



August 17, 2018

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Re: docket identification (ID) number CEQ-2018-0001

Dear Counsel on Environmental Quality,

The National Environmental Policy Act (NEPA) ensures that government agencies and officials have full information regarding the implications of decisions and actions that could have significant adverse impacts on the environment and communities, as well as information about other alternatives that could negate the need for the decision or action under consideration. In addition, NEPA ensures that the public has a role in government decisionmaking by ensuring the public an opportunity to speak on federal actions that could have significant adverse impacts on the environment, their health, their safety and their communities.

NEPA does not mandate that federal agencies advance only those projects and decisions that are protective of environmental resources, but it does seek to ensure that federal agencies and the public are fully informed about the environmental, economic, and health impacts of projects and decisions **prior** to any major government decision.

The Delaware Riverkeeper Network Opposes Any Action To Modify NEPA Through Modification of Its Implementing Regulations—This Iconic Law Is Effective As It Stands.

The Delaware Riverkeeper Network opposes any efforts to weaken this iconic and important law. NEPA ensures that the voices of all people are heard in the federal decisionmaking process when our health, our environment, our communities and economies could be harmed. And it ensures that government agencies, and the public, have the best opportunity for full information on impacts and alternatives before decisions that will have irreparable environmental, economic, and public health impacts are allowed to advance.

We oppose your efforts to revise NEPA – the law is strong and effective as it now stands.

CEQ's resources will be more efficiently utilized if the agency would invest first in more effective implementation of existing NEPA regulations – including through enhanced training, funding and

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intra-agency enforcement. Only upon full completion and implementation of such efforts would it make sense for CEQ to consider revisiting the need for regulatory modifications.

The Delaware Riverkeeper Network has experienced the importance of NEPA first hand with many projects, including the Susquehanna to Roseland 500kV Transmission Line Right-of-Way (ROW) and Special Use Permit application to the National Park Service (NPS) for an expanded ROW by PPL and PSE&G. The proposed project would affect three national park units: Delaware Water Gap, Appalachian Trail and Middle Delaware Scenic and Recreational River. The NEPA process was critically important by providing a robust, logical and predictable framework to which federal, state and local agencies, as well as the public, could fully and comprehensively evaluate alternative routes, total and cumulative impacts, including environmental, social, economic and other impacts, and mitigation opportunities. Specifically, the public had multiple opportunities to provide comment through the Scoping (Draft and Final), EIS (Draft and Final) and Record of Decision process. Over 5,000 comments were received. As a result of the impacts to the Parks being fully understood by the agencies and the public, a more accurate and justifiable mitigation plan, including site-specifics and timelines, was developed. Thanks to the NEPA process, the NPS was awarded a total of \$66 million in mitigation fees when only \$30 million was originally offered. Those funds were utilized to expand the size of the parks through open space purchases and the creation of habitat linkages with surrounding Game Lands, and to enhance ecological restoration and public outreach.

- 1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**
- 2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?**
- 3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**

The answer to each of these questions is no, because the existing regulations provide ample mechanisms for multiple agencies to confer and work concurrently on their reviews. Because of the intense political pressure that is often brought to bear on projects, agencies not only have the ability to work concurrently and efficiently, but they have every incentive to do so and in fact are already focused on timely reviews and coordination.

The premise of the three questions above is that there is a problem with the regulations in terms of inter-agency coordination and information sharing – but there is no deficiency in the current regulatory language that needs to be addressed; to the extent there is perceived shortcoming, it can be handled by improved implementation of the current regulations.

If change is needed in the implementation of current regulatory guidance regarding information reviews, it would be to mandate a more serious obligation to review and consider all science, technical and factual information brought forth. If anything, agencies are too quick to ignore important data and information in the name of timeliness and efficiency and as a result sacrifice the purpose, goals and values this good information brings to the decisionmaking process. CEQ could secure a more serious commitment to considering all science, technical and factual information

brought forth under the current regulatory regime.

