

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP13-551-001

ORDER GRANTING REHEARING FOR
FURTHER CONSIDERATION

(February 18, 2015)

Rehearing has been timely requested of the Commission's order issued on December 18, 2014, in this proceeding. *Transcontinental Gas Pipe Line Company, LLC* 149 FERC ¶ 61,258 (2014). In the absence of Commission action within 30 days from the date the rehearing request was filed, the request for rehearing (and any timely requests for rehearing filed subsequently)¹ would be deemed denied. 18 C.F.R. § 385.713 (2014).

In order to afford additional time for consideration of the matters raised or to be raised, rehearing of the Commission's order is hereby granted for the limited purpose of further consideration, and timely-filed rehearing requests will not be deemed denied by operation of law. Rehearing requests of the above-cited order filed in this proceeding will be addressed in a future order. As provided in 18 C.F.R. § 385.713(d), no answers to the rehearing requests will be entertained.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹ See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 95 FERC ¶ 61,173 (2001) (clarifying that a single tolling order applies to all rehearing requests that were timely filed).

Document Content(s)

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154 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP13-551-001

ORDER DENYING REHEARING

(Issued March 3, 2016)

1. On December 18, 2014, the Commission issued Transcontinental Gas Pipe Line Company, LLC (Transco) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct and operate facilities in Pennsylvania and New Jersey.¹ On January 16, 2015, Delaware Riverkeeper Network (Delaware Riverkeeper) filed a timely request for rehearing of the December 18 Order. On January 20, 2015, Kathleen P. Cherry and the Princeton Ridge Coalition, separately, filed timely requests for rehearing. This order denies the requests for rehearing.

I. Background

2. The December 18 Order authorized Transco to construct and operate approximately 29.97 miles of new pipeline loop and to add a total of 71,900 horsepower of compression at four compressor stations in Pennsylvania and New Jersey (the Leidy Southeast Project). The Leidy Southeast Project will enable Transco to increase its pipeline system's capacity in order to provide an additional 525,000 dekatherms per day (Dth/day) of firm transportation service from the existing Grugan Interconnect on Transco's existing Leidy Line in Clinton County, Pennsylvania, and the existing MARC I Interconnect in Lycoming County, Pennsylvania, to various delivery points on Transco's

¹ *Transcontinental Gas Pipe Line Company, LLC*, 149 FERC ¶ 61,258 (2014) (December 18 Order).

Mainline as far south as Transco's existing Station 85 Zone 4 and 4A Pooling Points in Choctaw County, Alabama. The new pipeline loop will be constructed in four segments – the Dorrance, Franklin, Pleasant Run, and Skillman Loops. The project's expansion capacity is fully subscribed by seven shippers² that have contracted for an in-service date of December 1, 2015.

3. The Commission found that the benefits the Leidy Southeast Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities.³ After review of the Environmental Assessment (EA) prepared by Commission staff for the Leidy Southeast Project to satisfy the requirements of the National Environmental Policy Act (NEPA),⁴ the Commission concluded that approval of Transco's proposal, with the imposition of 24 environmental conditions, would not constitute a major federal action significantly affecting the quality of the human environment.⁵ The issues raised by Delaware Riverkeeper, Kathleen P. Cherry, and the Princeton Ridge Coalition on rehearing primarily relate to the Commission's environmental analysis in the EA and the December 18 Order.

A. Transco's Upgrade Projects

4. Transco's multi-looped mainline system, consisting of over 10,000 miles of pipeline, extends from Texas, Louisiana, and offshore of the Gulf of Mexico, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its terminus in the New York City metropolitan area. Transco's mainline facilities includes the Leidy Line, an approximately 200-mile-long, multi-looped pipeline originating at an interconnection with Transco's mainline system at Compressor Station 505 in Hunterdon County, New Jersey, and terminating near Wharton, Pennsylvania, in Potter County.

² Capitol Energy Ventures Corp., Anadarko Energy Services Company, MMGS Inc., Piedmont Natural Gas Company, Public Service Company of North Carolina, Inc., South Carolina Electric & Gas Company, and Washington Gas Light Company.

³ December 18 Order, 149 FERC ¶ 61,258 at PP 12-17.

⁴ 42 U.S.C. §§ 4321-4370h (2012). Commission staff placed the EA into the public record on August 11, 2014, established a 30-day comment period, and mailed it to all stakeholders on the environmental mailing list.

⁵ December 18 Order, 149 FERC ¶ 61,258 at PP 126-27.

5. Historically, Transco has transported natural gas supplies from the Gulf Coast, Mid-continent and Appalachia to meet its shippers' market demands in the Northeast. However, in recent years, Transco shippers have reduced their reliance on Gulf Coast supplies in favor of northeast-market-area supplies. Transco has proposed infrastructure projects, including projects on its Leidy Line, in order to receive and transport these gas supplies. In its request for rehearing of the December 18 Order, Delaware Riverkeeper asserts that the Commission improperly segmented its environmental review of the Leidy Southeast Project from that of Transco's Northeast Supply Project, Atlantic Sunrise Project, and Diamond East Project. In order to provide context in addressing this argument, the Northeast Supply and Atlantic Sunrise Projects are described below.⁶

1. Northeast Supply Link Project (Docket No. CP12-30-000)

6. On December 14, 2011, Transco filed an application for a certificate of public convenience and necessity for its Northeast Supply Link Project (Northeast Supply Project) to provide 250,000 Dth/day of new incremental firm transportation service from supply interconnections on its Leidy Line in western Pennsylvania to its 210 Market Pool in New Jersey and the existing Manhattan, Central Manhattan, and Narrows delivery points in New York City. The Commission approved Transco's Northeast Supply Project on November 2, 2012.⁷

7. Transco completed the Northeast Supply Project and placed its facilities into service on November 1, 2013. The project facilities included a total of approximately 12 miles of new 42-inch-diameter pipeline looping, 16,000 horsepower of additional compression at an existing compressor station and construction of a new 25,000 horsepower compressor station, along with other smaller modifications to

⁶ While, according to its website (<http://investor.williams.com/press-release/williams/williams-announces-open-season-transco-pipelines-diamond-east-project>), Williams Partners LP (Williams) held an open season for a Diamond East Project from August 26 to September 23, 2014, Williams has not released the results of the open season or, to our knowledge, announced any further details about the project. While noting that "the final capacity, scope and cost of the project will be determined by the results of the open season," the press release only indicated that the project was anticipated "to include approximately 50 miles of pipeline looping and horsepower additions at existing Transco compressor facilities." There is no Diamond East Project currently before the Commission in any stage.

⁷ *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091 (2012).

