

169 FERC ¶ 61,220  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Adelphia Gateway, LLC

Docket Nos. CP18-46-000  
CP18-46-001

ORDER ISSUING CERTIFICATES

(Issued December 20, 2019)

1. On January 12, 2018, Adelphia Gateway, LLC (Adelphia) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to acquire, construct, and operate a new interstate pipeline system (the Adelphia Gateway Project). On August 31, 2018, Adelphia filed an amendment to its application to increase the design capacity on a segment of the proposed project. As amended, the project includes the purchase and repurposing of Interstate Energy Company, LLC's (Interstate Energy) existing non-NGA jurisdictional system in Pennsylvania, and construction of two new 16-inch-diameter pipeline laterals, 11,250 horsepower (hp) of compression, and related facilities in Delaware and Pennsylvania. Adelphia also requests approval of its *pro forma* tariff, a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open-access transportation services, and a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations.

2. For the reasons discussed in this order, the Commission grants Adelphia's requested authorizations, subject to conditions.

**I. Background and Proposal**

3. Adelphia, a limited liability company organized and existing under the laws of Delaware, is a wholly owned subsidiary of NJR Pipeline Company, which is a subsidiary of New Jersey Resources Corporation. Adelphia does not currently own any existing

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<sup>1</sup> 15 U.S.C. § 717f(c) (2018).

<sup>2</sup> 18 C.F.R. pt. 157 (2019).

interstate natural gas pipeline facilities and is not engaged in any jurisdictional natural gas transportation or storage operations. Upon commencing operations proposed in its application, Adelpia will become a natural gas company within the meaning of section 2(6) of the NGA<sup>3</sup> and will be subject to the Commission's jurisdiction.

**A. The Adelpia Gateway Project**

4. Adelpia proposes to purchase and repurpose Interstate Energy's existing pipeline system in Pennsylvania,<sup>4</sup> and construct additional pipeline and related facilities in Delaware and Pennsylvania. Interstate Energy's pipeline system was built in the 1970's to transport oil and natural gas<sup>5</sup> under the jurisdiction of the Pennsylvania Public Utility Commission.<sup>6</sup> The system consists of:

- an approximately 84.2-mile-long, 18-inch-diameter mainline, which is capable of transporting either oil or natural gas, extending from the Marcus Hook Industrial Complex in Delaware County, Pennsylvania, to the Martins Creek Terminal in Northampton County, Pennsylvania;<sup>7</sup>
- an approximately 4.4-mile-long, 20-inch-diameter mainline, which transports only natural gas, originating in Northampton County, Pennsylvania, and terminating at the Martins Creek Terminal;

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<sup>3</sup> 15 U.S.C. § 717a(6) (2018).

<sup>4</sup> Adelpia states that it has entered into a purchase and sale agreement with Talen Generation, LLC, Interstate Energy's parent company, to acquire all of Interstate Energy's membership interest. Adelpia states that it will merge Interstate Energy into Adelpia, such that the remaining company will be Adelpia.

<sup>5</sup> Interstate Energy operates the facilities as a Hinshaw pipeline, exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA. 15 U.S.C. § 717(c) (2018).

<sup>6</sup> *Order Granting Certificate of Public Convenience to Interstate Energy Company*, PUC Docket No. 97032, 46 Pa. PUC 524 (Feb. 6, 1973), *as modified*, 53 Pa. PUC 314 (June 7, 1979).

<sup>7</sup> The northern 34.8-mile-long segment is capable of transporting either oil or natural gas, and the southern 49.4-mile-long segment was previously used to transport oil only. Adelpia states that, since 2014, the northern segment has transported only natural gas and the southern segment has been inactive.

- four meter stations; and
- various appurtenant facilities.