If change was needed in the implementation of current regulatory guidance in terms of time, timing and information sharing and reviews it would be to ensure more time and opportunity for public engagement. The short time frames provided by agencies for public review of complicated, technical and scientific questions and materials are too limiting. If there are to be any adjustments to NEPA regarding timing, it should be to mandate longer time frames to accommodate public review of materials and comment, and there should be stronger mandates for public hearings to be held as the limited written comment format often provided tends to limit public participation. CEQ could secure a more serious commitment by agencies to expanded public review and comment opportunities under the current regulatory regime.

If a change was needed in the implementation of current regulatory guidance it would be to ensure a clearer mandate on the agencies to fully and fairly consider and respond to all of the factual, scientific and technical information brought forth by the public. All too often, technical and factual data and expert reports brought forth by the public are ignored and/or never responded too. Highly technical and expert reports commissioned by the public are obviously disregarded in the agency NEPA review process and data that directly contradicts information brought forth by applicants and embraced by agencies is never addressed. CEQ could secure a more serious commitment to considering technical information, expert reports, and clearly on-point factual information and data brought forth by the public under the current regulatory regime.

If change is needed in the implementation of current regulatory guidance it is to ensure agencies take more time and have a heightened obligation to allow for public participation and be responsive to the good information the public brings forth.

If change is needed in the implementation of current regulatory guidance regarding agency coordination it should be to mandate that lead agencies share, fully, all information regarding considered alternatives, particularly when alternatives have been demonstrated, through NEPA review, to negate the need for the project/action under consideration. We know of at least one agency that has shielded such information in an obvious effort to affect the ultimate decisionmaking outcome of other agencies. CEQ intervention, training and enforcement under the existing regulatory regime, could prevent such misuse of the current NEPA process.

With regards to this last point, of failing to share critical information with other agencies, the Delaware Riverkeeper Network has been able to demonstrate that the Federal Energy Regulatory Commission (FERC) intentionally withheld critical information and facts from state lawmakers and the public so as to inappropriately drive the outcome of pipeline infrastructure decisionmaking. The information withheld demonstrated there was a viable project alternative that displaced the need for the pipeline project being advanced – such information regarding a viable alternative could have had significant implications on decisionmaking at the state level, had it been shared. Specifically:

- In their review of the Tennessee Gas Pipeline Company, LLC's ("Tennessee") Orion Project ("Orion") (*FERC Docket CP16-4*), FERC concealed information from the Pennsylvania Department of Environmental Protection ("PADEP") regarding a project alternative that would have greatly reduced the project footprint and its impact on water resources, and therefore could have had a substantial influence on the State's Clean Water Act ("CWA") Section 401 Certification determination, as well as the public's understanding and opinion.

- The Delaware Riverkeeper Network was involved in two legal challenges to the Orion project, allowing the organization to secure documents through litigation that were not otherwise available to the public or the state through public information requests.¹ Were it not for this litigation, evidence of FERC concealing critical information would never have come to light.
- *Facts demonstrating that FERC withheld analyses of viable, technically feasible, and environmentally preferable alternatives from the state and the public:*
 - ⇒ On or about July 10, 2016, FERC generated a Draft Environmental Assessment (Draft EA) for Tennessee’s Orion Project.
 - ⇒ In the Draft EA, FERC identified and evaluated alternatives to the Orion Pipeline proposal.
 - ⇒ As a result, the Draft EA included a detailed analysis regarding an Alternative which eliminated the need for the 12 miles of pipeline looping being proposed and which would eliminate all waterbody impacts.²
 - ⇒ The Draft EA included a detailed description of the Alternative and concluded that this Alternative “meets the purpose and need” of the Orion Project, and “is technically feasible.”
 - ⇒ The Draft EA also concluded that the Alternative “would eliminate the need for 12.9 miles of new pipeline construction, which would eliminate 30 waterbody crossings, 13 road crossings, and impacts on wetlands and other land use impacts along the pipeline route.”
 - ⇒ The Draft EA included a table showing the different impacts resulting from the Alternative in comparison to the proposed looping pipeline project. The analysis showed that while the Alternative had its own set of impacts which required full and thoughtful consideration, the proposed looping project would harmfully impact 30 waterbodies, would have significant wetland impacts, as well as result in 222.6 more acres of total disturbed land, over 100 more acres of impact to agricultural lands, would traverse 2,100 feet of steep slopes, and would necessitate the long-term deforestation of between 9 and 19 more acres of upland forests.
- Therefore, not only did the Draft EA conclude that the Alternative was technically feasible and would meet the purpose and need of the Orion Project, but it also concluded that the Alternative’s environmental impacts would be significantly smaller, thereby making it the environmentally preferred option. However, without reason or explanation, FERC removed this analysis of the Alternative from the final Environmental Assessment that was eventually released to the public, and to the State of Pennsylvania.³
- Both the public and state were never provided, by FERC, this critical information regarding the scope and breadth of potential alternatives to the proposed Orion Pipeline Project, including the less environmentally harmful Alternative.