Transco's existing Leidy Line. The capacity created by the Northeast Supply Project is fully subscribed by four shippers.⁸

2. Atlantic Sunrise Project (CP15-138-000)

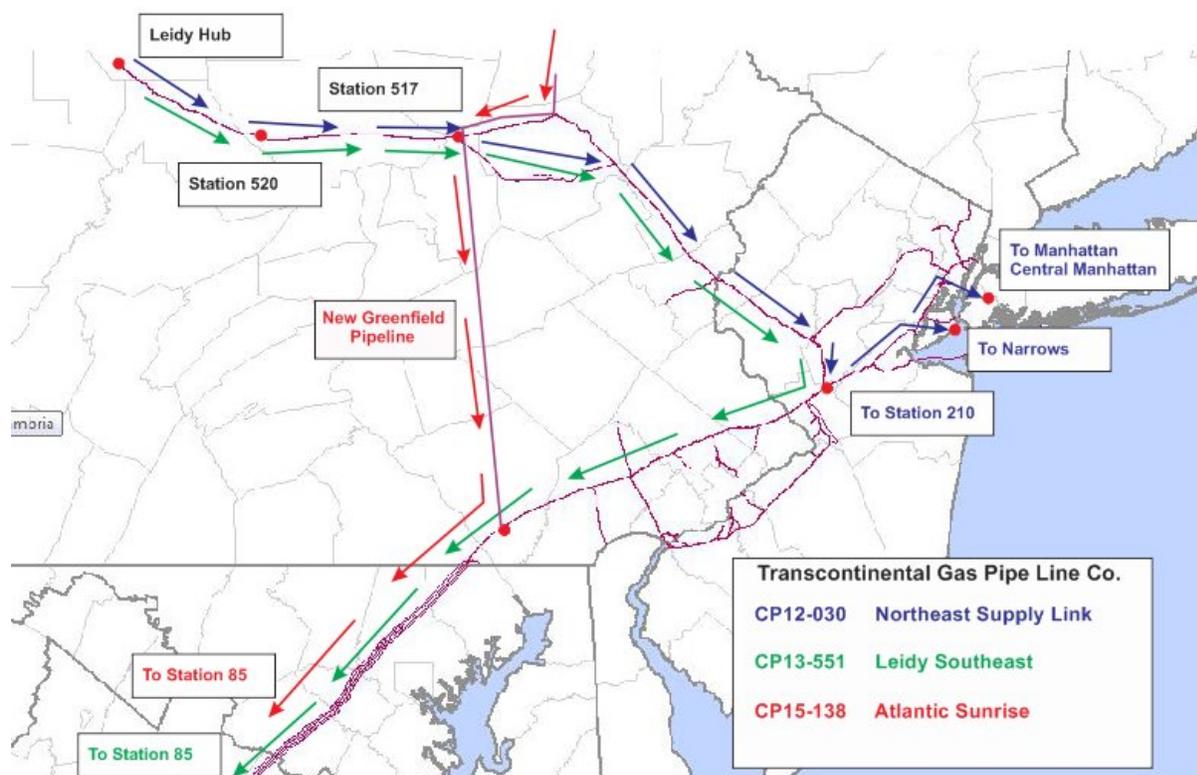
8. On March 31, 2015, Transco filed its pending application for a certificate of public convenience and necessity to construct and operate the Atlantic Sunrise Project to provide 1,700,002 Dth/day of incremental firm transportation service from northern Pennsylvania in Transco's Zone 6 southbound to Transco's Station 85 in Alabama. The Atlantic Sunrise Project would include deliveries to markets along Transco's pipeline system in Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and interconnects with existing pipelines serving the Florida market. The proposed project would include the construction of a new, 57.3-mile, 30-inch-diameter greenfield pipeline (the "Central Penn Line North") and a new 125.2-mile, 42-inch-diameter greenfield pipeline (the "Central Penn Line South"), incremental facilities on Transco's existing natural gas transmission system, and modifications to Transco's existing natural gas transmission system to enable north-to-south flow. The Atlantic Sunrise Project is fully subscribed by nine shippers⁹ and has a proposed in-service date of July 1, 2017.

3. Summary of Proposed Upgrade Projects

9. In sum, Transco's proposed Leidy Southeast, Northeast Supply, and Atlantic Sunrise expansion projects will each function to increase incremental capacity on portions of Transco's Leidy Line and mainline system by adding pipeline looping and additional compression facilities. Each project was designed to provide firm transportation from the primary receipt points to the primary delivery points specified in Transco's contracts with the expansion shippers. The following map depicts the Leidy Southeast, Northeast Supply, and Atlantic Sunrise Projects' transportation paths for the receipt and delivery of gas supplies:

⁸ Hess Corporation; MMIGS Inc.; Anadarko Energy Services Company; and Williams Gas Marketing Inc.

⁹ Anadarko Energy Services Company, Cabot Oil & Gas Corporation, Chief Oil & Gas LLC, Inflection Energy LLC, MMGS, Inc., Seneca Resources Corporation, Southern Company Services, Inc., Southwest Energy Services Company, and WGL Midstream, Inc.



II. Requests for Rehearing

A. Delaware Riverkeeper's Argument Regarding Segmentation of Transco's Leidy Project From Other Transco Expansion Projects

10. The Council on Environmental Quality (CEQ) regulations requires the Commission to include "connected actions," "cumulative actions," and "similar actions" in its NEPA analyses.¹⁰ "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."¹¹ "Connected actions" include actions that: (a) automatically trigger

¹⁰ 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

¹¹ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. See *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCBS, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) for

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other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.¹²

11. In evaluating whether connected actions are improperly segmented, courts apply a “substantial independent utility” test. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”¹³ For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. Similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”¹⁴

12. In *Del. Riverkeeper Network v. FERC*, the D.C. Circuit ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.¹⁵ The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.¹⁶ Courts have subsequently indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet

the proposition that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions’”).

¹² 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

¹³ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); *see also O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability”).

¹⁴ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

¹⁵ *Del. Riverkeeper Network*, 753 F.3d at 1308.

¹⁶ *Id.* at 1314.

filed an application, or where construction of a project is not underway.¹⁷ Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.¹⁸

13. As noted above, Delaware Riverkeeper asserts that Transco's Northeast Supply Project, Atlantic Sunrise Project, Diamond East Project, and Leidy Southeast Project should have been analyzed in a single environmental impact statement (EIS) consistent with the holding in *Del. Riverkeeper Network v. FERC*.¹⁹ It asserts that the proposed project here presents the same factual circumstances, where a single pipeline is being upgraded piecemeal to avoid the proper environmental review.

14. We disagree. As noted above, the courts have found that the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application.²⁰ Section 102(c) of NEPA requires agencies to prepare an environmental document for "proposals" for major federal actions affecting the human environment.²¹ The CEQ regulations state that "proposals" exist only when the action is at the stage when "an agency subject to [NEPA] has a goal and is actively preparing to make a decision ... and the effects [of that action] can be meaningfully evaluated."²²

15. The projects cited by Delaware Riverkeepers were not pending as proposals before the Commission at the same time. Therefore, the Commission was not required by CEQ

¹⁷ *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014). See also *Weinberger v. Catholic Action of Haw.*, 454 U.S. 139, 146 ("... an EIS need not be prepared simply because a project is *contemplated*, but only when the project is *proposed*") (emphasis in original); *Del. Riverkeeper*, 753 F.3d at 1318 ("NEPA, of course, does not require agencies to commence NEPA reviews of projects not actually proposed.").

