains valuable and relevant information, however, that information must be amended and analyzed in light of the new purpose and need of the 2020 Amendment Project, which includes the PA Route Amendments, CP19-78-000, and the Adelphia Gateway pipeline, CP18-46-000.

When analyzing whether two or more projects are connected as “interdependent parts of a larger action and depend on the larger action for their justification,”⁷⁰ “the essential question is whether the segmented projects have independent utility.”⁷¹ “Projects have independent utility where ‘each project would have taken place in the other’s absence.’”⁷²

PennEast’s Response to Scoping Comments goes to great lengths explaining why Adelphia Gateway pipeline in particular should not be considered a “connected action” in the Commission’s NEPA analysis of the 2020 Amendment Project. PennEast creates its own rule based on the sequence of proposals: “as long as a first-in-time project will proceed regardless of the outcome of a second anticipated project (*i.e.*, the first project has independent utility), the two actions are not connected for purposes of NEPA.”⁷³ While it is true that courts have considered sequentially-proposed projects and found that the first proposed project had independent utility,⁷⁴ this does not translate into a hard-and-fast rule that so long as the first project has independent utility, an agency can conclude that any subsequent project is not connected. In fact, when two connected projects are proposed sequentially, the first-proposed project will *always* appear to have independent utility—otherwise, the proposal would be nonsensical. Hence, an agency must evaluate *each* proposed action to determine if it truly has independent utility. Otherwise, an agency or private party could propose a small project with independent utility, which would be subject to an EA/FONSI, and then

⁶⁷ Response to Comments Received During Scoping Period, Accession No. 20200427-5061 (Apr. 24, 2020) at 5–6.

⁶⁸ Response to Scoping Comments at 6; 40 C.F.R. § 1502.9(c)(1) (2019).

⁶⁹ Response to Scoping Comments at 23–24.

⁷⁰ 40 C.F.R. § 1508.25(a)(1)(iii) (2019).

⁷¹ *Twp. of Bordentown v. Fed. Energy Regulatory Comm’n*, 903 F.3d 234, 249 (3d Cir. 2018).

⁷² *Id.* (quoting *Webster v. U.S. Dep’t of Agriculture*, 685 F.3d 411, 426 (4th Cir. 2012)).

⁷³ Response to Scoping Comments at 9.

⁷⁴ *Wee, e.g. Hudson River Sloop Clearwater, Inc. v. Dep’t of Navy*, 836 F.2d 760, 763 (2d Cir. 1988).

continued to propose small additions to that project without independent utility, each subject to an EA/FONSI, until a very large project exists that would have been subject to an EIS if proposed in its complete form.

As the D.C. Circuit made clear in *Delaware Riverkeeper Network*, an agency or private party proposing an action may not know at the time it commences one project that it will be embarking on a series of other projects that will soon amount to a larger project—the relevant issue is whether the agency is “justified in rejecting commenters’ requests that it analyze the entire . . . project once [a later component] was under review and once the parties had pointed out the interrelatedness of the sequential [projects.]”⁷⁵ Here, like in *Delaware Riverkeeper Network*, “previous and following projects [are and] were also under construction or review,” and “each phase of the development fit[s] with the others like puzzle pieces to complete an entirely new pipeline.”⁷⁶ That is to say, CP15-558-000, CP18-46-000, CP19-78-000, and CP20-47-000 are all sequential projects, which, together, create an entirely new pipeline as compared to the pipeline certificated in CP15-558-000.

Finally, PennEast sets up the strawman argument that commenters seek to make all linear pipeline projects “connected actions” for the purposes of NEPA based on physical interconnection alone.⁷⁷ If this were true, commenters would argue that the environmental impacts of Columbia Gas Transmission and Transco pipelines should also be considered as part of the Commission’s analysis. Instead, what commenters argue, and what the rule against segmentation requires, is that while physically connected projects can be analyzed separately under NEPA when the Commission considers the projects non-contemporaneously and when the projects have substantial independent utility,⁷⁸ actions must be considered together in the same EA or EIS when the projects are “connected and interrelated,” are “functionally and financially interdependent,” and have “significant ‘temporal overlap’ because they [are] ‘either under construction’ or ‘pending before the Commission for environmental review and approval’ at the same time.”⁷⁹

The Original PennEast Pipeline (CP15-558-000), the PA Route Amendments (CP19-78-000), the Adelpia Gateway Pipeline (CP18-46-000), and the 2020 Amendment Project (CP20-47-000) are connected and interrelated: CP15-558-000, CP19-78-000, and CP20-47-000 are all part of the same pipeline; and CP18-46-000 serves as one of two delivery points for Phase 1 of CP20-47-000, and is a part of Phase 1’s purpose and need.⁸⁰ The projects also appear to be functionally and financially interdependent—although FERC and PennEast claim that Phase 1 could be built without an interconnection to Adelpia Gateway, the fact that Adelpia is included as a part of the 2020 Amendment Project’s purpose and need and that no alternatives without Adelpia were considered in FERC’s EA belies that claim. Again, CP15-558-000, CP19-78-000, and CP20-47-000 are all a part of the same proposed pipeline, therefore they are functionally and financially interdependent. Finally, there is a temporal

⁷⁵ *Del. Riverkeeper Network*, 753 F.3d at 1318.

⁷⁶ *Id.* at 1318–19.

⁷⁷ Response to Comments at 9.

⁷⁸ See *City of Boston Delegation v. Fed. Energy Regulatory Comm’n*, 897 F.3d 241, 251–52 (D.C. Cir 2018).

⁷⁹ *Id.* at 252 (citations omitted) (quoting *Del. Riverkeeper Network*, 753 F.3d at 1308, 1309).

⁸⁰ See EA at 3.

overlap—while CP18-46-000, CP19-78-000, and CP20-47-000 have moved or are moving through FERC’s environmental review and approval, construction on the PennEast Pipeline has not yet even begun. Because these proposals came to FERC’s attention and under FERC’s jurisdiction prior to the commencement of construction on the PennEast Pipeline, FERC has the opportunity and the obligation to consider them together in its environmental review of CP20-47-000, the 2020 Amendment Project.

A comprehensive EIS that analyses each of these actions and their impacts would not require that FERC start from scratch—the PennEast Pipeline FEIS, the Adelpia Gateway Pipeline EA, and the PA Route Amendments EA each provide a wealth of environmental analysis. FERC need only: (1) amend with missing information,⁸¹ (2) redefine the statements of purpose and need in accordance with updated information about Phase 1 and the New PennEast Pipeline.⁸²

C. FERC’s Baseline for its NEPA Analysis Improperly Includes the Original PennEast Pipeline as a Given, Rather than Evaluating the Environment as it Exists Today

The Commission claims that its EA “describes the affected environment as it currently exists,”⁸³ however, throughout the analysis, the Commission operates on the baseline assumption that the Original PennEast Pipeline is certain to be built and that the only additional impact that needs to be evaluated is the Church Road Facility. This error is evident in the Commission’s alternatives analysis, which includes the already-certificated PennEast Pipeline as a part of the “no action” alternative.⁸⁴ By analyzing the impacts of the Church Road Facility as if the Original PennEast Pipeline has already been built, the Commission disjoins its NEPA analysis from reality, thus rendering it useless as both a “hard look” at the environmental consequences of the 2020 Amendment Project, and as a public disclosure of those consequences.⁸⁵

Instead, because PennEast is currently legally prohibited from constructing the Original PennEast Pipeline, the Commission should have described the environment as it *actually* currently exists—without a pipeline. Then, while re-using some data and analysis from the FEIS and adding new and previously missing information,⁸⁶ FERC should have

⁸¹ Delaware Riverkeeper Network has identified several discrepancies in past NEPA analyses for these projects that should be remedied in a comprehensive EIS. *See* Request for Rehearing of Delaware Riverkeeper Network, PennEast Pipeline Company, LLC, Docket No. CP15-558-000, Accession No. 20180124-5153 (Jan. 24, 2018) (Attached as Exhibit B); Petition for Rehearing of Delaware Riverkeeper Network and the Delaware Riverkeeper, Adelpia Gateway, LLC, Docket Nos. CP18-46-000, CP18-46-001, Accession No. 20200121-5138 (Jan. 21, 2020) (Attached as Exhibit C); Delaware Riverkeeper Network and the Delaware Riverkeeper’s Petition for Rehearing, PennEast Pipeline Company, LLC, Docket No. CP19-78-000, Accession No. 20200420-5289 (Apr. 20, 2020) (Attached as Exhibit D).

⁸² *See* Section IV.A, *supra*.

⁸³ EA at 3.

⁸⁴ EA at 77; Section IV.J.2, *infra*.

⁸⁵ *See Sierra Club*, 867 F.3d at 1368.

⁸⁶ *See* Section IV.B, *supra*.

concluded that the impact of constructing and operating Phase 1 was a major Federal action significantly affecting the quality of the human environment.⁸⁷

D. FERC Failed to Consider the Environmental Impacts of the 2020 Amendment Project that Will Be Caused by Upstream Production and Downstream Consumption of Natural Gas.

In our March 30, 2020 scoping comment, DRN, CAC, and PennFuture highlighted FERC's obligation to consider the environmental impacts of upstream production of natural gas, including greenhouse gas emissions and their effect on climate change, as well as impacts associated with siting of wells such as drilling, land disturbance, water withdrawal, material handling and waste management, operation of equipment, drinking water impacts, health and safety impacts, harm to wetlands, habitat, forest, and floodplains.⁸⁸ We also provided an updated calculation of downstream emissions, and explained how the social cost of carbon could be used to measure the impacts of these emissions on the human environment.⁸⁹ We hereby incorporate our discussion of these upstream and downstream impacts by reference, as they should have been, but were not, analyzed in FERC's EA for this project.