¹ Delaware Riverkeeper Network Reply Brief in Delaware Riverkeeper Network v. Pennsylvania Department of Environmental Protection et al., June 6, 2017.

² Draft Environmental Assessment for Tennessee’s Orion Project, FERC Docket No. CP16-4, June 10, 2016.

³ Environmental Assessment for Tennessee’s Orion Project, FERC Docket No. CP16-4, August 2016.

- Had PADEP been provided access to the draft Environmental Assessment and/or the analysis and conclusions regarding the Alternative, it may have chosen the Alternative as opposed to the pipeline looping Project. Had the public been aware of this information the direction of their comment and associated technical analyses would likely have been very different. And had FERC received comment that was more on point with the full breadth of information about this project and its alternatives, perhaps FERC would have made a different decision as well.

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

No, but CEQ needs to emphasize the flexibility regarding format that is already in the regulations, encouraging longer length documents and reviews if that is what is needed to ensure full and fair consideration of the proposals, alternatives, and both agency and public comment provided. It also needs to acknowledge that for a proposed action that triggers an EIS, it is seldom going to be possible to integrate compliance documents for all environmental requirements, federal, state, tribal and local, into the main body of one document that meets the current page limitations; rather, that material needs to go into appendices, as the current regulations allow. NEPA should encourage more information and data, not less. To the extent there is a proposal to try to limit the amount of information NEPA generates and shares through tighter page limits – that would be a violation of the goals and mandates of NEPA and would inflict an incredible disservice on the decisionmaking process that benefits from more, not less, information.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

To the extent there is a proposal to try to limit the amount of information NEPA generates and shares under the guise of having a “better focus on significant issues that are relevant and useful”, CEQ regulations and guidance already speak to this and no modification to current regulations is necessary. That being said, NEPA implementation should encourage more information and data, not less. An effort to try to reduce information and data provided to decisionmakers and the public undermines the goals and mandates of NEPA and would inflict an incredible disservice on the decisionmaking process that benefits from information.

Here too, the issue is not that there is a deficiency in the current regulations and their judicial interpretation, it is in the failure of agencies to fully and fairly implement the requirements clearly articulated. For example, consideration of climate change is a clear obligation by any fair reading of the law and its implementing regulations, and as the result of multiple judicial interpretations, and yet agencies like FERC continue to refuse to properly consider the climate changing ramifications of their decisions and actions. It is not that the agencies are unaware of the obligation, they are just choosing not to perform it.

When it comes to failing to consider climate change, FERC is among the worst bad actors. As so clearly stated by FERC Commissioner Glick in his June 15, 2018 dissent⁴ of the Mountain Valley Pipeline project order denying rehearing of the pipeline's certificate:

“Second, the Commission concludes that it is not obligated to consider the harm caused by the Projects’ contributions to climate change and, in any case, that it lacks the tools needed to do so. In order to meet our obligations under both NEPA and the NGA, the Commission must adequately consider the environmental impact of greenhouse (GHG) emissions on climate change. As I have previously explained, and reiterate below, the Commission has the tools needed to evaluate the Projects’ impacts on climate change. It simply refuses to use them.”