¹⁸ See *Myersville Citizens for a Rural Community Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

¹⁹ 753 F.3d 1304.

²⁰ See *supra* n.17.

²¹ 42 U.S.C. § 4332(2)(C) (2012).

²² 40 C.F.R. § 1508.23 (2015).

regulations or the court's decision in *Del. Riverkeeper Network* to prepare a single environmental document to analyze the impacts of the Northeast Supply, Leidy Southeast, Atlantic Sunrise, and Diamond East Projects.

16. As discussed above, the Northeast Supply Project certificate was issued on November 2, 2012;²³ Transco did not file its application for the Leidy Southeast Project until September 18, 2013. Further, when the Commission approved the Leidy Southeast Project on December 18, 2014, the Atlantic Sunrise Project was still in the development phase; Transco had not yet filed a certificate application for the project. Further, the Diamond East Project, if such a project is still under consideration by the company, is still in a conceptual stage. Thus, when the December 18 Order approving Transco's Leidy Southeast Project was issued, it was Transco's only proposal before the Commission to modify, increase capacity on, or create access to the Leidy Line. Because the Atlantic Sunrise Project and Diamond East Project were not fully defined "proposals" at any time during the period that the Leidy Southeast Project was receiving consideration, these projects were not improperly segmented from the Commission's environmental review of the Leidy Southeast Project under NEPA. The Commission nonetheless further addresses Delaware Riverkeepers' segmentation concerns below, and considers the environmental impacts of those projects identified by Delaware Riverkeepers as part of our environmental analysis of the Leidy Southeast Project, to the extent there was available information to consider such impacts.

17. We disagree that the Northeast Supply Project and the Leidy Southeast Project are "connected" actions, such that the Commission is required to consider them in a single environmental document. The Northeast Supply Project has a "substantial independent utility" from the Leidy Southeast Project. As stated above, the Northeast Supply Project was placed into service on November 1, 2013, to transport gas produced in Western Pennsylvania to New Jersey and New York City. The Leidy Southeast Project, approved over one year after the in-service date of the Northeast Supply Project, will transport gas from Western Pennsylvania southbound to different east coast markets and southward to Alabama. As evidenced, the Northeast Supply Project was built independently of the Leidy Southeast Project, and it has independent utility from the Leidy Southeast Project that "serve[s] a significant purpose."²⁴ Likewise, the Leidy Southeast Project does not

²³ *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091 (2012).

²⁴ *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). See also *O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project "can stand alone without requiring

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rely on the Northeast Supply Project for its operation and would have been built even if the Northeast Supply Project had not been constructed.

18. Delaware Riverkeeper asserts that the Northeast Supply and Leidy Southeast project facilities are designed to work in unison and therefore they are interdependent and connected actions. Every natural gas pipeline project before the Commission can be found to be interconnected with another by virtue of the fact that the entire interstate pipeline grid is a highly integrated transportation network. Every part of the system must be designed to receive and deliver natural gas from the pipeline network, which includes over 306,000 miles of pipeline that links production areas to markets across the country and nearly every major metropolitan area in the nation.

19. Delaware Riverkeeper contends that the December 18 Order's segmentation analysis was flawed because it only considered whether Transco's projects were "connected" and did not consider whether Transco's Northeast Supply, Atlantic Sunrise, and Diamond East Projects were "cumulative" and "similar" to the Leidy Southeast Project. We disagree.

20. "Cumulative" actions include actions that "when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."²⁵ As stated in the December 2014 Order, the EA for the Leidy Southeast Project analyzed the Northeast Supply Project as a recently completed project in the Leidy Southeast Project area, and found no significant cumulative impact associated with the two projects.²⁶ The Northeast Supply Project was considered as part of the environmental baseline for the Leidy Southeast Project because it had already been constructed at the time of the later project's environmental review.²⁷ The EA described the facilities associated with the Northeast Supply Project, discussed the impacts of that project, and assessed the potential for cumulative impacts of the Leidy Southeast Project and the Northeast Supply Project by resource type.²⁸ During the Leidy Southeast

construction of the other [projects] either in terms of the facilities required or of profitability").

²⁵ 40 C.F.R. § 1508.25(a)(2) (2015).

²⁶ December 18 Order, 149 FERC ¶ 61,258 at P 65.

²⁷ December 18 Order, 149 FERC ¶ 61,258 at P 51 and EA at 180.

²⁸ December 18 Order, 149 FERC ¶ 61,258 at P 51. *See also* EA at 183 (describing project), 187-90 (discussing cumulative impacts on soils), 188 (discussing

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Project's environmental analysis, the Atlantic Sunrise Project was still in the pre-filing stage. Nevertheless, the Commission's environmental consideration of the Leidy Southeast Project used the limited available information on the Atlantic Sunrise Project, which consisted primarily of the draft resource reports (project description and alternatives analysis).²⁹ As the Commission continues its review of the filed application for the Atlantic Sunrise Project, we will evaluate whether the project would have any significant cumulative impacts associated with the Northeast Supply and Leidy Southeast Projects and the need for any environmental conditions on the Atlantic Sunrise Project to avoid or mitigate such impacts. Delaware Riverkeeper fails to substantiate its claim that significant cumulative impacts would result from the construction of the Northeast Supply Project, the Leidy Southeast Project, and the Atlantic Sunrise Project so as to necessitate a single environmental analysis.³⁰

21. "Similar" actions include actions that, "when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography."³¹ The CEQ regulations state that "[a]n agency *may* wish to analyze [similar] actions in the same impact statement. It *should* do so when the *best way* to assess

cumulative impacts on water resources), 190 (discussing cumulative impacts on vegetation and wildlife).

²⁹ December 18 Order, 149 FERC ¶ 61,258 at P 53. *See also* EA at 184 (observing that, while detailed information regarding the environmental impacts associated with the Atlantic Sunrise Project is not available, none of that project's construction activities would occur within 20 miles of any of the Leidy Southeast Project's facilities and that construction schedules for the two projects would be separated by a minimum of 6 months); *see also* EA at 187-193 (considering the cumulative impacts of the Atlantic Sunrise Project on soils, water resources, vegetation and wildlife, land use, recreation, special interest areas, and visual resources, air quality, and noise).

³⁰ As stated above, Transco has not yet requested to begin the pre-filing process for a Diamond East Project, which, if it exists, is still in the planning stages. If Transco files a certificate application in the future for a Diamond East Project so that it is a "proposal" in front of the Commission, the Commission will evaluate whether the project has any significant cumulative impacts associated with Transco's other projects.