In its EA, the Commission asserted that it has already addressed "climate change, upstream impacts, and downstream use for the PennEast Pipeline Project in Docket Nos. CP15-558-000, CP15-558-001, CP19-78-000, and CP19-78-001" and that "the limited scope of the proposed 2020 Amendment Project does not raise new impacts that would alter the staff's previous environmental analyses"⁹⁰ As highlighted in our scoping comment, however, the Commission in fact declined to analyze these impacts.⁹¹

"[O]ne of the fundamental purposes of NEPA is to require consideration of questions of general or broad significance, such as chemical pollution, alternative modes of transportation, and world resource exploitation. The act expressly requires recognition of 'the worldwide and long-range character of environmental problems,' and one of the specific elements to be studied . . . is 'the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.'"⁹² FERC's failure to meaningfully engage in a climate change analysis violates NEPA.⁹³ Furthermore, as previously explained in Section IV.B of this comment, the Commission's scope in reviewing the 2020 Amendment Project is arbitrarily narrow, as it fails to evaluate the pipeline project as a whole, which, if the 2020 Amendment Project is approved, will be substantially different from the project originally certificated.

⁸⁷ See 42 U.S.C. § 4332(2)(C).

⁸⁸ See Scoping Comment at 13-19.

⁸⁹ See Scoping Comment at 19-22.

⁹⁰ EA at 5.

⁹¹ See Scoping Comment at 13; see also OFFICE OF ENERGY PRODUCTS, FEDERAL ENERGY REGULATORY COMMISSION, PENNEAST PIPELINE PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT at 4-258, FERC\EIS:0271F (Apr. 2017).

⁹² *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975) (first quoting 42 U.S.C. § 4332(2)(E), and then quoting 42 U.S.C. § 4332(2)(C)).

⁹³ See *Sierra Club*, 867 F.3d at 1371-75.

DRN, CAC, and PennFuture provided FERC with updated analysis of upstream impacts based on new information presented in the 2020 Amendment Project.⁹⁴ There is no reason why the Commission could not or should not incorporate such an analysis in an EIS, as these impacts are caused by, and are a foreseeable result of, the 2020 Amendment Project.⁹⁵

E. FERC Failed to Address Information and Analyses Missing from Prior Evaluations of the PennEast Pipeline Project.

In our scoping comment, DRN, CAC, and PennFuture raised specific issues regarding data gaps from the Commission's environmental review of the original PennEast Pipeline.⁹⁶ Because FERC failed to address any environmental impacts beyond the Church Road Facility and the phasing of construction in its EA for CP20-47,⁹⁷ these issues remain unaddressed. Accordingly, FERC's erroneous decision to narrow the scope of its review resulted in the additional error of failing to address outstanding data regarding the environmental impacts of the PennEast Pipeline. We hereby incorporate by reference those issues raised in our Scoping Comment, and assert that the Commission was required to address them in its environmental analysis of the 2020 Amendment Project.⁹⁸ In addition, Exhibits B–D to this comment include Delaware Riverkeeper Network's requests for rehearing in FERC Dockets CP15-558-000, CP18-46-000, and CP19-78-000, which describe errors made by the Commission in its NEPA analyses for those projects.

F. FERC's Analyses of Air Quality, Health Impacts, and Noise are Deficient.

Section 7.0 of the EA,⁹⁹ on Air Quality and Noise, suffers from major omissions and deficiencies, in addition to several minor and correctable errors. Among the major problems are FERC's failure to consider acute health impacts from air pollution and its outdated information about the air quality permitting of the Kidder Compressor Station.

1. FERC Improperly Ignores Acute Health Impacts from Gas Infrastructure.

Acute health impacts are vital to consider and cannot be evaluated using mere annual emissions tallies. This is particularly important when considering blowdowns and other venting incidents. Blowdowns are known to cause acute illness in people living near gas compressor stations. The Attorney General of Pennsylvania convened a Grand Jury to investigate potential environmental crimes in the fracking industry in Pennsylvania. The Grand Jury produced a report recently, documenting many findings that a state judge then found to be proved.¹⁰⁰ Among these findings were descriptions of the impacts on residents

⁹⁴ See Scoping Comment at 13-22.

⁹⁵ See 40 C.F.R. § 1508.25 (2019); 40 C.F.R. § 1508.7 (2019); *Sierra Club*, 867 F.3d at 1373.

⁹⁶ See Scoping Comment at 27-45.

⁹⁷ See Section IV.B, *supra*.

⁹⁸ See Scoping Comment at 27-45.

⁹⁹ EA at 29-49.

¹⁰⁰ OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF PENNSYLVANIA, REPORT 1 OF THE FORTY-THIRD STATEWIDE INVESTIGATING GRAND JURY, available at <https://www.attorneygeneral.gov/wp->

from acute emissions from compressor stations—emissions which FERC does not consider whatsoever in the EA. The Grand Jury wrote:

Various homeowners all described emissions from compressor stations smelling like chlorine. Noxious gases generated from compressor stations would permeate the interior and exterior of peoples' homes, causing burning eyes, headaches, and sores in their mouths, and the development of serious illnesses. Blood tests would confirm the presence of contaminants in people who had been exposed to these gaseous emissions.

Health symptoms related to exposure to routine emissions were numerous and deeply troubling. Respiratory problems, headaches, dizziness, and burning eyes were commonplace. Children in particular experienced nosebleeds and extreme stomach pain. People told us that after the industry came into their lives they experienced weight loss, neuropathy (nerve pain), tremors and shaking, nose and throat pain.¹⁰¹

No EA would be complete without seriously considering the grave health impacts caused by acute emissions from gas infrastructure.

These emissions would affect residents of areas already burdened by elevated levels of pollution, since the areas are mostly in nonattainment of the NAAQS.¹⁰² It has been well-settled for decades that NEPA's ultimate goal is the protection of human health and welfare and the physical environment.¹⁰³ FERC must therefore undertake a full and substantive analysis of the potential environmental and health effects of NO_x, VOCs, greenhouse gases and other pollutants—including fugitive emissions and health impacts from short-term emissions—that would be generated if the Project were to go forward.

2. PennEast has Withdrawn its Application for a State-Only Operating Permit for the Kidder Compressor Station and the Emissions Data FERC Uses Contradicts the Latest Data PennEast Submitted to State Regulators.

The EA appears to have outdated and erroneous information about the emissions and air quality permitting of the Kidder Compressor Station. In Section 7.3.1.1, FERC writes that “The compressor turbines, emergency generator, and fuel gas heater at the Kidder Compressor Station would be required to apply to the PADEP for a preconstruction permit,

<content/uploads/2020/06/FINAL-fracking-report-w.responses-with-page-number-V2.pdf>, attached as Exhibit E.

¹⁰¹ *Id.* at 36–37.

¹⁰² See EA at Table B.7.3-2.

¹⁰³ See *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 771 (1983) (“All the parties agree that effects on human health are cognizable under NEPA . . .”), 773 (“NEPA states its goals in sweeping terms of human health and welfare . . . [T]hese goals are ends that Congress has chosen to pursue by means of protecting the physical environment.”) (original emphasis omitted).

as well as a state-only operating permit, and the compressor turbines would be required to demonstrate the use of Best Available Technology for control of emissions.”¹⁰⁴ That is not true.

PennEast has *withdrawn* its application for a state-only operating permit for the Kidder Compressor Station. The announcement was made in the *Pennsylvania Bulletin* on August 15, 2020.¹⁰⁵ In place of seeking a state-only operating permit, PennEast is seeking a general permit for the station, which will not require it to make a demonstration of Best Available Technology.¹⁰⁶ However, PADEP has flagged the application as deficient multiple times.¹⁰⁷ As a result, it is entirely unclear what the end result of the permitting for the Kidder Compressor Station will look like. It will not, however, match what the EA has said it is.

Moreover, the Phase 1 Operating Emissions data that FERC lists for the Kidder Compressor Station in Table B.7.3-6 contradicts that which PennEast submitted to the Pennsylvania Department of Environmental Protection in July 2020. Table 1 in the Emissions Calculations sheet PennEast submitted in support of its GP-5 application lists Phase 1 Operating Emissions as well, and has different numbers for all of the tons per year emissions figures.¹⁰⁸ FERC needs to get to the bottom of this discrepancy and re-do the air quality analysis based on whatever the actual, accurate figures are.

3. *The Section on Air Quality and Noise Suffers from Several Deficiencies*

Beyond these major issues, there are other problems with Section 7 of the EA.

a) Attainment and Greenhouse Gas Analyses are Incomplete or Misleading

FERC analysis of air quality impacts on the Project area is based on inaccurate information because it misunderstands the current air quality and climate science. In Table B.7.2-3, “Attainment Status for 2020 Amendment Project Components,” Bucks County’s attainment is listed as “Marginal for O₃ 2008.”¹⁰⁹ But this only tells part of the story because this statistic has been updated since 2008 and Bucks County was categorized as “Marginal for O₃ 2015” as well.¹¹⁰ The Green Book also lists Hunterdon County as *serious* for 8-hour O₃ (2008) rather than *marginal* as FERC indicates in this table.¹¹¹ Thus, Table B.7.2-3 contains

¹⁰⁴ EA at 37.