Segmentation is another area of NEPA that is undermined by inappropriate compliance by the agencies, not because of a problem with the regulations that currently exist. For example, FERC routinely and illegally narrows its environmental review of pipeline projects by allowing companies and FERC staff to engage in the practice of segmentation. And yet, CEQ fails to take action to ensure compliance with this clear area of NEPA law. Even after the United States Court of Appeals for the District of Columbia instructed FERC that it had engaged in segmentation and needed to stop the behavior,⁵ FERC continues with this illegal practice, most recently with the Tennessee Gas Company’s proposed Orion Pipeline project -- another segmented project designed to further upgrade the 300 Line project -- that was the subject of the Delaware Riverkeeper Network, et. al. case. The case is now in court because CEQ failed to take any helpful action to head off this continuing agency abuse. Had CEQ focused on training and enforcement, decisionmaking and preservation of agency, judicial and public resources would be benefitted.

6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

The focus on efficiency in this question is misplaced – the focus on increased involvement, opportunity for engagement, and obligation for agencies to fully and fairly consider public comment is where focus would be appropriate. That being said, current regulations can well serve this purpose and goal.

If a change was needed in the implementation of current regulatory guidance it would be to ensure a clearer mandate on the agencies to more fully and fairly support public involvement. The current standard 15 and 30 day time frames provided for written comment on proposed agency action are too short to allow the public to become aware of the time for comment, to secure access to all of the information needed to properly comment, to actually review that information, to secure expert reviews and reports to the degree appropriate or necessary, and then to actually craft the comment and submit it. A minimum 60 day time frame for public comment that only starts after all of the applicable information has been made readily accessible online and in public locations like libraries and town halls of affected communities would be of value.

⁴ Statement of Commissioner Richard Glick on Mountain Valley Pipeline, LLC , FERC Docket Nos. CP16-10-000 and CP16-13-000, June 15, 2018.

⁵ *Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Commission*, 753 F.3d 1304, at 1314-1315 (D.C. Cir. 2014) & Delaware Riverkeeper Network Press Release, *Federal Court Rules FERC Violated Federal Law When Issued Approvals for NEUP Pipeline Project*, June 6, 2014.

Mandating consideration of 30, 60 and 90 day time extensions for complicated issues with demonstrated public controversy would be important moving forward with NEPA implementation.

Ensuring that the public be given timely notice of comment time extensions, as opposed to learning of an extension on or near the last day of the original comment period, is also important. All too often agencies grant extension requests on the last day, or days, of the original comment period when it is of far lesser assistance or value to the public as they have already had to scramble to get their reviews, comments and expert reports completed and in. Adding more time after the fact is of tremendously diminished value. For example, for the Delaware River Deepening project the Army Corps of Engineers provided a 15 day comment period that began on December 17, just before a major holiday season for most people in the region. In response to an outpouring of comment seeking more time given this very poor timing, the Army Corps did grant an approximately 1 week extension, but that extension was announced on the last day of the comment (December 31) when all involved had already completed their comments in order to meet the December 31 deadline. In addition, the majority of the extension was usurped by the New Year's holiday that most people in the region enjoy. As a result, this extension was of little value. This anecdote raises another important point, the importance of agencies avoiding high holiday time frames for comment – comment periods that span major holidays or vacation seasons also seriously undermine public comment and should be avoided.

CEQ, in its implementation of current regulations, should ensure a clearer mandate on the agencies to fully and fairly consider and respond to all of the factual, scientific and technical information brought forth by the public. All too often technical and factual data, and expert reports brought forth by the public are ignored and/or never responded to – highly technical and expert reports commissioned by the public are obviously disregarded in the agency NEPA review process and data that directly contradicts information brought forth by applicants and embraced by agencies is never addressed.

7. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

- a. Alternatives;** - no
- b. Purpose and Need;** - no
- c. Reasonably Foreseeable;** - no
- d. Trivial Violation;** - no
- e. Other NEPA terms** – no

The definitions provided in the statute, regulations and judicial decisions provide the guidance necessary for these terms. Problems occur when agencies try to circumvent these definitions. What is needed is clear enforcement by CEQ for the interpretation and application of these terms by agencies in the NEPA context.