³¹ 40 C.F.R. § 1508.25(a)(3) (2015).

adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”³²

22. We do not find that the Northeast Supply, Atlantic Sunrise, Diamond East and Leidy Southeast Projects are “similar” actions. Contrary to Delaware Riverkeeper’s assertions, the Leidy Southeast Project does not share common timing with the Northeast Supply Project, the Atlantic Sunrise Project, or a Diamond East Project. The Northeast Supply Project was placed into service two months before the Leidy Southeast Project was proposed to the Commission. The Atlantic Sunrise Project was still in the prefiling process when the December 18 Order was issued,³³ and the Diamond East Project is still, at best, in its conceptual stage; it is not yet in the Commission’s prefiling process. Moreover, while portions of the Northeast Supply and Atlantic Sunrise Projects may overlap with the Leidy Southeast Project, each project is designed to serve different markets independent of the Leidy Southeast Project. Under these circumstances, the Commission finds that a single environmental analysis is neither required nor the best way to assess these proposals. The Commission has appropriately conducted a comprehensive environmental review of the Leidy Southeast Project, including an analysis of the potential cumulative impacts of the Northeast Supply Project. Of course, before either the Atlantic Sunrise or Diamond East Projects could be authorized and constructed, each would be subject to full Commission scrutiny, including NEPA analysis.

23. Delaware Riverkeeper also argues that the Commission fails to satisfy factors articulated in *Taxpayers Watchdog, Inc. v. Stanley*,³⁴ namely whether the project has substantial independent utility, has logical termini, and does not foreclose the opportunity to consider alternatives. As discussed above, the Leidy Southeast Project meets the *Taxpayers Watchdog* factor of having substantial independent utility and the project would have been built even if the Northeast Supply Project had not been, and Atlantic

³² *Id.* (emphasis added); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 1000-01 (9th Cir. 2004) (similarly emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the *best way* to do so).

³³ Transco entered into the Commission’s prefiling process for the Atlantic Sunrise Project on April 4, 2014. While preliminary project details were available (Resource Reports 1- Project Description and 10 - Alternatives), there was not sufficient information to make an informed analysis of environmental impacts.

³⁴ 819 F.2d 294, 298 (D.C. Cir. 1987) (*Taxpayers Watchdog*).

Sunrise Project is not in the future, constructed. Additionally, the Commission's separate consideration of the three projects did not foreclose our opportunity to consider alternatives – the Commission evaluated alternatives to the Leidy Southeast in its EA.³⁵ With respect to the logical termini factor, the placement and termini of pipeline looping is logical, as it is based on the dictates of the engineering and hydraulics necessary to add capacity to an existing system sufficient to transport the contracted for volumes of natural gas between designated receipt and delivery points. However, unlike a metro rail system, which was the infrastructure under consideration in *Taxpayer Watchdog*, the logical termini of pipeline expansion loops are not necessarily coterminous with the contracted receipt and delivery points (or what would be the stations in the case of a rail system). Further, the logical placement of compressor stations, which cannot be said to have “termini” in the usual sense of the word, are also dictated by engineering and hydraulics.

24. The court in *Del. Riverkeeper Network v. FERC*, noting that the Commission had relied on the four factors of *Taxpayers Watchdog* in defending its determination in proceeding on appeal emphasized that, instead, “the agency’s determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a).”³⁶ Our environmental review here indeed followed CEQ’s regulations against segmentation. Consistent with the court’s ruling in *Del. Riverkeeper Network v. FERC*, we evaluated the Leidy Southeast Project under our governing regulations and find that we did not improperly segment our NEPA review of the Leidy Southeast Project from the Northeast Supply or Atlantic Sunrise Projects.

B. Princeton Ridge Coalition’s Argument Regarding Cumulative Impacts of Transco’s Leidy Southeast and Diamond East Projects and PennEast Pipeline Company, LLC’s PennEast Project

25. CEQ defines “cumulative impact” as “the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions”³⁷ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

³⁵ EA at 196-210. See December 18 Order, 149 FERC ¶ 61,258 at PP 118-25.

³⁶ *Del. Riverkeeper Network*, 753 F.3d at 1315.

³⁷ 40 C.F.R. § 1508.7 (2015).

26. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”³⁸ CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”³⁹ Further, a cumulative impact analysis need only include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”⁴⁰ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.⁴¹

27. Separate from any segmentation claims, Princeton Ridge Coalition alleges that the EA failed to analyze the cumulative impacts of Transco’s Diamond East Project and PennEast Pipeline Company, LLC’s (PennEast) PennEast Project as they relate to the Leidy Southeast Project. We disagree. PennEast did not receive permission to enter into the Commission’s prefiling process for the PennEast Project until October 2014 and did not file its certificate application for the project until September 2015, after the EA for the Leidy Southeast Project was issued. As discussed above, there is no evidence the Diamond East Project has moved beyond the conceptual stage – there is nothing regarding it pending before the Commission. Thus, prior to issuance of the Leidy Southeast Project EA, the information available regarding the PennEast and Diamond East Projects was insufficient to provide any meaningful cumulative impacts analysis. While Princeton Ridge Coalition contends that a route was developed for the PennEast Project before the EA for the Leidy Southeast Project was issued, there was no specific information with regard to impacts on specific environmental resources. Further, as discussed above, projects that enter the Commission’s prefiling process may undergo numerous changes, both large and small in scale, prior to a formal proposal.

³⁸ *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976).

³⁹ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997).

⁴⁰ *Id.*

⁴¹ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005).

C. Disclosure of Gas Flow Velocity Data

28. On rehearing, Delaware Riverkeeper alleges that the Commission failed to provide critical information on the flow velocities of the Leidy Southeast Project. Delaware Riverkeeper states that failure to provide this information prevents the public from determining the safety of the project.

29. We disagree. Delaware Riverkeeper had ample opportunity to review the flow velocity data prior to the December 18 Order.

30. Delaware Riverkeeper first raised its concerns with the Leidy Southeast Project's flow diagrams in a March 24, 2014 letter filed with the Commission. Specifically, Delaware Riverkeeper alleged that Transco's flow diagrams showed that the operation of the proposed Leidy Southeast Project would result in "unsafe gas velocities" at several locations along Transco's system and that these flow velocities would "pose direct threats to the safety of the system."⁴² Delaware Riverkeeper further argued that, as a result of these alleged unsafe gas velocities, Transco would need to add additional future looping in order to reduce those gas velocities to safe levels.⁴³ Delaware Riverkeeper also requested specific data on gas flow velocities and supporting information for Transco's proposed project.⁴⁴

31. On July 23, 2014, the Commission issued a letter requesting Transco to verify that it provided Delaware Riverkeeper with the information requested in its March 24, 2014 letter. On July 25, 2014, Transco stated its understanding that Commission staff had sent Delaware Riverkeeper copies of Transco's Exhibits G and G-II of the Leidy Southeast Project's certificate application.⁴⁵ Transco further stated that the Exhibit G documents, along with Transco's responses to Commission staff's July 2 and July 11, 2014 data requests, would provide Delaware Riverkeeper with the requested gas flow velocity information. Transco also offered to share its Synergi Gas hydraulic flow models (in electronic file format) used in designing the Leidy Southeast Project. The Synergi Gas

⁴² Delaware Riverkeeper's March 24, 2014 Comments at 1.

⁴³ *Id.*

⁴⁴ Delaware Riverkeeper made additional requests for flow velocity information on April 2, April 10, April 17, June 18, and July 25, 2014. Specifically, Delaware Riverkeeper requests answers to a list of 10 questions.