5. Interstate Energy's existing system currently delivers natural gas to Lower Mount Bethel Energy, LLC, and Martins Creek, LLC (collectively, Existing Shippers) at the Martins Creek Terminal. These shippers, which are subsidiaries of Talen Energy Corporation, use the natural gas for power generation. Adelpia states that it has entered into firm transportation service contracts with the Existing Shippers to continue service to their power generation facilities. Adelpia states that it will terminate the state-regulated services currently provided<sup>8</sup> and has advised the Pennsylvania Public Utility Commission of the proposed transaction.

6. In addition to operating the existing Interstate Energy facilities as an interstate natural gas pipeline, Adelpia proposes to construct and integrate with the existing facilities:

- a 5,625 hp compressor station in Delaware County, Pennsylvania, consisting of three 1,875 hp natural gas-fired reciprocating compressor units (Marcus Hook Compressor Station);
- a 5,625 hp compressor station in Bucks County, Pennsylvania, consisting of three 1,875 hp natural gas-fired reciprocating compressor units (Quakertown Compressor Station);
- an approximately 0.3-mile-long, 16-inch-diameter lateral extending from the Marcus Hook Compressor Station to an existing meter station owned by Delmarva Power and Light Company (Delmarva)<sup>9</sup> in New Castle County, Delaware (Parkway Lateral);<sup>10</sup>

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<sup>8</sup> Adelpia states that certain auxiliary facilities that are currently used to allow for oil transportation service will no longer be needed when the facilities are purchased and have been disconnected by Interstate Energy.

<sup>9</sup> Delmarva is a public utility owned by Exelon Corporation (Exelon) providing natural gas and electricity to customers in Delaware and Maryland.

<sup>10</sup> The Parkway Lateral will also interconnect with two interstate natural gas pipelines owned by Columbia Gas Transmission and Texas Eastern Transmission Company, LP.

- an approximately 4.4-mile-long, 16-inch-diameter lateral extending from the Marcus Hook Compressor Station to interconnections with Transcontinental Gas Pipe Line Company (Transco) and the PECO Energy Company (PECO)<sup>11</sup> in Delaware County, Pennsylvania (Tilghman Lateral);<sup>12</sup>
- five meter stations; and
- other appurtenant facilities.

7. Adelphia proposes to operate the project in three zones: Zone North A, Zone North B, and Zone South. Zone North A, which extends from an existing interconnection with Texas Eastern Transmission Company, LP. (Texas Eastern) in Bucks County, Pennsylvania, to the Martins Creek Terminal, consists of approximately 34.8-miles of Interstate Energy's existing 18-inch-diameter mainline and would be capable of providing up to 250,000 dekatherms per day (Dth/day) of bidirectional firm natural gas transportation service.<sup>13</sup> Zone North B, which extends northward from an interconnection with Transco in Northampton County, Pennsylvania, to the Martins Creek Terminal, consists of approximately 4.4-miles of Interstate Energy's existing 20-inch-diameter mainline and would be capable of providing up to 350,000 Dth/day of firm transportation service. Last, Zone South consists of approximately 49.4 miles of Interstate Energy's existing 18-inch-diameter mainline, and extends southward from the terminus of the Zone North A system in Bucks County, Pennsylvania, to the Marcus Hook Industrial Complex in Delaware County, Pennsylvania. The Zone South system also includes the Tilghman and Parkway Laterals, and the Marcus Hook and Quakertown Compressor Stations. The Zone South facilities would be capable of providing up to 250,000 Dth/day of firm transportation service. Adelphia states that the facilities will be placed into service in two phases. The Zone North A and Zone North B facilities will be placed into service immediately upon closing of the acquisition of the existing

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<sup>11</sup> PECO is a public utility owned by Exelon Corporation providing natural gas and electricity to customers in Pennsylvania.

<sup>12</sup> The Tilghman Lateral will also interconnect with the Monroe Refinery.

<sup>13</sup> In its initial application, Adelphia stated that the Zone North A system could provide up to 175,000 Dth/day of firm service, with all the gas transported in a south-to-north direction. In its amended application, Adelphia states that up to an additional 75,000 Dth/day of firm service can be provided from the Zone North A system southward into the Zone South facilities. Adelphia further stated that no additional facilities would be required to provide this additional service.

facilities. The Zone South facilities will be placed in service following the conversion of those facilities.