¹⁰⁵ 50 Pa.B. 4146 (“13-00019A: PennEast Pipeline Company, LLC (835 Knitting Mills Way, Wyomissing, PA 19610) terminated on July 23, 2020 for the proposed construction and operation of Kidder Compressor Station, which will be constructed as part of the PennEast Pipeline Project to be located in the Kidder Township, Carbon County.”). See also PADEP eFACTS, Authorization Search Details for Permit No. 13-00019A (“Status: Withdrawn on 7/23/2020”)

(https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleAuth.aspx?AuthID=1131707).

¹⁰⁶ See PADEP eFACTS, Authorization Search Details for Permit No. AG5-13-00001A

(https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleAuth.aspx?AuthID=1324263).

¹⁰⁷ See *id.* (on both 8/26/2020 and 8/24/2020: “Applicant has been issued a deficiency letter.”)

¹⁰⁸ See <https://www.ahs.dep.pa.gov/ePermitPublicAccess/Public/DownloadFileFromOnBase/36554>, attached as Exhibit F.

¹⁰⁹ EA at 32.

¹¹⁰ See EPA GREEN BOOK, https://www3.epa.gov/airquality/greenbook/anayo_pa.html.

¹¹¹ *Id.*

outdated air quality attainment data that understates the pollution load residents of these counties experience. FERC needs to review the data shown in this table and provide the most up-to-date and complete information for this EA, including information for attainment for Bucks County.

FERC's discussion of greenhouse gases ("GHG") in the eponymously-titled paragraph of Section 7.0 is also erroneous and adds to the inaccuracy of the conclusion that FERC makes about PennEast's total contribution to global warming.¹¹² The EA needs to take into account the full effect of the PennEast pipeline on global warming. First, FERC states that "GHG, including CO₂, CH₄, N₂O, hydrofluorocarbons, and perfluorocarbons, are naturally occurring pollutants in the atmosphere and products of human activities, including burning fossil fuels."¹¹³ However, per the EPA, perfluorocarbons, with the exception of carbon tetrafluoride, are not naturally occurring.¹¹⁴ Hydrofluorocarbons are also not naturally occurring, per the National Oceanic and Atmospheric Administration.¹¹⁵ To lump these two man-made chemicals into the "natural" category is misleading and creates confusion in exactly how much and what kind of an impact a pipeline has in GHG generation and on global warming.

FERC also underestimates the total global warming effect of PennEast by failing to use the correct global warming potential value for methane. FERC states the global warming potential ("GWP") of methane is 25 years in its discussion of GHG. But 25 years is far from accurate because the EPA has identified the GWP of methane to be 28-36 over 100 years.¹¹⁶

FERC needs to update the EA and re-do the air quality analysis to base it on accurate information about how pipeline construction and operation affects air quality, GHG generation, and global warming.

b) Dust Suppression Plans are Outdated

In Section 7.3.2.1, FERC discusses the mitigation plans for dust creation at pipeline construction sites, but certain mitigation measures are outdated.¹¹⁷ FERC identifies "suitable dust suppression chemicals" might be used to control dust at construction sites as part of the "Fugitive Dust Control Plan" PennEast plans to use.¹¹⁸ However, this plan was drafted in 2015 or earlier,¹¹⁹ which was before the DEP stopped allowing the use of radioactive waste

¹¹² See EA at 33.

¹¹³ *Id.*

¹¹⁴ See <https://www.epa.gov/pfas/what-are-pfcs-and-how-do-they-relate-and-polyfluoroalkyl-substances-pfass>.

¹¹⁵ See <https://www.ncdc.noaa.gov/monitoring-references/faq/greenhouse-gases.php>.

¹¹⁶ See EPA, *Understanding Global Warming Potentials*, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>, accessed August 23, 2020.

¹¹⁷ EA at 38-41.

¹¹⁸ EA at 39.

¹¹⁹ FERC cites to Appendix L-5 of the original September 2015 application under Docket No. CP15-558-000 (see Accession No. 20150925-5028).

as a roadway dust suppressant.¹²⁰ Therefore, PennEast might be considering spraying on roads radioactive frack brine or other potentially hazardous chemicals. FERC should not allow radioactive chemicals to be used as a means to control dust for this project and should restrict dust suppression materials to pure water. Thus, the Fugitive Dust Control Plan needs to be updated, as well as the EA, to reflect the usage of only water to suppress dust.

c) Project Impacts on Air Quality are Incomplete

The conclusion that FERC makes at the end of Section 7.3.2.1 on Construction Emissions is baseless. FERC states: “[d]ue to the temporary nature of construction activities, and with the implementation of the mitigation measures discussed in the FDCP, we conclude that construction of the 2020 Amendment Project would not have a significant impact on air quality.”¹²¹ FERC provides no rationale for this conclusion. In fact, FERC notes in a preceding paragraph that “2020 Amendment Project estimates that construction emissions would increase for most aspects of construction.”¹²² In addition, the totals for emissions that FERC computes in Table B.7.3-5 are quite large, with 87,000 tons of CO₂e, 2,000 tons of coarse particulate matter, over 200 tons of NO_x, and almost 3 tons of hazardous air pollutants. Under the Clean Air Act, those volumes of NO_x and coarse particulate matter are considered significant.

FERC also notes that “[f]ollowing construction, air quality would not revert back to previous conditions, but would transition to permanent operational-phase emissions after commissioning and initial start-up.”¹²³ Given that this is only one of the few conclusions FERC makes in this section, it does not follow that FERC concludes that this project would not have a significant impact on air quality. FERC needs to either remove this conclusion or provide evidence and reasoning to back up the statement that this project will not have a significant impact on air quality.

FERC’s lack of support and analysis on the amount and severity of emissions from the PennEast project also exists again, at the end of Section 7.3, which should either be removed or explained. FERC notes that “[d]ue to the temporary nature of construction emissions and with the implementation of the mitigation measures discussed for operational emissions, and the FDCP of the 2020 Amendment Project, we conclude that the construction and operation of the 2020 Amendment Project would not have a significant impact on air quality.”¹²⁴ This statement lacks evidentiary support and analysis, rendering it arbitrary.

d) Noise Impact Studies Need to be Redone or Updated

FERC should have the noise impact studies discussed in Section 7.4 redone to include noise effects on the planned “Traditions of America” age-restricted community subdivision.

¹²⁰ See <https://www.post-gazette.com/news/environment/2018/05/22/DEP-brine-prohibited-roadways-pennsylvania-warren-county-gas-oil-drilling/stories/201805220114>.

¹²¹ EA at 41.

¹²² EA at 40.

¹²³ EA at 41.

¹²⁴ EA at 44.

This planned retirement subdivision is much closer to the Church Road Facility than any of the noted “Noise Sensitive Areas” (“NSA”) at which FERC conducted noise tests. The closest NSA that FERC tested for noise is a residence 490 ft to the northeast of the Church Road Facility.¹²⁵ The Traditions of American residences may extend to immediately on the other side of Church Road to the west, which would mean it would be separated from the pipeline construction site by a mere 50 to 100 ft, making it the closest NSA to the PennEast site.

Not only is the distance to the nearest NSA smaller, taking the retirement community into account, but the sensitivity of the retirement community is likely to be higher. These residents are more likely to be home most of the day and probably chose to live in such a community because the rural area is more isolated and tranquil than living in a denser or more industrial community. Moreover, seniors are more sensitive to noise and not as able as younger people to tune out irrelevant noise such as the machinery that would be built at the Church Road location.¹²⁶ FERC needs to overhaul all of the studies done in Section 7.4 related to noise to factor in the much closer and more noise-sensitive Traditions of America age-restricted community. The noise-related studies currently noted in the EA here are thus woefully incomplete.

In addition, the noise studies for the Church Road Facility should be redone because their current distance calculations are broadly inaccurate. In each noise study, distances to noise-sensitive areas are calculated in feet from the center of the Church Road Facility. However, site construction does not all take place in the very center of the site. Construction equipment would be operating throughout the site, especially at road access points. Because construction will take place throughout the site, distances should be measured from the site border rather than the site center to obtain the most accurate noise data. FERC needs to perform the noise studies again using site border distances to specific noise-sensitive areas to make the noise studies of this EA accurate.

FERC also needs to update the EA to address inconsistencies in Section 7.4.3 describing noise impacts as compared to Section 5.2, describing Visual Resources. In Section 5.2, FERC describes the visual impacts of pipeline construction as being mitigated by a “number of line-of-sight features that would partially screen views and minimize the visual impact of the facilities,” in the form of existing mature and decorative trees in various locations.¹²⁷ No other specific mitigation measures are noted to be taken to mitigate the visual impacts of construction. In contrast, Section 7.4.3 describes the noise mitigation measures to include erecting a “three site-specific perimeter barrier walls along the southern, northwestern, and northern site boundaries.”¹²⁸ This proposed perimeter noise-reduction barrier wall directly conflicts with the tree-only visual barrier discussed previously. This inconsistency must be cleared up so that accurate information is set forth in both sections of the EA.

¹²⁵ See EA at 44–49.

¹²⁶ Jennifer Bieman, “Western University study: Aging brains over-sensitive to sounds,” *London Free Press*, August 21, 2018, available at <https://lfpres.com/news/local-news/western-university-study-aging-brains-over-sensitive-to-sounds>.

¹²⁷ EA at 25.

¹²⁸ EA at 48.