⁴⁵ Exhibits G and G-II contain flow diagrams and flow diagram data.

hydraulic flow model software requires a commercial license to operate; therefore, Transco invited Delaware Riverkeeper to view the models at Transco's office or via video-conference.

32. On July 25, 2014, Delaware Riverkeeper filed a response acknowledging it had access to Exhibits G and G-II and confirmed it received Transco's invitation to view the commercially licensed hydraulic flow models.

33. Now, on rehearing, Delaware Riverkeeper contends the Commission erred by failing to disclose or verify flow velocity and other technical data that was necessary to determine the full extent of the project's inter-relatedness to previous, pending, and future projects, and also to determine the operational safety of the project. Specifically, Delaware Riverkeeper also argues that the Commission must answer the 10 questions it filed in its March 2014 letter.

34. The Commission rejects Delaware Riverkeeper's allegation that technical data pertaining to the current project had not been properly disclosed. As detailed above, Delaware Riverkeeper was given proper access and ample opportunity to review the supporting technical data filed in this proceeding. Transco, of its own accord, provided Delaware Riverkeeper with the opportunity to review the hydraulic flow modeling used in the design of the project; however, Delaware Riverkeeper did not respond to Transco's invitation. The Exhibit G information and the hydraulic flow modeling provides all the information Delaware Riverkeeper requested in the March 2014 letter, including the answers Delaware Riverkeeper seeks to the 10 questions. Therefore, we find Delaware Riverkeeper's assertions that it could not meaningfully comment on the safety of the project due to a lack of gas flow velocity information without merit.

35. Furthermore, as explained in the December 18 Order, the Commission reviewed all the information provided by Transco on the Leidy Southeast Project's gas flow velocities and analyzed Transco's flow diagrams and its Synergi Gas hydraulic flow models, for both existing and proposed operating conditions of the Leidy Southeast Project. Based upon our review, we found that Transco has properly designed its pipeline system to accommodate the proposed new service while maintaining its existing service obligations. Delaware Riverkeeper provided no evidence that that the proposed pipeline operations will be unsafe. Additionally, we found that Delaware Riverkeeper's assertions about future looping and expansion are entirely speculative and found no evidence that the current project, as proposed, required future looping in order to reduce gas velocities. On rehearing, Delaware Riverkeeper provided no additional information to support additional looping projects, other than mere speculation.

D. Identification of Wetland Delineations

36. Delaware Riverkeeper alleges that the Commission failed to perform a site specific review of the wetlands in the project area and properly implement the methodology of the U.S. Army Corps of Engineers Corps' (Corps) Wetlands Delineation Manual. Delaware Riverkeeper also argues that the Commission failed to properly classify wetland types and assess the criteria for wetlands under Pennsylvania's State Wetland Classification and, therefore, misidentified and undercounted several wetlands that would meet state requirements as Exceptional Value. From these concerns, Delaware Riverkeeper extrapolates to question the accuracy of the baseline data used to assess impacts on waterbodies and wetlands and the expected ground disturbance impacts that will result from the construction activity of the project.

37. As indicated in the EA and the December 18 Order, Transco's wetland delineations were conducted using the Corps' Wetlands Delineation Manual.⁴⁶ Transco's methodology to determine baseline wetlands data is acceptable. Further, the methodology enabled staff to disclose and evaluate potential impacts on wetlands and to serve as a starting point for the development of protective mitigation. As we stated in the December 18 Order, the EA includes a consideration of the water resource classifications for the potentially affected surface and groundwater resources identified during the application process.⁴⁷ Stream designations and state water quality standards are verified through final consultation with the appropriate state regulatory agencies, prior to their issuance of state permits.⁴⁸

38. The Corps and Pennsylvania Department of Environmental Protection have the discretion to determine whether Transco's waterbody classifications and crossing techniques comply with their permit application process prior to issuing a water quality permit. As such, we uphold our determination that the baseline data used in the EA to assess impacts on waterbodies and wetlands were appropriate.

⁴⁶ December 18 Order, 149 FERC ¶ 61,258 at P 77 and EA at 61.

⁴⁷ December 18 Order, 149 FERC ¶ 61,258 at P 74.

⁴⁸ The Commission will not authorize Transco to construct the project without documentation of all applicable authorizations under federal law. December 18 Order, 149 FERC ¶ 61,258 at Appendix B, Environmental Condition 9.

E. Evidentiary Support for Mitigation Measures

39. Delaware Riverkeeper contends that the Commission's wetland mitigation measures are inadequate and lack adequate evidentiary support. Delaware Riverkeeper also alleges that the Commission failed to properly implement and require the mitigation procedures outlined in the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*.

40. We disagree. As we previously explained in the December 18 Order,⁴⁹ the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* are based on Commission staff's experience inspecting pipeline construction and include industry best management practices designed to minimize the extent and duration of disturbance on wetlands and waterbodies during the construction of Commission-jurisdictional natural gas projects. The *Wetland and Waterbody Construction and Mitigation Procedures* were recently revised and fully vetted with input from the natural gas industry; federal, state, and local agencies; environmental consultants; inspectors and construction contractors; and nongovernmental organizations and other interested parties with special expertise with respect to natural gas facility construction projects. The Commission is confirming Transco's implementation of the mitigation measures under the *Wetland and Waterbody Construction and Mitigation Procedures* during project inspections.⁵⁰ Therefore, we find that the construction and mitigation measures in the *Wetland and Waterbody Construction and Mitigation Procedures* are sufficient to protect wetlands and waterbodies.

F. Issuance of Public Convenience and Necessity Prior to Receipt of Water Quality Certifications Under Section 401 of the Clean Water Act

41. Environmental Condition 9⁵¹ requires that Transco receive the necessary state approvals under all applicable federal statutes prior to the construction of the Leidy

⁴⁹ December 18 Order, 149 FERC ¶ 61,258 at P 79.

⁵⁰ Throughout construction, Commission staff has conducted monthly inspections to determine Transco's compliance with our mitigations measures. On January 5, 2016, Transco placed the Leidy Southeast Project into service, following a Commission determination that restoration and rehabilitation of the right-of-way and other areas affected by the project proceeded satisfactorily.

⁵¹ December 18 Order, 149 FERC ¶ 61,258 at Appendix B, Environmental Condition 9.

Southeast Project. Nevertheless, Delaware Riverkeeper and Princeton Ridge Coalition state that the Commission violated the Clean Water Act by issuing the December 18 Order prior to the issuance of a Section 401 Water Quality Certification from the Pennsylvania Department of Environmental Protection and the New Jersey Department of Environmental Protection. Delaware Riverkeeper requests that the Commission rescind the December 18 Order until Transco receives its required water quality certifications.

42. As an initial matter, we find Delaware Riverkeeper's and Princeton Ridge Coalition's arguments moot, in part. Transco obtained its Section 401 Water Quality Certifications from the Pennsylvania Department of Environmental Protection on April 17, 2015, and from the New Jersey Department of Environmental Protection on April 8, 2015. Accordingly, we find no need to address Delaware Riverkeeper's request to rescind the December 18 Order for lack of a water quality certification.