We have tremendous problems with agencies trying to limit or redefine, unilaterally, the definition of “reasonably foreseeable”, “purpose and need,” and “alternatives” in need of review, in ways that serve the industry applicants, rather than objectively fulfilling the pre-existing definition of these terms and using interpretations that provide the broadest and most informed quality of information for decisionmaking purposes. As a result, enforcement is needed, not re-opening the regulations in order to try to officially weaken or water down these definitions.

For example, FERC allows pipeline companies to assert increased profits or competitive advantage to support the claim of need for a pipeline project. This is a clear misuse of the term – “need” should be focused on public need for the energy to be provided, not a company’s own desire to secure a competitive edge or increase its own profits. In addition, FERC often allows the use of precedent agreements between a pipeline company’s own subsidiaries to support a claim of project need for a proposed pipeline. Such a narrow view of whether a project is needed allows for companies to manufacture/represent need where in fact none exists, ignores the changing dynamics of the energy market, and fails to reflect the possibility that alternatives to providing natural gas exist. FERC does not require market projections or other objective information that would verify these self-manufactured claims of need. And FERC routinely ignores data, evidence and expert reports demonstrating that there is no genuine public need for a proposed pipeline project. Failing to mandate genuine demonstrations of public need for the gas a proposed pipeline would carry is one reason for the anticipated overbuild of pipeline projects being projected by the industry itself. The refusal of agencies to fully apply the definitions that exist in the statute, existing regulations and case law has real world implications – and that is why new definitions are not what is needed, compliance with the definitions we have is.

Amongst the problems with the implementation of NEPA is the refusal by agencies to fully and fairly consider data, information and expert reports that refute the claims being made by involved agencies or applicants. For example, FERC’s refusal to consider expert analysis that is contrary to claims of “need” by the pipeline companies has led to pipeline overbuild. In many cases of a proposed natural gas pipeline project under review by FERC, expert analysis provided on the record has directly contradicted the company’s assertions of “need.” And yet, in each instance, FERC myopically accepted the claims of “need” advanced by the pipeline applicants and failed to give serious (if any) consideration to the contrary demonstration provided by the public and their experts, e.g.:

- NorthEast Direct Pipeline (FERC Docket No. CP 16-21): A 2015 study conducted by Analysis Group at the request of the Massachusetts Attorney General found that new interstate natural gas pipeline capacity is not needed in New England through the year 2030.⁶
- Mountain Valley (FERC Docket No. CP16-13) and Atlantic Coast Pipelines (FERC Docket No. CP15-554): According to a 2016 study conducted by Synapse Energy “The region’s anticipated natural gas supply on existing and upgraded infrastructure is sufficient to meet maximum natural gas demand from 2017 through 2030. Additional interstate natural gas pipelines, like the Atlantic Coast Pipeline and the Mountain Valley Pipeline, are not needed to keep the lights on, homes and businesses heated, and industrial facilities in production.”⁷ In a separate analysis, Synapse found that Dominion overestimated the Atlantic Coast Pipeline’s economic benefits in reports to FERC and failed to account for any of the environmental and societal costs that the pipeline would impose on local communities.⁸
- Constitution Pipeline (FERC Docket No. CP13-499): In the case of the Constitution Pipeline, one report concluded that New York City’s existing infrastructure is “large, dynamic, and more than adequate” to support the City’s needs. The report also provided evidence that the Constitution Pipeline does not, in fact, seek to supply the City with natural gas, but instead seeks to export the

⁶ Power System Reliability in New England, Analysis Group, Inc., November 2015 and Press Release, Mass Attorney General’s office, AG Study: Increased Gas Capacity Not Needed to Meet State’s Electric Reliability Needs, November 18, 2015.

⁷ Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary? Synapse Energy, September 12, 2016.