As alluded to above, the pipeline operational noise study noted in Section 7.4.3 should be re-performed. The operational noise impact study fails to take into consideration a close-by noise-sensitive planned retirement community. The residents of this community most likely will choose such a community because of the anticipated quieter and more peaceful environment and the operational noise studies noted in the EA fail to take this into consideration. To fail to take the planned retirement community into account in the noise studies leaves a significant part of the EA incomplete. And the existence or non-existence of sound barriers must be cleared up. Thus, the operational noise studies should be performed again.

G. FERC's Discussion of Public Safety is Outdated and Incomplete.

In Section 8.1, Pipeline Safety Standards, FERC needs to clear up an inconsistency in the Class designation for the Church Road Facility area in light of the current and potential community characteristics. This area, FERC states, is “consistent with a Class 2 designation.”¹²⁹ Further on, the EA states “PennEast proposes to utilize Class 3 pipe at this location to account for the anticipated growth along US Route 33 corridor.”¹³⁰ It is unclear in these characterizations what class FERC deems the Church Road Facility actually is, but PennEast notes that it expects that area to grow and, as such, that area should be deemed Class 3. By the time the Project would be built, it may *be* Class 3 and need not just be *deemed* Class 3, as a dense planned retirement community lies within the same area of the mainline pipe. Thus, the EA needs to be updated for the Class designation for the Church Road Facility to be clear about safety features of the pipe that will be constructed there, and that what PennEast proposes is the bare minimum required, not an instance of going above and beyond.

Section 8.0 on Reliability and Safety of the pipeline is inadequate because it lacks specificity and information particular to the PennEast project. While the several pages of discussion in this section regard many aspects of pipeline safety and the likelihood of accidents, no one paragraph discusses the safety aspects of the PennEast project specifically nor is there any discussion of the safety parameters applied to PennEast. In one section, FERC notes that it “received public comments expressing concern that the design class for some areas should be higher and the current list of HCAs does not contain some areas that should be classified as HCAs.”¹³¹ However, this is the only discussion that comes close to describing safety aspects of PennEast itself, as the rest is a general discourse on pipeline safety that appears to be a summary of the regulations that *may* apply to PennEast.

FERC needs to update the EA to describe how the regulations affect the planning and construction of PennEast as well as the limitations of PennEast’s design with regard to safety so that the community is fully informed. Furthermore, FERC does not provide any information about special community groups that may be affected by a hazardous

¹²⁹ EA at 51.

¹³⁰ *Id.*

¹³¹ EA at 52.

construction project or pipeline, such as community members that may have limited mobility in the event of a disaster. FERC needs to update the EA to include safety measures of PennEast to account for its location near retirement communities or residents with limited mobility.

H. FERC's Site-Specific Analysis of the Church Road Facility is Incomplete

1. Karst Geology/Groundwater

In recent years, Pennsylvanians have endured a spate of dangerous, destructive incidents as a result of pipeline companies failing to fully investigate and properly account for geological hazards. The Revolution Pipeline, in Western Pennsylvania, exploded mere days after going into service as a result of avoidable geologic risks. A home was lost to the explosion and the family only narrowly escaped the fire. Massive sinkholes have erupted in residents' backyards, roads, and public spaces as a result of the ongoing construction of the Mariner East pipelines across Southern Pennsylvania. Groundwater has been disrupted and drinking water supplies destroyed as a result of similarly poor planning with respect to geology. One significant risk factor contributing to such incidents is Pennsylvania's karst geology.

In the EA, FERC acknowledges that PennEast construction, and the Church Road Facility in particular, is planned in karst areas.¹³² FERC's recommendation that additional geotechnical and geophysical analysis of the Church Road Facility be completed is appropriate and necessary but insufficient. First, the scope of an in-depth geohazards assessment must include, at a minimum, *all* karst areas to be traversed by the project, not just the Church Road Facility. Subsidence and other geohazards pose a significant threat both to above-ground facilities and pipeline integrity. As written, the geographic extent of geohazards analysis referenced in the recommendation is unclear. FERC must ensure the assessment is broad enough and thorough enough to account for all geologic risks.

Second, the recommendation calls out ground-penetrating radar as a geophysical method to be used for further geologic study, but the language should be more inclusive to ensure the most appropriate methodologies are chosen. The use of multiple, complementary geophysical methods would likely be best, and ground-penetrating radar might not even be an appropriate option. After numerous incidents related to the construction of the Mariner East pipelines, including in karst areas in Southeastern Pennsylvania, the pipeline company ultimately was made to conduct geophysical surveying that included the use of seismic, gravity, and electrical resistivity techniques to get a fuller picture of what was happening underground. Those methods may be the most appropriate approach to geophysical surveying here too and it is important that FERC's recommendation is not perceived as limiting the selection of a methodology.

Third, the geophysical surveying must be accompanied by robust geotechnical testing, such as test bores, to confirm results. FERC must ensure that locations chosen for

¹³² EA at 12.

test bores are representative of relevant conditions, drilled to adequate depth, and correspond to anomalies revealed in geophysical testing. It is important that FERC provide specific expectations with regard to both geophysical and geotechnical testing as, based on Commenters' experience with other pipeline construction in Pennsylvania, PennEast is likely to do as little as possible to meet requirements.

Finally, given the seriousness of public safety concerns at stake, the geohazards analysis should be made available to the public and subject to comment prior to issuance of any final decision from FERC. As it stands, the EA recommends geological studies be completed "Prior to construction." EA at 12. That is insufficient and allows PennEast to evade necessary public review of this critical aspect of its proposal.

2. Land Use and Vegetation

The EA considers land use and vegetation in Sections 1.2, 3.1, and 3.2, as well as cumulatively with other local impacts in Sections 9.6.2 and 9.6.3. In these sections collectively, FERC makes errors that need correcting.¹³³

FERC's errors start by assuming that residential use of the area will last forever. At page 13, it writes, "[t]he existing use of the site is residential and not farmland. It is unlikely that this small area of prime farmland soil would be used for agriculture in the future based on the existing use of the property as residential." FERC's attempts to speculate what the future will look like 100 years from now based on the present are a weak attempt to ignore the fact that this loss of prime farmland soil would be permanent and affect many generations to come. Soil regenerates over the course of centuries, not years. Meanwhile land uses change all the time. Residential areas sometimes return to commercial farming, as illustrated in a recent article about another suburban Pennsylvania area.¹³⁴ As populations shift, some residential land becomes abandoned and later recovered for farming.¹³⁵

Protection of prime farmland soil cannot be casually dismissed because the current use of the land happens to not be a farm. This is a non-analysis. FERC needs to actually consider the cumulative effects of piecemeal loss of prime farmland soil. Moreover, the Church Road Facility is across from a large area which is losing farmland, so cumulative impacts are especially important.

This same failure to take a hard look at land use impacts infects the consideration of cumulative impacts on soils in Section 9.6.3. That section contains no real analysis. FERC essentially just lists some projects and says that the pipeline company's "[a]dherence to

¹³³ In Section 3.3, FERC makes a more basic error of editing. On page 22, the EA has a paragraph which is repeated in full except for the addition of "post-construction" in one paragraph, and it is unclear which paragraph (if either) is correct. They do not mean the same thing. Whether the monitoring starts during construction or post-construction makes a difference. This error needs correcting as well.

¹³⁴ See *Philly Voice*, "An unconventional farmer: Tilling the backyards of suburbia," May 25, 2017, available at <https://www.phillyvoice.com/unconventional-farmer-tilling-backyards-suburbia/>.

¹³⁵ See *Fox News*, "Urban decay to be replaced with farmland in Detroit," November 24, 2013, available at <https://www.foxnews.com/us/urban-decay-to-be-replaced-with-farmland-in-detroit>.

these plans and requirements would minimize the potential for negative impacts on soil resources.”¹³⁶ FERC does not consider the significance of the impacts. Such a rote recital fails to comply with NEPA.

Regarding vegetation, FERC in Section 3.1 writes that “PennEast has committed to use only plant species that are native to the local area for revegetation of the Project area. Stormwater facilities would also utilize native vegetation or be allowed to grow naturally without mowing in accordance with PADEP BMPs and standards.”¹³⁷ While PennEast may have *said* that, its instructions to its contractors contradict its words. PennEast has specified that its seed mixes, as listed in its blueprints submitted to PADEP, use such non-natives as Penlawn Creeping Red Fescue and Kentucky Bluegrass.¹³⁸ These are not only non-native species, Pennsylvania’s Department of Conservation and Natural Resources actually recognizes Creeping Red Fescue and Kentucky Bluegrass as potentially invasive species.¹³⁹ FERC must make this a condition of any FONSI, rather than simply relying on PennEast’s false statements.

With respect to earthmoving at the Church Road Facility, the EA explains, “Minor temporary impacts on groundwater could include changes in percolation rates from clearing of vegetation, soil mixing and compaction, and permanent conversion of portions of the site to impervious or semi-impervious surfaces.”¹⁴⁰ It is unclear how permanent conversion of cover type will result in changes to water that are only minor and temporary.

Finally, FERC writes that “a number of line-of-sight occluding features would minimize the visual impact of the Church Road Facility including maintaining the existing tree line and highway sound barriers.”¹⁴¹ As explained above, the tree line will not be visible if there is a property line sound barrier up. The analyses need to be revised to account for the correction of this discrepancy.

3. *Traditions of America Retirement Community*

As it should, FERC spends much of the EA analyzing the surroundings of the Church Road Facility to determine its impact on the neighborhood and its cumulative impacts together with neighboring sources of pollution and other social harms. But astonishingly, FERC completely misunderstands the nature of the retirement community called “Traditions of America at Green Pond,” which is currently a massive construction site for 229 homes *adjacent* to the Church Road Facility.