43. In any event, we find that the issuance of our December 18 Order was consistent with the Clean Water Act. The December 18 Order ensured that until the Pennsylvania Department of Environmental Protection and the New Jersey Department of Environmental Protection issued the WQCs, Transco could not begin an activity, i.e., pipeline construction, which may result in a discharge into jurisdictional waterbodies. Consequently, there could be no adverse impact on Pennsylvania or New Jersey jurisdictional waters until the Commission received confirmation that the Pennsylvania Department of Environmental Protection and the New Jersey Department of Environmental Protection have completed their review of the project under the Clean Water Act and issued the requisite permits.

44. Delaware Riverkeeper and Princeton Ridge Coalition cite *City of Tacoma v. FERC*,⁵² in which a tribe complained that the state's water quality certification, which had issued before the Commission's hydroelectric license issued, was deficient under section 401(a) of the Clean Water Act. We have previously observed the court in *City of Tacoma* did not hold that the Commission's issuance of a conditional license or certificate violates the terms of the Clean Water Act. Rather, *City of Tacoma* addressed the extent to which the Commission must verify that a state's water quality certification is valid.⁵³ Thus, as we describe further below, we do not believe that *City of Tacoma* limits our authority to conditionally approve applications prior to state action under the Clean Water Act.

⁵² 460 F.3d 53, 68 (D.C. Cir. 2006) (*City of Tacoma*).

⁵³ *Crown Landing LLC*, 117 FERC ¶ 61,209, at P 27 n.38 (2006).

45. Previously, in explaining our rationale for granting conditional authorizations, we have cited *City of Grapevine v. U.S. Department of Transportation*,⁵⁴ a case in which the D.C. Circuit upheld the Federal Aviation Administration's (FAA) approval of a runway project conditioned upon the applicant's subsequent compliance with the National Historic Preservation Act (NHPA).⁵⁵ In past proceedings, we likened the NHPA to the Clean Water Act in that the NHPA states that the head of a federal agency "shall," prior to the approval of the expenditure of any federal funds on an undertaking, take into account the effect of the undertaking on historic properties. We explained that "this language expressly prohibits a federal agency from acting prior to compliance with its terms, a fact that did not deter the *City of Grapevine* court from upholding the FAA's conditional approval of a runway."⁵⁶

46. Unlike in *City of Tacoma*, the *City of Grapevine* court squarely considered a federal agency's authorization of a project subject to the applicant's subsequently fulfilling certain conditions. There, petitioners protested the FAA's approach whereby it first issued a conditional approval for a runway, and then took seven months to complete its final assessment after reviewing the conclusions and recommendations arising out of the consultation process required by NHPA section 106, and then took six more months of deliberation before submitting a multiple-agency agreement concluding that there would be no adverse effect within the meaning of the NHPA. The court accepted this multi-stage procedural approach, stating that:

Much of the relevant activity . . . took place after the FAA had issued its Decision. Although it is of course desirable for the § 106 process to occur as early as possible in a project's planning stage, we do not agree with the petitioners that in this case the FAA's conditional approval of the West Runway violated any requirement of the NHPA. Merely by issuing its Decision the FAA did not "approve the expenditure of any Federal funds" for the runway . . . [and] if the [applicant] commits its own resources to the West Runway – for further planning, engineering, or what have you short of construction

⁵⁴ 17 F.3d 1502 (D.C. Cir. 1994) (*City of Grapevine*).

⁵⁵ *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 72 (2009); *Broadwater Energy LLC*, 124 FERC ¶ 61,225, at P 60 (2008); *Georgia Strait Crossing Pipeline LP*, 108 FERC ¶ 61,053, at P 16 (2004).

⁵⁶ *Id.*

– although the runway was only conditionally approved, then it does so at the risk of losing its investment should the § 106 process later turn up a significant adverse effect and the FAA withdraw its approval. In sum, because the FAA’s approval of the West Runway was expressly conditioned upon completion of the § 106 process, we find here no violation of the NHPA.⁵⁷

47. We interpret the court’s reasoning and result to establish the principle that an agency can authorize a project conditioned on the subsequent compliance with pending applications for other necessary project authorizations. That is the approach we adopted in this proceeding.

G. Statement of Purpose and Need Regarding the Commission’s Alternatives Analysis

48. Section 102(C)(iii) of NEPA requires that an agency discuss alternatives to the proposed action in an environmental document.⁵⁸ Based on a brief statement of the purpose and need for the proposed action,⁵⁹ CEQ regulations require agencies to evaluate all reasonable alternatives, including no-action alternatives and alternatives outside the lead agency’s jurisdiction.⁶⁰ Agencies use the purpose and need statement to define the objectives of a proposed action and then to identify and consider legitimate alternatives.⁶¹ Guidance from CEQ explains that reasonable alternatives “include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the [permit] applicant.”⁶² Yet CEQ has also

⁵⁷ *City of Grapevine*, 17 F.3d at 1509.

⁵⁸ 42 U.S.C. § 4332(C)(iii) (2012). Section 102(E) of NEPA also requires agencies “to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(E).

⁵⁹ 40 C.F.R. § 1502.13 (2015).

⁶⁰ *Id.* § 1502.14.

⁶¹ *See Col. Env’tl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

⁶² *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).

stated that there is “no need to disregard the applicant’s purposes and needs and the common sense realities of a given situation in the development of alternatives.”⁶³ For eliminated alternatives, agencies must briefly discuss the reasons for the elimination.⁶⁴ An agency’s specification of the range of reasonable alternatives is entitled to deference.⁶⁵

49. Delaware Riverkeeper asserts that the Commission defined the Leidy Southeast Project’s purpose and need so narrowly that all other alternatives were ruled out by definition. Delaware Riverkeeper also states that no system alternatives were analyzed, with the exception of pipeline replacement on Transco’s existing system.

50. We disagree. The EA did not narrowly interpret the project purpose so as to preclude consideration of other alternatives. While an agency may not narrowly define the proposed action’s purpose and need, the alternative discussion need not be exhaustive.⁶⁶ When the purpose of the project is to accomplish one thing, “it makes no sense to consider the alternative ways to which another thing might be achieved.”⁶⁷

51. The EA adopted Transco’s stated project purpose⁶⁸ “to provide 525,000 dekatherms per day of firm natural gas transportation capacity to delivery points that would be accessible by customers in the mid-Atlantic and Southern states.”⁶⁹ That purpose is supported by precedent agreements executed for the full gas volumes associated with the project and designating primary receipt and delivery points. With that in mind, the alternatives analysis was conducted. The EA concedes that the no action

⁶³ *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,262, 34,267 (July 22, 1983).

⁶⁴ *See* 40 C.F.R. § 1502.14(a) (2015).

⁶⁵ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

⁶⁶ *See State of N.C. v. FPC*, 533 F.2d 702, 707 (D.C. Cir. 1976).

⁶⁷ *City of Angoon et al. v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986).

⁶⁸ *City of Grapevine, Texas v. DOT*, 17 F.3d 1502, 1506 (D.C. Cir. 1994) (upholding federal agencies’ use of applicants’ identified objectives as the basis for evaluating alternatives).