⁸ Atlantic Coast Pipeline Benefits Review, Synapse Energy, June 12, 2015.

natural gas.⁹

- PennEast Pipeline (FERC Docket No. CP15-558): The asserted public “need” advanced by the PennEast pipeline company for the PennEast Pipeline Project included assertions that the proposed pipeline is necessary to serve New Jersey and eastern Pennsylvania communities and some unstated number of “surrounding states.” However, numerous expert reports on the PennEast docket demonstrate there is in fact no such “need” for the gas that PennEast would transport, and that if the pipeline were to be built there would be an increased gas surplus in both NJ and PA:
 - “The proposed PennEast Pipeline would deliver an additional 1 Bcf/d of natural gas to New Jersey potentially creating a 53% supply surplus above the current level of consumption.” “...Pennsylvania has no unfulfilled demand...”¹⁰
 - “Local gas distribution companies in the Eastern Pennsylvania and New Jersey market have more than enough firm capacity to meet the needs of customers during peak winter periods. Our analysis shows there is currently 49.9% more capacity than needed to meet even the harsh winter experienced in 2013.”¹¹

In addition to these expert analyses backed by facts, the New Jersey Division of Rate Counsel criticized FERC’s acceptance of precedent agreements as the company’s demonstration of need stating: “PennEast bases its claim of need on “precedent agreements with seven foundation shippers and twelve total shippers, which together combine for a commitment of firm capacity of 990,000 dekatherms per day (‘Dth/d’),” approximately 90% of the Project’s total capacity...In this case, approximately 610,000 Dth/d of the 990,000 Dth/d of capacity has been contracted by affiliates of the Project owners... Of the twelve shippers that have subscribed to Project capacity, five of them are affiliates of companies that collectively own PennEast... **Thus, two-thirds of the demand for the pipeline exists because the Project’s stakeholders have said it is needed. This self-dealing undermines the assertion of need that the DEIS relies upon.**”¹²(emphasis added)

- Sabal Trail Pipeline (FERC Docket No. CP14-554): FERC refused to revisit the alleged “need” for the Sabal Trail pipeline through Alabama, Georgia, and Florida, despite admissions by Florida Power and Light (FPL) that the region’s needs had dramatically changed. In 2016, FPL’s Ten Year Plan stated firmly that “FPL does not project a significant long-term additional resource need until the years 2024 and 2025” and acknowledged that growing investments in efficiency and solar power will stave off and reduce Florida’s need for increased natural gas deliveries.”¹³
- In Empire Pipeline, then-Commissioner Norman Bay acknowledged that the Agency’s reliance on precedent agreements to establish need is misplaced. Former Commissioner Bay stated that FERC should consider “whether precedent agreements are largely signed by affiliates; or whether there is any concern that anticipated markets may fail to materialize” among other considerations.¹⁴

⁹ Anne Marie Garti, Report on Need for the Constitution Pipeline, April 7, 2014.

¹⁰ Arthur Berman, Labyrinth Consulting Services, Inc., Professional Opinion on the PennEast Pipeline, February 2015 and Arthur Berman, Labyrinth Consulting Services, Inc., PennEast Updated Opinion, September 11, 2016.

¹¹ Analysis of Public Benefit Regarding PennEast, Skipping Stone, March 9, 2016.

¹² Comments of the New Jersey Division of Rate Counsel on PennEast Pipeline, FERC Docket No. CP15-558, Sept. 12, 2016. (emphasis added; *citations omitted*).

¹³ Florida Power and Light, Ten Year Power Plant Site Plan, 2016-2025, April 2016, p.56-62.

¹⁴ Commissioner Bay Separate Statement, p.3, FERC Docket No. CP15-115, February 3, 2017.