¹³⁶ EA at 72.

¹³⁷ EA at 15.

¹³⁸ See PennEast Pipeline Project Site Restoration Plan - Recommended Seeding Mixture, available at http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/PennEast/August_2020/ESG02000160002/July%20202020/ESCGP%203-2%20SITE%20RESTORATION_COVER%20SHEET%20TO%20000-03-01-050%2007-02-2020.pdf.

¹³⁹ See http://www.docs.dcnr.pa.gov/cs/groups/public/documents/document/dcnr_20031625.pdf.

¹⁴⁰ EA at 14.

¹⁴¹ EA at 73.

Perhaps the reason FERC ignores the retirement community is that it incorrectly locates it at “0.5 mile W of Phase 2” rather than adjacent to the Church Road Facility, which is where it actually is.¹⁴² This could be because the street address listed for the new development is 5800 Green Pond Road, which indeed is about half a mile Northwest of the Church Road Facility. If FERC had visited the site, as commenters have, or inspected the site plan, copied below, FERC would see that the site spans the entire breadth of the former farmland between 5800 Green Pond Road and the Church Road Facility.

At page 24 of the EA, FERC writes: “There are no buildings identified within 50 feet of the proposed new facilities. The parcel is bordered to the south by currently undeveloped agricultural lands. West of the site is Church Road, beyond which is an agricultural field.” As a matter of fact, a Construction Office building for Traditions of America is not much more than 50 feet from the proposed facilities, and beyond Church Road is a massive construction site—there is no longer an agricultural field to the west. Photos taken on August 9, 2020¹⁴³ show the construction office from Church Road in front of the Interconnects site, the sign advertising the “55+ Resort Lifestyle Community,” and a vast construction site with heavy equipment, exposed dirt, a multi-acre retention pond, and hundreds of boulders where the farm field used to be. The size of the construction site is hard to overstate.

Further down on page 24 of the EA, FERC writes that:

PennEast consulted with local and county government planning officials to determine if new residential or commercial development is scheduled to occur within 0.25-mile of the Church Road Interconnects. Planned residential and commercial developments include developments on file with a local planning board or those included in a municipal master plan. One such commercial development project, the Mill Creek Corporate Campus Development, is located approximately 0.14-mile south of the proposed new facilities.

The Mill Creek Corporate Campus Development is the only one listed. This ignores the much more massive new retirement community that is zero miles from—directly abutting—the Church Road Facility. The failure to recognize the presence of the large abutting residential development has consequences across much of the EA.

In Section 5.2, FERC writes that “During operation, the presence of the new aboveground facilities would result in permanent visual impacts. The proposed Church Road Facility would be located between Route 33 to the east and Church Road to the west. The closest neighboring residence is to the north, more than 300 feet away.”¹⁴⁴ This ignores the dense residential road being built just across Church Road. A live version of the community site plan is available at <https://www.traditionsofamerica.com/find-new->

¹⁴² See EA at 65; *see also* EA at 70.

¹⁴³ Attached as Exhibit G.

¹⁴⁴ EA at 24.

[homes/communities/13/green-pond/site-plan](#), showing which homes have already been sold (in advance of building), and the plan without those indications, as of August 26, 2020, is copied here:



A zoomed-in version of the upper-left-hand corner of the live version of this plan, with red dots indicating houses already sold as of August 26, 2020, is below:



The small white structure at the top of this image is the Construction Office referred to above, which is *directly across* Church Road from the Interconnects site. Thus one of only two access roads—Loyal Lane—to this community of 229 homes, some of which have already been sold, would be *directly across* the street from this industrial facility. New homes would be at most a few hundred feet away.

FERC concludes that “keep[ing] the existing perimeter tree line intact” would leave the site with “minimal long-term impacts on visual and aesthetic resources.”¹⁴⁵ It is one thing to come to this conclusion for a site in a sparsely populated residential road bordered by a farm, which is FERC’s understanding of the site in the EA. When accounting for the fact that perhaps half of all traffic into a huge new residential community would pass directly by the site onto Loyal Lane, the conclusion does not hold. More screening would be needed, given the visual and aesthetic impact on this new “55+ Resort Lifestyle Community.”

Likewise, the traffic analysis at page 28 of the EA is not complete because it includes no analysis or quantification of impact, let alone when considering the addition of one of only two access roads to a 229-home community directly across the street from the site. This will have huge traffic implications that FERC must consider.

Section 6.6 on property values refers back to the analysis in the Certificated Project about abstract, industry-funded studies of the effect of construction and operation of

¹⁴⁵ EA at 25.

pipeline facilities on property values. This ignores the obvious fact that a retiree wanting to move to a tranquil suburban location by a country club will very likely be deterred from buying when the entrance to their community is at an industrial site. This renders the property value analysis incomplete and inaccurate.

Section 9.6.3 is also rendered inaccurate by FERC's failure to consider the impact on land use and visual resources by the Traditions of America development. FERC writes at page 72 (emphasis added):

The Church Road Interconnects' effect on geology and soils would be highly localized and primarily limited to the construction period. ***Cumulative impacts would only occur if other projects are constructed during the Church Road Interconnects' construction period in a shared location.*** Compaction due to construction activity could contribute to cumulative erosion impacts on soils. Large residential developments like Blue Ridge Real Estate Properties and Mill Creek Corporate Campus Development could also lead to soil exposure, compaction, and erosion.

Clearly, large residential developments are being considered, but FERC did not consider the adjacent Traditions of America development--precisely the type of other project that would be constructed during the Church Road Facility's construction period in a shared location.

Overall, FERC must revise the EA to take full account of the Traditions of America retirement community under construction.

4. FERC's Recommendations are Seriously Lacking

The EA's lack of serious analysis finds its logical conclusion in Section D, "Conclusions and Recommendations."¹⁴⁶ The first three recommendations, though necessary, should be standard FERC regulation rather than a needed recommendation, as they basically say that PennEast should do what it has already committed to do, and FERC should have leave to take protective measures. The only other two measures are both for PennEast to submit plans: one to address geophysical hazards and one to control the spread of the spotted lanternfly. While these are both good and needed measures, they are not enough.

First, they are not enough because, with all the problems identified in these comments and not addressed in the recommendations section, it is clear much more is needed. One overarching problem identified with the EA is a lack of serious analysis of the issues. It is no wonder that the EA lacks recommendations, because the issues have not been probed thoroughly enough to find the problems that need addressing.

¹⁴⁶ EA at 84.

Second, even these two measures would only require PennEast to draft up plans before construction begins, but presumably after FERC has already issued a certificate. This presumes that any plan that PennEast might come up with is enough to ensure that there would be no significant impact from the Project. This is putting the cart before the horse. FERC should be evaluating PennEast's plans to determine *whether* they are likely to cause a significant impact, not presuming that any plans it comes up with will not cause such an impact.

I. FERC's Cumulative Impacts Analysis is Flawed

The cumulative impacts analysis in Section 9.0 only considers PennEast pipeline construction in cumulative impacts for air quality.¹⁴⁷ For every other metric, only facilities near the Church Road Facility are considered, and the grounds that the earlier analysis undertaken years ago should suffice. No reasoning for why a years-old analysis of proposed projects in the area would be accurate is provided. Instead, FERC writes in Section 9.2:

Since the previous FEIS and EA were completed some new projects have been identified, and past, present, or reasonably foreseeable future projects or activities within the geographic scopes of Phase 1 and Phase 2 not previously identified or substantially changed since the analysis completed for the Certificated Project are included in Table B.9.2-1 and sections B.9.3 through B.9.5. However, the addition of these new projects or project updates does not change the cumulative impacts analysis and conclusions from the Certificated Project.¹⁴⁸

That last sentence is unexplained. The only way to determine that the additions of those new projects and project updates do not change the cumulative impacts analysis is to do a new or updated cumulative impacts analysis. The place for that analysis is Section 9.0 of the EA. But FERC does not put that analysis in the EA. As discussed below, FERC mentions new projects, but does not do any actual analysis of them, let alone a real, quantitative analysis to tally up their impacts. The reasonable conclusion, therefore, is that FERC has not actually done this analysis at all, and that conclusory sentence is unjustified. This does not satisfy NEPA.

FERC's consideration of the pipeline construction only when looking at air quality impacts also ignores that timing of impacts matters for more than just air quality. Stormwater and flooding impacts from land development, for example, require consideration of timing, because flooding happens during discrete events that last no more than days. But FERC does not take that into account, rendering its cumulative impact analysis incomplete in this additional way.

¹⁴⁷ EA at 58-76.

¹⁴⁸ EA at 60.

These general shortcomings in the cumulative impacts show up in particular in certain of the subsections of Section 9.0. As an instance of failing to take a hard look at the cumulative impacts from additional projects on vegetation, in Section 9.6.2, FERC merely acknowledges that the proposed development projects listed in Table B.9.2-1 are subject to permit approvals and each will need to adhere to vegetation protection measures.¹⁴⁹ However, merely stating that these projects are subject to vegetation protection rules does not provide narrative on what the cumulative impacts of them are, nor does it tally that impact, which is the purpose of the EA. Not only does FERC fail to assess the projects together or as a whole, but it also draws an unsubstantiated conclusion that the impacts of them are not significant. FERC needs to assess the projects' impacts together and describe, in detail, its reasoning on how it came to the conclusion that the impacts of the projects together are not significant.