⁶⁹ EA at 7.

alternative would be environmentally superior in that the impacts associated with the project would not occur; however, it also recognized the need for capacity to provide the incremental transportation service subscribed in the precedent agreements.

52. The EA considered that other pipeline systems could potentially meet the Leidy Southeast Project's need, but concluded that systems in the general area were fully subscribed and would require modifications that would result in environmental impacts that are similar to, or greater in magnitude than, those associated with the Leidy Southeast Project.⁷⁰ It was reasonable, on that basis, to dismiss such alternatives from further analysis. Delaware Riverkeeper has not provided documentation or evidence on the record that contradicts the EA or discloses pipelines systems that could, without similar modifications to the Leidy Southeast Project, provide the required capacity.

53. As thoroughly described in the EA and the December 18 Order, the Leidy Southeast Project would be constructed adjacent to existing rights-of-way, thereby minimizing environmental impact. Based on the scope of the project, we conclude that the alternatives analysis was appropriate.

H. Rejection of a Construction Alternative for the Skillman Loop

54. Princeton Ridge Coalition alleges that the Commission improperly rejected the horizontal directional drill (HDD) alternative to install the Skillman Loop in Princeton Ridge based on a mischaracterization of evidence in the public record. The December 18 Order notes that Princeton Ridge Coalition's preference for the HDD method is based primarily on the assertion that overland construction would result in significant environmental impacts and unacceptable safety risks related to potential damage to Transco's existing Caldwell B pipeline.⁷¹

55. Princeton Ridge Coalition supports its claim by stating that Transco never indicated that using an HDD to construct the Skillman Loop in Princeton Ridge was likely to fail; therefore, the Commission made a significant error in its statement and should require Transco to implement the HDD for construction of the Skillman Loop.

56. Contrary to the Princeton Ridge Coalition's claims, Transco did in fact state that an HDD for a 42-inch-diameter pipeline along a 7,120-foot-long portion of the Skillman

⁷⁰ EA at 197.

⁷¹ December 18 Order, 149 FERC ¶ 61,258 at P 121.

Loop, specifically in the Princeton Ridge, has a “very high risk of failure.”⁷² However, this was not the only factor underlying the Commission’s conclusion. In practice, the HDD construction method is used to avoid specific sensitive resources, such as wetlands or waterbodies, or areas that may pose difficulties for overland construction. However, as discussed below, the EA concluded that employing HDD in the Princeton Ridge would not provide a significant advantage. Further, as discussed in the December 18 Order, Transco committed to installing the Skillman Loop in its existing right-of-way, significantly reducing the environmental impact of the pipeline and addressing many of the Princeton Ridge Coalition’s concerns regarding impacts on the existing canopy and forest fragmentation, vegetation, and wildlife.⁷³ The December 18 Order also explained that Transco responded to the Princeton Ridge Coalition’s concerns regarding the safety of overland construction by implementing safety measures beyond industry standard, including commitments made in its October 1, 2014 filing.⁷⁴

57. The EA stated that the HDD of the Princeton Ridge would take an estimated 240 days to complete and occur primarily through bedrock. An HDD operation of this size and over this extensive period would result in other environmental impacts, such as water requirements for drill passes, surface workspace requirements for entry and exit holes, and continuous 24-hour air and noise emissions monitoring.

58. As described in the December 18 Order, Transco engaged experts to determine the site specific geology and soil conditions of the Princeton Ridge through geotechnical borings, geophysical techniques, and laboratory analysis.⁷⁵ To alleviate concerns raised by Princeton Ridge Coalition, Transco developed a detailed Rock Handling Plan and a separate Princeton Ridge Construction Restoration Plan for installing the Skillman Loop by overland construction in the Princeton Ridge. These plans thoroughly address environmental and safety concerns raised for overland construction by the Princeton Ridge Coalition.

59. Ultimately, the Princeton Ridge Coalition did not present compelling arguments to suggest that an HDD in the Princeton Ridge would provide a significant advantage over overland construction. Further, in *Myersville Citizens for a Rural Community, Inc. v.*

⁷² See Transco’s September 2013 Resource Report 10 at 10-18.

⁷³ December 18 Order, 149 FERC ¶ 61,258 at P 122.

⁷⁴ *Id.* at P 121.

⁷⁵ *Id.*

FERC,⁷⁶ the D.C. Circuit Court found that “NEPA does not compel a particular result. Even if an agency has conceded that an alternative is environmentally superior, it nevertheless may be entitled under the circumstances not to choose that alternative.”⁷⁷ Based on Transco’s commitment to limit its construction and operational right-of-way, the numerous measures it will take to reduce environmental and safety impacts, and the lack of evidence that overland construction would result in significant environmental impacts, we find that HDD would not provide a significant advantage to overland construction of the Skillman Loop in Princeton Ridge.

I. Adoption of Transco’s Construction Mitigation Measures

60. Princeton Ridge Coalition asserts that the Commission failed to expressly include Transco’s proposed construction mitigation measures, in particular those measures contained in Transco’s October 1, 2014 supplement. As a result, Princeton Ridge Coalition requests that the Commission modify Environmental Condition 1 to expressly provide for the mitigation measure contained in the October 1, 2014 supplement.

61. We find it unnecessary to modify Environmental Condition 1, which requires Transco to “follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order.”⁷⁸ Environmental Condition 1 explicitly requires Transco to comply with all of the measures it proposed in its application and any supplements, including those outlined in Transco’s October 1, 2014 filing.

J. Measures to Protect Landowners

62. Princeton Ridge Coalition states that the Commission improperly rejected “reasonable” measures to protect landowners, such as requiring Transco to provide an environmental performance bond or require Transco to utilize the Commission’s dispute resolution process to resolve disputes.

⁷⁶ 783 F.3d 1301 (D.C. Cir. 2014).

⁷⁷ *Id.* at 1324 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

⁷⁸ December 18 Order, 149 FERC ¶ 61,258 at Appendix B, Environmental Condition 1.

63. We disagree. As detailed in the December 18 Order, the Commission ensures proper environmental restoration and addresses landowner concerns.⁷⁹ Transco has adopted our *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures*, which were established to ensure environmental protection during construction and adequate restoration after construction. In addition, Commission staff or its contractors conduct routine construction compliance inspections that are published in the project docket. Finally, in addition to Transco's Landowner Complaint Resolution Procedures,⁸⁰ landowners may contact the Commission using our Landowner Helpline, which is a voluntary option.⁸¹ The Commission addresses landowner concerns throughout the life of the project. We, again, conclude these procedures are sufficient to address landowner concerns. Further, we do not require bonds because the Commission has authority to require restoration and remediation to satisfactory levels.

K. Transco's Exercise of Eminent Domain

64. Princeton Ridge Coalition states that the Commission should not allow Transco to initiate any eminent proceedings until it has acquired all of its necessary federal and state authorizations. Princeton Ridge Coalition explains that without these approvals, such as its section 401 Water Quality Certification, the pipeline route remains uncertain and as a result, landowners may incur time and resources defending themselves in an eminent domain proceeding that could be rendered unnecessary.