The failure of FERC to provide any independent review or oversight over self-serving claims of “need” undermines the requirements of the law and results in poor decisionmaking. In the case of pipelines it means the approval of pipelines that are not in fact needed, so there is an overbuild of pipeline infrastructure that is increasingly recognized by over-servers of the industry:

- “...current low natural gas prices in the Marcellus and Utica region are driving a race among natural gas pipeline companies An individual pipeline company acquires a competitive advantage if it can build a well-connected pipeline network...; thus, pipeline companies competing to see who can build out the best networks the quickest. This is likely to result in more pipelines being proposed than are actually needed to meet demand in those higher-priced markets.”¹⁵
- “...[T]he regulatory environment created by FERC encourages pipeline overbuild. The high returns on equity that pipelines are authorized to earn by FERC and the fact that, in practice, pipelines tend to earn even higher returns, mean that the pipeline business is an attractive place to invest capital. And because ... there is no planning process for natural gas pipeline infrastructure, there is a high likelihood that more capital will be attracted into pipeline construction than is actually needed.”¹⁶
- “The pipeline capacity being proposed exceeds the amount of natural gas likely to be produced from the Marcellus and Utica formations over the lifetime of the pipelines. An October 2014 analysis by Moody’s Investors Service stated that pipelines in various stages of development will transport an additional 27 billion cubic feet per day from the Marcellus and Utica region. This number dwarfs current production from the Marcellus and Utica (approximately 18 billion cubic feet per day).”¹⁷

Industry experts themselves have recognized that there is no need for additional pipeline capacity and that FERC’s review process is resulting in pipeline overbuild:

- Rusty Braziel speaking to attendees at the 21st Annual LDC Gas Forums Northeast Conference regarding capacity in the Northeast, said: “an evaluation of price and production scenarios through 2021 suggests the industry is planning too many pipelines to relieve the region’s current capacity constraints...What we’re really seeing is the tail end of a bubble, and what’s actually happened is that bubble attracted billions of dollars’ worth of infrastructure investment that now has to be worked off.”¹⁸
- Elle G. Atme, Vice President, Marketing and Midstream Operations for independent producer Ranger Resources has said: “We believe that the Appalachian Basin’s takeaway capacity will be largely overbuilt by the 2016-2017 time frame.”¹⁹

As FERC Commissioner Glick has so clearly confirmed on the record, the problem is not with the definitions that already exist for NEPA implementation, it is in how the agencies interpret and apply those definitions:

“ ... the Commission concludes that precedent agreements among affiliates of the same corporation are sufficient to demonstrate that the Projects are needed. I disagree. The

¹⁵ Institute for Energy Economics and Financial Analysis, *Risks Associated with Natural Gas Pipeline Expansion in Appalachia*, April 2016.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Jeremiah Shelor, *Marcellus/Utica on Pace for Pipeline Overbuild, Says Braziel*, Natural Gas Intelligence, June 8, 2016.

¹⁹ Kallanish Energy, *Marcellus-Utica could soon be overpiped*, February 2, 2016.

mere existence of affiliate precedent agreements—which, by their very nature, are not necessarily the product of arms-length negotiations—is insufficient to demonstrate that the Projects are needed. ²⁰

8. Should the provisions in CEQ’s NEPA regulations relating to the timing of agency action be revised, and if so, how?

- No; §1501.8 provides sound criteria and a mechanism for any applicant to ask that time limits be set.

9. Should the provisions in CEQ’s NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Here again, the primary problem is in enforcement – agencies use third party consultants that are conflicted or fail to have the expertise necessary to do the most effective job. If there is to be reform of the NEPA program, the reform should be in ensuring that agencies have the full funds necessary to secure the in-house expertise and staffing necessary to undertake NEPA reviews and documentation, thereby ensuring complete and quality NEPA reviews while at the same time removing much (not all) of the concerns regarding conflicts of interest and bias. Regulatory re-writes are not necessary to accomplish this important goal—proper compliance with the regulations in place is.

For example, FERC routinely hires third party consultants to lead its pipeline project reviews knowing full well that these same consultants are simultaneously working as consultants for the pipeline companies seeking FERC approval for projects. Sometimes the projects consultants are working on for FERC and for pipeline companies have a direct and demonstrated relationship/connection. The use of these conflicted consultants, that are operating on both sides of the FERC approval process at the same moment in time, sometimes on directly related projects, injects an obvious source of bias and concern.