Also missing from the EA's discussion of cumulative impacts to vegetation is a discussion of the impacts on vegetation from the retirement community. FERC lists nine other development projects that have the potential to occur in the same timeframe as PennEast and none of these include the "Traditions of America" retirement community. Perhaps, as described above, that is because it does not realize that the community is adjacent to the Church Road Facility.¹⁵⁰

The same failure to consider the retirement community renders the cumulative impacts from traffic analysis fatally flawed. In the EA at page 74, FERC reasons that "Construction of the Church Road Interconnects would be expected to be completed prior to any earthwork or increase in construction traffic related to the Mill Creek Corporate Center, which is still in the preliminary planning stages. Therefore, no cumulative impacts from construction traffic are expected." This is not the case for the retirement community. By FERC's own reasoning, therefore, cumulative impacts are to be expected. Therefore, a real traffic analysis needs to take place. The same is true of FERC's consideration of fugitive dust impacts, which also neglects the contemporaneous retirement community construction project.¹⁵¹

A theme throughout the EA's cumulative impacts analysis is that it is based on speculation rather than the administrative record. FERC guesses that the actors in question will abide by best practices, that those best practices are protective, and that therefore any harms will be minor. Guesswork does not satisfy NEPA, however.

In doing the air quality cumulative impacts analysis, for example, FERC writes, "Projects that are constructed concurrently with the Church Road Interconnects may also impact air quality during construction, but these impacts would be short-term and local."¹⁵² There is no basis whatsoever for this conclusion. The EA does not contain information on the

¹⁴⁹ EA at 73.

¹⁵⁰ Compare EA at 70 (identifying retirement community as 0.5 miles from Project) with EA at 73 (not mentioning retirement community in discussion of vegetation impacts).

¹⁵¹ See EA at Section 9.6.5.

¹⁵² EA at 74.

duration of the construction projects in question. Nor does it contain air modeling information that would inform it of how local the air quality impacts would be. This is all speculation.

FERC goes on to write, “The Mill Creek Corporate Campus Development and Highway Restoration PennDOT Project: SR22-Bethman Road to Farmsville Road will likely implement similar minimization measures”¹⁵³ “Will likely implement.” FERC does not know. The information is not in the record. This is speculation.

When FERC discusses on page 75 the additional pipeline projects in the area, it writes, “The consideration of these other projects does not change the conclusion contained within the Certificated Project FEIS that the proposed Kidder Compressor Station and interconnect stations are considered nonmajor sources of emissions, do not exceed NAAQS, and would not be expected to contribute significantly to cumulative impacts on air quality.” The whole point of a cumulative impacts analysis is to consider these things together, not to mention them and then fall back on the conclusion that in isolation, they are not a big deal.

A cumulative impacts analysis requires information in the record on the details of the other projects that the analyst then needs to lay side-by-side with the project in question and tally up quantitatively. FERC errs in failing to gather that data, failing to consider all new projects, and failing to do any sort of quantitative analysis. The result is speculation and conclusions masquerading as a cumulative impacts analysis.

J. FERC’s Alternatives Analysis is Flawed

An alternatives analysis is “the heart of the environmental impact statement.”¹⁵⁴ It is based upon the “underlying purpose and need” of the proposed action,¹⁵⁵ and “present[s] the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.”¹⁵⁶ “The purposes of NEPA are frustrated when consideration of alternatives and collateral effects is unreasonably constricted.”¹⁵⁷ An unreasonable constriction may “result if proposed agency actions are evaluated in artificial isolation from one another.”¹⁵⁸

1. FERC Improperly Ignores the Transco REAE Expanded Case Alternative

In evaluating alternatives in the EA, FERC improperly failed to consider Williams Transco’s REAE Expanded Case. The two project proposals parallel each other. And while PennEast denied that they are alternatives, Transco readily admits it.

¹⁵³ EA at 74.

¹⁵⁴ 40 C.F.R. § 1502.14 (2019).

¹⁵⁵ 40 C.F.R. § 1502.13 (2019).

¹⁵⁶ 40 C.F.R. § 1502.14 (2019).

¹⁵⁷ *Greene Cty. Planning Bd. v. Fed. Power Comm’n*, 559 F.2d 1227, 1232 (2d Cir. 1976), *cert. denied* 434 U.S. 1086 (1978).

¹⁵⁸ *Id.*

Considering alternatives in an earlier filing, PennEast wrote, “PennEast considered a loop of Transco’s Leidy Line pipeline system as a system alternative to the proposed Project. A loop of Transco’s Leidy Line could access the same production region that the PennEast Project accesses. However, the Transco Leidy Line does not offer the same access to specific delivery point locations provided by the PennEast Project.” PennEast rejected the alternative for this reason.¹⁵⁹ What PennEast wrote then has been exposed as false now.

In Transco’s Resource Report 10 (Alternatives) in Docket ID No. PF20-3-000, Transco writes:

Transco also evaluated whether the scope of the Project could be expanded to provide a feasible alternative that meets the objectives of PennEast’s proposed Phase 1. To support the combined capacity and meet the objectives of both projects, including the ability to deliver all of PennEast’s currently subscribed 338,000 Dth/d to PennEast Phase 1 subscribers, Transco determined that the scope of the proposed Project would only need to be modified to include the following facilities (the Project, together with the following modifications, is referred to herein as the REAE Expanded Case):

- one additional 46,930 HP greenfield compressor station in Northampton County, PA;
- one new regulator in Bucks County, PA; and
- facility modifications at two existing meter stations in Northampton County, PA.¹⁶⁰

Transco went on to say that “the analysis clearly shows that (1) PennEast is not a viable alternative to the Project, but (2) the Project, with few modifications, would be able to meet the market needs of PennEast with significantly less environmental impact, at a lower cost for shippers, and with greater security of supply and resiliency for energy consumers.”¹⁶¹

Setting aside Transco’s assumptions about what market needs exist at all, the REAE Expanded Case is a true alternative to PennEast that FERC failed to consider in the EA. “The existence of a viable but unexamined alternative renders an [EA] inadequate.”¹⁶² FERC must consider the Transco REAE Expanded Case as a true alternative to PennEast.

¹⁵⁹ PennEast, “Prior Alternative 4 (Originally Filed As “Transco Leidy Line Alternative” In Draft Resource Report 10),” accessed August 22, 2020, <https://penneastpipeline.com/prior-alternative-4/>.

¹⁶⁰ Resource Report 10, June 2020, at 10-17.

¹⁶¹ Resource Report 10, June 2020, at 10-17.

¹⁶² *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (alteration in original) (quoting *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 868 (9th Cir. 2004)).

2. FERC Improperly Describes “No-Action” Alternative As Construction of Original PennEast Pipeline

A no-action alternative “allows policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action. The no action alternative is meant to ‘provide a baseline against which the action alternative’ . . . is evaluated.”¹⁶³ In describing the “no-action” alternative, FERC makes the conclusory statement that “[i]t is reasonable to expect that if the 2020 Amendment Project is not authorized (the no-action alternative), PennEast would instead construct the Certificated Project as authorized by the Orders in Docket Nos. CP15-558-000 and CP19-78-000.”¹⁶⁴

This assumption is unreasonable, as the current factual and legal circumstances clearly prohibit the construction of the Certificated Project. PennEast has been denied a water quality certificate from the State of New Jersey, and it is prohibited from exercising its delegated eminent domain power over lands in which New Jersey holds an interest.¹⁶⁵ Accordingly, the presumption should be that the Certificated Project will *not* be built, and thus, the no-action alternative should involve no pipeline construction at all.

FERC’s failure to describe the baseline environmental conditions/no-action alternative as the absence of the PennEast Pipeline forecloses an accurate determination of the New PennEast Project’s environmental impact.¹⁶⁶ The Commission’s no-action alternative is thus arbitrary and capricious and violates NEPA.

3. FERC Improperly Considers a Capacity Expansion of Existing Infrastructure to be “No-Action” When it Should Be Considered as An Action Alternative

Additionally, in describing the no-action alternative, FERC states that “[i]f the proposed amendment is not constructed, Columbia and Adelpia may seek other means to obtain an equivalent supply of natural gas from new or existing pipeline systems.”¹⁶⁷ Reasoning that “any replacement project capable of transporting similar volumes of natural gas may result in the expansion of existing natural gas transportation systems or the construction of new infrastructure” the Commission concluded that the no-action alternative was “likely to result in impacts comparable or greater than those described in . . . this EA . . .”¹⁶⁸

¹⁶³ *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, 623 F.3d 633, 642 (9th Cir. 2010) (quoting *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998)).

¹⁶⁴ EA at 77.

¹⁶⁵ See *In re PennEast Pipeline Co., LLC*, 938 F.3d 96 (3d Cir. 2019).

¹⁶⁶ See *Northern Plains Research Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067 (9th Cir. 2011) (finding that a government agency who failed to provide adequate baseline data to assess project impacts to aquatic resources failed to consider an “important aspect of the problem,” resulting in an arbitrary and capricious decision) (internal quotations omitted); see also *Half Moon Bay Fisherman’s Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“Without establishing the baseline conditions . . . there is simply no way to determine what effect the [action] will have on the environment . . .”).

¹⁶⁷ EA at 77.

¹⁶⁸ *Id.*

Immediately after the no-action alternative section, FERC goes on to analyze in a separate section “system alternatives,” which are “alternatives to the proposed action that would make use of other existing, modified, or proposed natural gas transmission facilities that would meet the stated purpose of the proposed actions.”¹⁶⁹ Apparently, according to FERC’s analysis, the use or modification of existing or soon-to-be-existing infrastructure is *both* a no-action alternative, *and* a system alternative. Clearly both cannot be true. The use of existing, modified, or proposed natural gas transmission facilities should be properly considered as a system alternative, that is, an action alternative.