8. Adelpia estimates the total cost of the project to be \$331,965,085. The estimated cost consists of \$189,000,000 related to the acquisition of Interstate Energy's existing system, and \$142,965,085 in costs for the construction of the new facilities and the replacement and other activities necessary to modify the oil transportation facilities in order to provide natural gas transportation service.

9. Adelpia states that it held an open season between November 2, 2017, and December 8, 2017, for the proposed firm transportation services offered by the project. The Existing Shippers have executed binding precedent agreements for firm transportation service totaling 175,000 Dth/day (70 percent of the capacity) on the Zone North A system and 350,000 Dth/day (100 percent of the capacity) on the Zone North B system.<sup>14</sup> For the Zone South system, Adelpia has executed binding precedent agreements with two shippers for a total of 122,500 Dth/day of firm transportation service (49 percent of the zone's capacity).<sup>15</sup> Adelpia states that 22,500 Dth/day will be transported to the interconnect with PECO at the terminus of the Tilghman Lateral and 100,000 Dth/day will be transported to interconnections with existing interstate pipelines for further transportation on the interstate grid. Adelpia also asserts that it is engaged in discussions with various other shippers that submitted bids during the open season.<sup>16</sup>

10. Adelpia also requests approval of its proposed *pro forma* tariff. Adelpia proposes to offer firm transportation service under Rate Schedule Firm Transportation Service (FTS), interruptible transportation service under Rate Schedule Interruptible Transportation Service (ITS), and parking and lending service under Rate Schedule Parking and Lending Service (PALS). Adelpia proposes to use zone-gate rates for each of the three zones for its initial recourse rates.

## **B. Blanket Certificates**

11. Adelpia requests a Part 284, Subpart G blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations, authorizing Adelpia to provide transportation service to customers requesting and qualifying for

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<sup>14</sup> Adelpia February 28, 2018 Answer at 4.

<sup>15</sup> Adelpia August 10, 2018 Data Response at 1.

<sup>16</sup> Adelpia July 10, 2018 Data Response at 1.

transportation service under its proposed FERC Gas Tariff, with pre-granted abandonment authorization.<sup>17</sup>

12. Adelpia also requests a blanket certificate of public convenience and necessity, pursuant to section 157.204 of the Commission's regulations, authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.<sup>18</sup>

## II. Procedural Issues

### A. Notice, Interventions, Protests, and Comments

13. Notice of Adelpia's application in Docket No. CP18-46-000 was published in the *Federal Register* on January 30, 2018.<sup>19</sup> Notice of Adelpia's amendment to its application in Docket No. CP18-46-001 was published in the *Federal Register* on September 14, 2018.<sup>20</sup> A number of timely and late motions to intervene were filed. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>21</sup> On May 2, 2018, May 30, 2018, June 26, 2018, September 11, 2018, and January 8, 2019, the Commission issued notices granting late motions to intervene.

14. Numerous entities and individuals filed protests and adverse comments raising concerns over the need for and the environmental impacts of the proposed project. On February 28, 2018, Adelpia filed an answer to the protests, as well as to various comments filed on the project. Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests,<sup>22</sup> we will accept Adelpia's answer because it provides clarification and information that has assisted in our decision making. These issues are addressed in the Environmental Assessment (EA) and below.

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<sup>17</sup> 18 C.F.R. § 284.221 (2019).

<sup>18</sup> *Id.* § 157.204.

<sup>19</sup> 83 Fed. Reg. 4,200 (2018).

<sup>20</sup> 83 Fed. Reg. 46,731 (2018).

<sup>21</sup> 18 C.F.R. § 385.214(c) (2019).