65. Pursuant to section 7(h) of the NGA, any holder of a certificate of public convenience and necessity has the ability to acquire the necessary rights to construct and operate the authorized facilities by exercise of the right of eminent domain if it cannot obtain the rights by contract or is unable to agree with the owner of the property regarding compensation. No additional action by the Commission is required before the certificate holder can exercise that statutory right. As discussed above, the Commission

⁷⁹ December 18 Order, 149 FERC ¶ 61,258 at P 33.

⁸⁰ Transco stated that two to three weeks prior to beginning planned construction, it will send its complaint resolution letters to affected landowners on the project's mailing list. *See* Transco's December 23, 2013 Filing at 116. *See also* Transco's Application at Appendix C (Transco's Complaint Resolution Letter Template).

⁸¹ Landowners and interested parties may contact the Commission's Landowner Helpline at (202) 502-6651, toll-free at (877) 337-2237, or by email at LandownerHelp@ferc.gov.

does not believe it is necessary or practical for it to defer issuance of certificates pending action by other agencies on all required authorizations. Moreover, it is sometimes impossible for companies to gain access to property to complete studies which might be required prior to receipt of those authorizations without the ability to exercise the right of eminent domain afforded by the issuance of a certificate. In any event, we note that Transco has received all the authorizations necessary for construction of its project. Therefore, Princeton Ridge Coalition's arguments with regard to this project are moot.⁸²

L. Property Values and Property Insurance

66. The Princeton Ridge Coalition alleges that the Commission did not adequately consider impacts on property values and property insurance. We disagree. As stated in the December 18 Order, the pipeline segments to be constructed in conjunction with the Leidy Southeast Project will largely consist of looping and will be constructed in or adjacent to an existing right-of-way that contains as many as three other pipelines, which have been in operation for approximately 60 years.⁸³ Therefore, the Leidy Southeast Project will not necessarily adversely affect current property values.⁸⁴ Further, the Princeton Ridge Coalition has not provided any first-hand accounts or documentation from insurance providers identifying the potential for the modification or cancellation of any policy based on the construction of a pipeline. We agree with the EA's finding that there is no conclusive evidence suggesting that locating a pipeline on a property will result in the cancellation of policy or increase premiums.⁸⁵

⁸² While the Commission has no role in a company's acquisition of property rights, whether by negotiation or use of the eminent domain process, we note that the right of eminent domain afforded a certificate holder by NGA section 7(h) only extends to the "necessary right-of-way to construct, operate, and maintain" the facilities authorized by the certificate. *See* December 18 Order, 149 FERC ¶ 61,258 at Appendix B, Environmental Condition 4. Thus, it might be possible for property owners to negotiate, or argue in condemnation proceedings, for easement provisions which would result in the reversion

of, or the ability of the property owner to reacquire, any property rights associated with a project that does not ultimately go forward.

⁸³ December 18 Order, 149 FERC ¶ 61,258 at P 91.

⁸⁴ EA at 130-31.

⁸⁵ *Id.*

M. Impacts to and Disclosure of Cultural Resources

67. Ms. Cherry contends that the December 18 Order did not adequately address the potential loss of historical and archaeological resources due to the Leidy Southeast Project. Ms. Cherry questions the Leidy Southeast Project's potential to adversely impact cultural resource sites on the Skillman Loop, specifically the 28-Me-304 Site, Tulane Site, Upton Sinclair Site, and Petit Site.⁸⁶ Ms. Cherry believes that the Area of Potential Effect⁸⁷ determined by the Commission and the New Jersey and Pennsylvania Historic Preservation Officers (SHPO) was improperly limited to those that will occur inside existing easement areas since some construction activities, removal of trees, storage of materials, and other related impacts will occur outside of the existing right-of-way boundaries. Ms. Cherry also contends that the 28-Me-304 Site and Tulane Site "may be much closer than 2,000 feet" to the Area of Potential Effect.⁸⁸ Ms. Cherry states that the Area of Potential Effect for the Leidy Southeast Project was not publicly available and the public is unaware of which surveys have been completed and what methodology was used to determine impacts on the four sites in question. Finally, Ms. Cherry indicates that she does not know the identities of the "consulting parties" referenced in a December 15, 2014 letter from the New Jersey Department of Environmental Protection's Historic Preservation Office.

68. Since the issuance of the EA and December 18 Order, all cultural resources surveys were completed for the Leidy Southeast Project, in accordance with Environmental Condition 20.⁸⁹ Surveys for the project utilized methods approved by the New Jersey State Historic Preservation Office (SHPO) and were consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation*. The SHPO concurred that Transco's project will avoid all sites identified by the cultural resource surveys for the Skillman Loop.⁹⁰ Transco detailed the avoidance and protection

⁸⁶ EA at 136.

⁸⁷ The "area of potential effects" is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." 36 C.F.R. § 800.16(d) (2015).

⁸⁸ Ms. Cherry's Request for Rehearing at 5.

⁸⁹ December 18 Order, 149 FERC ¶ 61,258 at Appendix B, Environmental Condition 20.

⁹⁰ See New Jersey SHPO's letter filed February 23, 2015.

of these sites in its February 27 and April 8, 2015 filings. Therefore, there will be no loss of historical and archaeological resources, no damage of resources by construction, and no adverse impacts on the 28-Me-304 Site, Tulane Site, Upton Sinclair Site, or Petit Site.

69. We disagree that the public was not provided with sufficient information to make informed comments. As we discussed in the December 18 Order,⁹¹ the EA thoroughly addressed survey methodologies, clearly identified the survey corridor widths for pipeline routes (200 to 400 feet) and access roads (50 feet), which provided a buffer well beyond the limits of disturbance for the project, and the results presented in the survey reports. Contrary to Ms. Cherry's assertions, construction activities are limited to the construction areas identified and analyzed in the EA and authorized by the order. Therefore, we do not believe any interested stakeholder was hampered in its ability to comment on cultural resources because it did not receive the primary reports. The primary reports were withheld in compliance with Section 304 of the National Historic Preservation Act (NHPA) and Commission regulations.⁹²

70. Finally, the New Jersey and Pennsylvania SHPOs and the Commission were the consulting parties for the project under section 106 of the NHPA.⁹³ No other consulting parties were identified by the SHPOs or the Commission.

⁹¹ December 18 Order, 149 FERC ¶ 61,258 at P 104.

⁹² NHPA Section 304 provides that Federal agencies shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. *See* Section 304 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 307103, Pub. L. No. 113-287, 128 Stat. 3188, 3231-32 (2014). (The National Historic Preservation Act was recodified in Title 54 in December 2014).

⁹³ To fulfill an agency's obligations under section 106 of the NHPA, the Advisory Council on Historic Preservation's regulations administering NHPA requires agencies to consult with SHPOs; Indian Tribes and Native Hawaiian Organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; and the public. *See* 36 C.F.R. § 800.2(c) (2015).

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The Commission orders:

The requests for rehearing are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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