For example:

The FERC Environmental Assessment (EA) for Spectra Energy’s Atlantic Bridge project was prepared with the help of NRG, a third party contractor hired by FERC. At the same time, Spectra had also retained NRG as a “public outreach and relations” consultant on the PennEast pipeline project, of which Spectra owns 10% interest. This means that NRG was hired by FERC to conduct an objective, unbiased review of Spectra’s Atlantic Bridge project, while at the same time receiving money from Spectra Energy to conduct the preliminary review for another of the company’s proposed pipelines (i.e. PennEast pipeline). Additionally, the two projects (PennEast and Atlantic Bridge) are physically connected, further entrenching the conflict of interest. It is no stretch of the imagination that NRG would financially benefit from Spectra’s Atlantic Bridge project if the project were approved, a project which NRG was partially tasked by FERC with “objectively” reviewing. In fact, while NRG was conducting its “review”, Spectra hired NRG *for no less than five other projects.*²¹

²⁰ Statement of Commissioner Richard Glick on Mountain Valley Pipeline, LLC , FERC Docket Nos. CP16-10-000 and CP16-13-000, June 15, 2018.

²¹ DeSmog Blog, *Revealed: Contractors Hired by FERC to Review a New Spectra Energy Pipeline Work for Spectra on a Related Project*, May 26, 2016.

FERC's own handbook defines such a situation as a conflict of interest, stating a conflict of interest exists when a contractor has an ongoing relationship with an applicant. The conflicts involving NRG, Spectra, the PennEast Pipeline (*FERC Docket No. CP15-558*), and the Atlantic Bridge Pipeline (*FERC Docket No. CP16-9*) were brought to FERC's attention by concerned community members and two U.S. Senators. Instead of conducting a new, unbiased review, FERC's then-Chairman Norman Bay simply responded by quoting sections of FERC's handbook on hiring third-party contractors. NRG's review still stands intact because despite clear evidence to the contrary, FERC took NRG's word that no conflicts existed.²²

By way of further example:

Tetra Tech is a known consultant for FERC, most recently on the PennEast Pipeline project. Tetra Tech is also a member of the Marcellus Shale Coalition. Founded in 2008, the Marcellus Shale Coalition works to advance production and distribution of gas fracked from the Marcellus and Utica Shales. The support of the Marcellus Shale Coalition is not just well known, but is touted by the PennEast Pipeline company raising another significant conflict for FERC on the PennEast Pipeline project.²³

While it is clear that the third party contractors being used by FERC suffer from incurable conflicts that are a clear violation of existing NEPA regulation and guidance, neither FERC nor CEQ has taken any steps to curb the conduct.

10. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

No, there is not a need for regulatory revision, there is a need for quality implementation by the agencies and enforcement by CEQ. Currently agencies tend to use a very narrow lens for determining alternatives – e.g. they look for alternative locations for projects, rather than whether the flood control or energy goals of the proposal could be fulfilled by another strategy such as floodplain restoration or clean energy alternatives. Here again, there needs to be a focus on compliance rather than trying to re-open the regulations.

To reiterate, the Delaware Riverkeeper Network opposes efforts to revise NEPA – the law is strong and effective as it now stands. NEPA ensures that the voices of all people are heard in the federal decisionmaking process when our health, our environment, our communities and economies could be harmed. And it ensures that government agencies, and the public, have the best opportunity for full information on impacts and alternatives before decisions that will have irreparable environmental, economic, and public health impacts are allowed to advance. CEQ's resources will be more efficiently utilized if the agency would invest first in more effective implementation of existing NEPA regulations – including through enhanced training, funding and intra-agency enforcement. Only upon full completion and implementation of such efforts would it make sense for CEQ to consider revisiting the need for regulatory modifications.

²² DeSmog Blog, *Despite Senate Inquiry into Potential Conflicts of Interest, FERC Approves Spectra Energy's Atlantic Bridge Project*, January 26, 2017.

²³ Times of Trenton, *PennEast Natural Gas Pipeline Environmental Study Firm's Connection to Shale Coalition is Questioned*, February 28, 2015.

Respectfully submitted,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive style with a long horizontal stroke at the end.

Maya K. van Rossum, the Delaware Riverkeeper
On behalf of the Delaware Riverkeeper Network