<sup>22</sup> *Id.*

**B. Insufficient Time to Intervene**

15. Many commenters argue that the time to intervene in this proceeding was not sufficient.<sup>23</sup> They assert that technical problems with the Commission's website prevented timely intervention.<sup>24</sup> Additionally, Ms. Arianne Elinich states that the Commission's Notice of Intent to Prepare an Environmental Assessment referenced becoming an intervenor in the proceeding even though the deadline to file motions to intervene had since passed.<sup>25</sup> Ms. Elinich asserts that this created confusion and potentially prevented some individuals from becoming parties in the proceeding.<sup>26</sup>

16. As stated above, the Commission issued notices granting untimely motions to intervene on May 2, 2018, May 30, 2018, June 26, 2018, September 11, 2018, and January 8, 2019. No motion to intervene has been denied in this proceeding; thus, no party was denied the opportunity to participate or comment.<sup>27</sup>

**C. Incomplete Application**

17. Several commenters argued that the Commission must require Adelphia to resubmit its application and include all the information needed for the Commission to conduct a proper review of the project in a single application.<sup>28</sup> The commenters assert that Adelphia has provided project information in a piecemeal fashion, noting that Adelphia has responded to over 200 inquiries from Commission staff.<sup>29</sup> The commenters

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<sup>23</sup> See, e.g., Arianne Elinich January 31, 2018 Comments.

<sup>24</sup> See, e.g., Pipeline Safety Coalition February 13, 2018 Comments.

<sup>25</sup> Arianne Elinich May 7, 2018 Comments.

<sup>26</sup> *Id.*

<sup>27</sup> Ms. Elinich also notes that Adelphia opposed some untimely motions to intervene, while not opposing others, and argues that the Commission should not allow such discrimination. Regardless of Adelphia's opposition, the Commission granted all untimely motions to intervene.

<sup>28</sup> See, e.g., Joseph Quirk October 1, 2018 Comments.

<sup>29</sup> *Id.*

claim that a new complete application is the only way to assure that the true impacts of the project will be properly analyzed.<sup>30</sup>

18. It is the Commission's practice to accept additional information into the record to assist in its analysis.<sup>31</sup> Here, Adelphia has responded to inquiries from Commission staff and submitted information on its own that was necessary to develop a more complete record to inform the Commission's analysis and deliberation. Much of this information was related to the environmental impact of the project and was used in the development of the EA. In addition, the Commission has accepted all comments into the record throughout the proceeding, and the EA was issued for public comment and all substantive comments received in response to the EA are addressed below.

### III. Discussion

19. Adelphia's proposal to construct and operate facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission is subject to the requirements of subsections (c) and (e) of NGA section 7.<sup>32</sup>

#### A. Certificate Policy Statement

20. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.<sup>33</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

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<sup>30</sup> *Id.*

<sup>31</sup> *Tres Palacios Gas Storage LLC*, 160 FERC ¶ 61,107, at P 15 (2017) (stating that "[t]he Commission routinely accepts additional information into the record to assist in its analysis.").

<sup>32</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2018).

<sup>33</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).



avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

21. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

### **1. Subsidization and Impact on Existing Customers**

22. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. As Adelpia is a new company, it has no existing customers; as such, there is no potential for subsidization.<sup>34</sup>

### **2. Existing Pipelines and Their Customers**

23. Adelpia's project is not intended to replace service on other pipelines, and no pipelines or their customers have filed adverse comments regarding Adelpia's proposal. Thus, we find that Adelpia's project will not adversely affect other pipelines or their captive customers.

### **3. Landowners and Communities**

24. We are additionally satisfied that Adelpia has taken appropriate steps to minimize adverse impacts on landowners. More than 95 percent of the total length of the project's pipeline facilities consist of existing pipeline. Of the 4.7 miles of new pipeline that will be constructed, approximately 81 percent will be collocated or adjacent to

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<sup>34</sup> As stated above, Adelpia has signed precedent agreements for interstate transportation service with Interstate Energy's existing intrastate natural gas transportation customers which replicates the service currently being provided.

existing rights-of-way.<sup>35</sup> Finally, both compressor stations are proposed at existing facility sites that Adelpia would own following the acquisition of the facilities from Interstate Energy.<sup>36</sup>

#### 4. Project Need

25. Adelpia has entered into long-term, firm precedent agreements with four shippers for 647,500 Dth/day of firm transportation service, approximately 76 percent of the project's capacity. This service includes 175,000 Dth/day of service on the North A system and 350,000 Dth/day of service on the North B system necessary to maintain service to the Existing Shippers' electric generating facilities.