Furthermore, in discussing existing infrastructure’s capacity to handle “similar volumes of natural gas,” FERC does not identify what volumes it considered. Was it the 650,000 Dth/d that Phase 1 is capable of handling, or the 338,000 Dth/d for which PennEast has provided evidence of market demand? Without identifying the volume of natural gas that would be handled by the system alternative, FERC’s alternatives analysis is incomplete. To the extent that FERC considered, based on the stated purpose and need for Phase 1, the capacity for existing infrastructure to handle 650,000 Dth/d, the EA should have explain how it determined that there was a market demand for the additional 312,000 Dth/d beyond the volume that PennEast is currently under contract to deliver. As stated previously in Section IV.A of this comment, PennEast’s claim that it is engaged in ongoing negotiations to subscribe this remaining capacity is insufficient to support a finding of market need.

4. FERC Improperly Incorporates the Alternatives Analysis for CP15-558, A Project that May Not Be Built

In its alternatives analysis, the Commission states that it “evaluated system alternatives in the final EIS prepared for the Certificated Route . . . and concluded that there are no reasonable system alternatives that would provide a significant environmental advantage to the Certificated Project. That previous analysis remains valid and applicable to the proposed 2020 Amendment Project.”¹⁷⁰ This application is based on the belief that the 2020 Amendment Project “consists of only a minor addition to the Certificated Project, and phasing of construction of the facilities approved”¹⁷¹

As explained elsewhere in this comment and in previous comments submitted on the CP20-47-000 docket, the purpose and need of Phase 1 is substantially different from that of the Original PennEast Pipeline, and according to the Third Circuit Court of Appeals, Phase 2/the New PennEast Pipeline cannot be built under the current circumstances. Thus, the alternatives analysis conducted in the FEIS cannot be adopted wholesale, as an alternatives analysis is based on a proposed project’s purpose and need.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

5. *FERC Improperly Rejects the More Environmentally Protective Alternative Natural Gas Delivery Point Alternative 2*

One of the “system alternatives” considered by the Commission was to construct Phase 1 along the originally-certificated route up to and including the Hellertown Lateral, which was previously approved under Docket CP15-558 to interconnect with the Columbia Gas Transmission pipeline.¹⁷² This alternative would include a new interconnection with Adelphia in order to meet the 2020 Amendment Project’s purpose and need.¹⁷³ The Commission considered two options for connecting the Hellertown Lateral to Adelphia: Alternative 1, which would involve greater land disturbance than the Church Road Facility; and Alternative 2, which would involve less land disturbance and would provide better natural screening at a location further away from residential areas.¹⁷⁴

In considering Adelphia Gateway Interconnect Alternative 2, FERC says that it presents not enough benefit as compared to the “minor” impacts to the adjacent land uses at the Church Road Facility.¹⁷⁵ But this conclusion is flawed because the Commission did not consider impacts of the Church Road Facility on the retirement community.¹⁷⁶ FERC needs to re-do this analysis to take those impacts into account. However, even without considering the retirement community, the Commission fails to adequately explain why an alternative that meets the purpose and need of the 2020 Amendment Project while reducing environmental impact is not the “preferred” alternative.

6. *FERC Fails to Consider Any Alternatives Not Including Connection to Adelphia*

The Commission states that the “first consideration for including an alternative in our analysis is whether or not it could satisfy the stated purpose of the project.”¹⁷⁷ In this case, the Commission chose not to consider any alternatives that did not connect to the Adelphia pipeline. Accordingly, the Commission’s alternatives analysis concludes that the project as proposed by PennEast is “the preferred alternative that meets the purpose and need as defined in this EA.”¹⁷⁸ While the Commission is not required by NEPA to “provide a detailed study of alternatives that do not accomplish [the] purpose or objective” of the proposed action, it “may not ‘define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives.’”¹⁷⁹ By failing to consider alternatives that do not involve a connection to Adelphia, the Commission improperly narrowed its consideration of alternatives.

¹⁷² EA at 78.

¹⁷³ *Id.*

¹⁷⁴ EA at 78-79.

¹⁷⁵ EA at 79.

¹⁷⁶ See Section IV.H.3, *supra*.

¹⁷⁷ EA at 76.

¹⁷⁸ EA at 82.

¹⁷⁹ *High Country Conservation Advocates v. U.S. Forest Serv.*, 951 F.3d 1217, 1223 (10th Cir. 2020) (quoting *Wyoming v. U.S. Dept. of Agriculture*, 661 F.3d 1209, 1244 (10th Cir. 2011)).

As PennEast has pointed out in its response to scoping comments, “the interstate pipeline grid is a highly integrated transportation network.”¹⁸⁰ The Commission must explore the possibility that this highly-integrated network has the ability to deliver the natural gas to the shippers without requiring an interconnection with Adelpia.

If the inclusion of Adelpia Gateway pipeline as necessary is to be accepted on its face, however, that required acceptance belies PennEast’s and the Commission’s assertion that Phase 1 and Adelpia Gateway pipeline are not “connected” actions for the purpose of NEPA.¹⁸¹ Indeed, PennEast itself claims that the Phase 1 facilities do not need Adelpia to function, as they “can deliver gas to the Columbia Gas Transmission delivery point at the Church Road Interconnects.”¹⁸² Without an evaluation of these possibilities, the conclusion that a connection with the Adelpia Gateway pipeline is a necessary component of the 2020 Amendment Project is unsupported, and in fact directly contradicted, by the record.

V. FERC Should Ultimately Deny PennEast’s Request to Amend the 2018 Certificate

The Commission’s Certificate Policy Statement describes its decisionmaking process in issuing or denying a certificate of public convenience and necessity.¹⁸³ While PennEast’s application under CP20-47-000 is styled as an “amendment” to its already-existing certificate under CP15-558-000, PennEast is in fact proposing two new projects: (1) Phase 1, a Pennsylvania pipeline terminating at an interconnection with Adelpia and Columbia pipelines at the Church Road Facility; and (2) the New PennEast Pipeline, which is essentially the original PennEast Pipeline plus the interconnections and the Church Road Facility. The Commission implicitly recognizes this in the EA by setting out two separate statements of purpose and need.¹⁸⁴ Because the nature of the original PennEast Pipeline Project has changed, the Commission should analyze both Phase 1 and the New PennEast Pipeline as new pipelines within the framework of its Certificate Policy Statement.

The threshold question is “whether the project can proceed without subsidies from . . . existing customers.”¹⁸⁵ This is typically answered by a demonstration of market need, often in the form of precedent agreements. Since PennEast is a new pipeline, however, it has no existing customers who would subsidize the project. Although the question of subsidization may not be relevant to this particular project, the Commission must still take the second step

¹⁸⁰ Response to Scoping Comments at 10.

¹⁸¹ *Compare* EA at 7 (“Regardless of whether or not the Adelpia Gateway Project were constructed, PennEast could still move forward with its Project; similarly, without the PennEast Pipeline Project, the Adelpia Gateway Project would be able to proceed.”) *with* EA at 3 (“The purpose of the 2020 Amendment Project would be to allow Phase 1 delivery of up to 650,000 dekatherms per day (Dth/d) of firm transportation service to new delivery points with existing Columbia Gas Transmission, LLC (Columbia) and Adelpia Gateway, LLC (Adelpia) at the proposed new Church Road Interconnects facility.”).

¹⁸² Response to Scoping Comments at 10.

¹⁸³ *See Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC P 61,227 (Sept. 15, 1999), *clarified*, 90 FERC P 61,128 (Feb. 9, 2000), *further clarified*, 92 FERC P 61,094 (July 28, 2000).

¹⁸⁴ *See* EA at 3; Section IV.A, *supra*.

¹⁸⁵ 88 FERC at 61,745.

of weighing the “public benefits against the potential adverse consequences” of Phase 1 and the New PennEast Project.¹⁸⁶

The public benefits of Phase 1 are significantly reduced from the public benefits provided by the Original PennEast Project--Phase 1 will provide 338,000 Dth/d and has the potential to provide 650,000 Dth/d. The Original PennEast Project was fully subscribed to deliver 1.1 million Dth/d. The potential adverse consequences have also changed--the pipeline route has been truncated, with new interconnections and the Church Road Facility. The Commission should find that the adverse consequences of Phase 1 outweigh the public benefits of Phase 1 based on the substantial environmental disturbance that will occur along the pipeline route,¹⁸⁷ as well as the environmental impacts of the Church Road Facility, which is nestled among residences and schools in Bethlehem Township.¹⁸⁸

With regard to the New PennEast Project, PennEast claims that the shippers from the Original PennEast Project remain fully committed to the completed route, including Phase 2. PennEast is not clear, however, on what purpose the interconnections and Church Road Facility will serve once the New PennEast Project is fully constructed.¹⁸⁹ Thus, based on the record, the public benefits of the New PennEast Project appear to be identical to the public benefits of the Original PennEast Project, but with greater adverse consequences due to the environmental impacts of the Church Road Facility.

VI. FERC Must Not Amend PennEast’s Certificate Without DRBC Approval

As we stated in our March 30, 2020 Scoping Comment, both Phase 1 and the New PennEast Project are subject to the jurisdiction of the Delaware River Basin Commission (“DRBC”), and, accordingly, FERC may not amend PennEast’s certificate without DRBC’s prior approval.¹⁹⁰ Both Phase 1 and the New PennEast Pipeline are “project[s] having a substantial effect on the water resources of the basin,” , thus, both projects must be “submitted to an approved by” the DRBC if it determines that Phase 1 and the New PennEast Pipeline “would not substantially impair or conflict with the comprehensive plan.”¹⁹¹ This substantial effect is based on Phase 1’s and the New PennEast Pipeline’s “significant disturbance of ground cover affecting water resources.”¹⁹² Because of this requirement, FERC may not amend the certificate without DRBC approval. Should FERC choose to issue an amended certificate conditioned on DRBC’s approval, it must not authorize any construction, tree-felling, or tree-clearing prior to DRBC’s decision.

DRBC also submitted a scoping comment on March 30, 2020, which made clear that Phase 1 is subject to review under Section 3.8 of the Delaware River Basin Compact at least based on its crossing of reservoirs and recreation areas designated in the DRBC’s

¹⁸⁶ *Id.*

¹⁸⁷ See Scoping Comment, attached comments on Docket Nos. CP15-558-000 & CP19-78-000.

¹⁸⁸ See Sections IV.F–I, *supra*.

¹⁸⁹ See Section IV.A, *supra*.

¹⁹⁰ See Scoping Comment at 47–50.

¹⁹¹ DELAWARE RIVER BASIN COMPACT, § 3.8 (1961).

¹⁹² DELAWARE RIVER BASIN COMMISSION, RULES OF PRACTICE AND PROCEDURE, Article 3, § 2.3.5(A)(12) (July 1, 2019).

Comprehensive Plan.¹⁹³ DRBC also raised the possibility that additional Section 3.8 review and approval may be required for water withdrawals and discharges used for horizontal directional drilling, depending on the source and discharge location of the HDD fluid.¹⁹⁴ DRBC concluded in its comment that DRBC review and approval are required “prior to the commencement of any substantial construction activity or related preparation of land.”¹⁹⁵ DRBC also submitted comments to FERC on April 28, 2020, and PennEast submitted an application to DRBC for Section 3.8 review on May 11, 2020, maintaining its argument that DRBC does not have jurisdiction over Phase 1.

In its EA, FERC arbitrarily fails to acknowledge DRBC’s jurisdiction over Phase 1 and the New PennEast Project: “Given that PennEast submitted an application, we included the DRBC in the table [of major permits, approvals, and consultations for the 2020 Amendment Project] below; however, we clarify that FERC staff is not making any determination of jurisdiction or opinion on this ongoing matter.”¹⁹⁶ Contrary to FERC staff’s equivocal statement, DRBC’s jurisdiction over both Phase 1 and the New PennEast Pipeline is clear.

VII. Conclusion

For the foregoing reasons, the Commission’s conclusion that “approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment” is not supported by the record, or by NEPA. The Commission should prepare an EIS for the 2020 Amendment Project, incorporating the corrections, information, and recommendations made in this comment.

Maya K. van Rossum

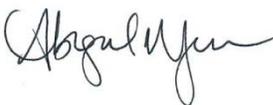


the Delaware Riverkeeper
Delaware Riverkeeper Network



Joseph Otis Minott
Executive Director & Chief Counsel
Clean Air Council

Abigail M. Jones



Vice President, Legal & Policy
PennFuture

¹⁹³ Comment of Delaware River Basin Commission under CP20-47, et al., Accession No. 20200331-5071 (Mar. 30, 2020) at 2 (hereinafter “DRBC Scoping Comment”).

¹⁹⁴ DRBC Scoping Comment at 2–3.

¹⁹⁵ DRBC Scoping Comment at 3.

¹⁹⁶ EA at 10.

Attachment B



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Director

August 11, 2020

Certified Mail
Return Receipt Requested
7018 1130 0000 1612 778

DWR # 20181638 v3
Alamance & Rockingham Counties

Mountain Valley Pipeline LLC
Attn: Kathy Salvador
700 Universe Boulevard
Juno Beach FL 33408

Subject: DENIAL of 401 Water Quality Certification and Jordan Lake Riparian Buffer Authorization Application
MVP Southgate Project

Dear Ms. Salvador:

On August 13, 2019, the Division of Water Resources (Division) received your application, requesting a 401 Individual Water Quality Certification and Jordan Lake Buffer Authorization Certificate from the Division for the subject project. The application fee for the project was subsequently received on August 15, 2019 at which time the application was complete.

Upon review of your application and supporting materials, the hearing officer's report, the FERC Final Environmental Impact Statement (FEIS), responses to the Division's requests for additional information, and public comments, the Division has determined that the proposed MVP Southgate project is inextricably linked to, and dependent upon, completion of the under-construction Mountain Valley Pipeline (MVP Mainline) project. The physical connections and functional links between the MVP Mainline project and the MVP Southgate project are evident in your stated purpose to "provide additional firm natural gas transportation services ... via interconnections with the under construction Mountain Valley Pipeline project,"¹ and to transport "natural gas from the existing terminus of the Mountain Valley Pipeline in Pittsylvania County, Virginia to the T-15 Dan River Interconnect in Rockingham County and then on to the T-21 Haw River Interconnect in Alamance County, North Carolina."² Without a complete and in-service MVP Mainline, MVP Southgate project's purpose of

¹ FERC Final Environmental Impact Statement dated February 2020 [EIS-0297F, FERC Docket No.: CP19-14-000] p. 1-2 (PDF p. 38)

² MVP Southgate Project Pre-Construction Notification Joint Permit Application, August 2019, p.2-1 (PDF p. 11)



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1617 Mail Service Center | Raleigh, North Carolina 27699-1617
919.707.9000

providing “southern Virginia and North Carolina with direct pipeline access to the Marcellus and Utica gas regions in West Virginia, Ohio and Pennsylvania”³ is unachievable.

As indicated in your “Response to Request for Additional Information” dated June 26, 2020, several federal permits necessary for the construction of the MVP Mainline project have been suspended or are pending, with some in litigation. In addition, the Federal Energy Regulatory Commission has issued a stop-work order on the currently incomplete MVP Mainline project. The uncertainty of the MVP Mainline project’s completion presents a critical risk to the achievability of the fundamental purpose of MVP Southgate.

Certification of this project, without further confidence that it can achieve its stated purpose, is inappropriate and allows for avoidable environmental impacts to water quality and protected riparian buffers. This problem is unique to the MVP Southgate project in that its sole utility and purpose is tied to and wholly relies on, the completion of the entire MVP Mainline project. The FEIS notes that most adverse environmental impacts of the MVP Southgate project would occur during construction.⁴ And that the MVP Southgate project has the potential to result in “sedimentation and turbidity, alteration or removal of instream and stream bank cover, stream bank erosion, introduction of water pollutants, water depletions, and entrainment of small fishes and fry during water withdrawals [which] could increase the rates of stress, injury, and mortality experienced by fish and other aquatic life.”⁵ In addition, the project would unnecessarily risk impacting high-quality waters and protected and critical drinking water supplies of North Carolinians. As noted in your June 26, 2020 Response to Request for Additional Information request, you intend to begin construction on the MVP Southgate project immediately once all necessary permits are in place, irrespective of the completeness of the MVP Mainline project. Approving construction activities and thereby allowing the most adverse environmental impacts - without certainty of the project’s utility upon completion - is inconsistent with principles of minimization. **Therefore, the Division has determined that your applications are hereby denied.**

The Division’s decision can be contested as provided in Chapter 150B of the North Carolina General Statutes by filing a Petition for a Contested Case Hearing (Petition) with the North Carolina Office of Administrative Hearings (OAH) within sixty (60) calendar days. Requirements for filing a Petition are set forth in Chapter 150B of the North Carolina General Statutes and Title 26 of the North Carolina Administrative Code. Additional information regarding requirements for filing a Petition and Petition forms may be accessed at <http://www.ncoah.com/> or by calling the OAH Clerk’s Office at (919) 431-3000. One (1) copy of the Petition must also be served to the North Carolina Department of Environmental Quality:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

³ *Ibid.*

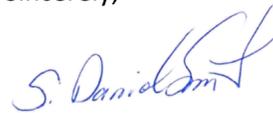
⁴ *FERC Final Environmental Impact Statement dated February 2020 [EIS-0297F, FERC Docket No.: CP19-14-000] p. 5-1 (PDF p. 396)*

⁵ *Ibid.* p. 5-9, (PDF p. 404)

Please be aware that you have no authorization under the Water Quality Certification Rules or the Jordan Lake Riparian Buffer Rules for this activity and any work done within waters of the state or riparian buffers may be a violation of North Carolina General Statutes and Administrative Code.

Please contact Sue Homewood at 336-776-9693 or Sue.Homewood@ncdenr.gov if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "S. Daniel Smith". The signature is written in a cursive style with a large, stylized "S" at the beginning.

S. Daniel Smith, Director
Division of Water Resources

cc: Heather Patti, TRC Environmental Corporation (via email)
David Bailey, USACE Raleigh Regulatory Field Office (via email)
Olivia Munzer, NCWRC (via email)
Todd Bowers, EPA (via email)
Christopher A. Militscher, Chief, NEPA Section, Strategic Programs Office, USEPA, 61 Forsyth St SW, Atlanta GA 30303
Maria Clark, NEPA Section – Region 4, USEPA, 61 Forsyth St SW, Atlanta GA 30303
DWR WSRO 401 files
DWR 401 & Buffer Permitting Unit