##### a. Comments

26. Numerous parties and commenters challenge the need for the project. They raise a number of arguments including: (1) the use of precedent agreements is insufficient to demonstrate need for the project; (2) insufficient demand for natural gas in the Philadelphia and Northeastern markets; (3) that the gas transported by the project may be exported; (4) that the market area is already served by the PennEast Project;<sup>37</sup> and (5) the availability of renewable energy alternatives.

27. Commenters argue that the Commission should not rely on precedent agreements to demonstrate project need.<sup>38</sup> Lower Saucon Township states that if the Commission does rely on precedent agreements, those agreements should be made public and the Commission should evaluate the relationship between the applicant and the entities who have signed precedent agreements.<sup>39</sup> Similarly, Pipeline Safety Council requests the

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<sup>35</sup> EA at 10.

<sup>36</sup> *Id.* at 182.

<sup>37</sup> The PennEast Project is a new 116-mile-long natural gas pipeline that will extend from Luzerne County, Pennsylvania, to Mercer County, New Jersey, along with three laterals extending off the mainline authorized by the Commission on January 19, 2018. At this time, the PennEast Project is not yet under construction. *PennEast Pipeline Company, LLC*, 162 FERC ¶ 61,053 (2018).

<sup>38</sup> Lower Saucon Township May 17, 2018 Comments at 5; Lorraine Crown May 30, 2018 Comments; Arianne Elinich September 19, 2018 Comments (stating the Commission should conduct a cost-benefit analysis).

<sup>39</sup> Lower Saucon Township May 17, 2018 Comments at 5-6 (citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) ("If an

Commission state the criteria on which need of the project is determined and provide documentation of that need.<sup>40</sup> Clean Air Council notes that although Adelphia states that it has “bids for more than twice the capacity of Zone South,” it has not provided evidence of agreements with those bidders.<sup>41</sup>

28. Next, Commenters assert that there is insufficient demand for natural gas in the Philadelphia and Northeastern markets.<sup>42</sup> Citing studies submitted in the PennEast Project proceeding, Delaware Riverkeeper Network (Delaware Riverkeeper) asserts that there is no need for additional gas in Pennsylvania, and Adelphia has not substantiated its claim that the gas will be needed in other states in the Northeast.<sup>43</sup> Lower Saucon Township asserts that Adelphia’s justification that it is building pipeline capacity to “increase available natural gas pipeline capacity” is circular and does not demonstrate project need.<sup>44</sup> Lower Saucon Township further argues that the continuation of service to existing power plants that are already adequately served by existing supplies does not establish any need for the project as proposed.<sup>45</sup> Ms. Christine Durst notes that Adelphia admits that there are no specifically identified end users for the natural gas from this

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applicant has entered into contracts or precedent agreements for the capacity, it will be expected to file the agreements in support of the project.”)); *see also* Arianne Elinich January 7, 2019 Comments (requesting all shippers who signed precedent agreements be publicly identified).

<sup>40</sup> Pipeline Safety Coalition June 4, 2018 Comments at 3.

<sup>41</sup> Clean Air Council June 1, 2018 Comments at 26.

<sup>42</sup> Christina Zettner February 12, 2018 Comments; Jane Lick February 13, 2018 Motion to Intervene; Susan Meacham May 29, 2018 Comments; Christine Durst June 1, 2018 Comments; Sondra Wolferman June 1, 2018 Comments.

<sup>43</sup> Delaware Riverkeeper June 1, 2018 Comments at 8 (citing Labyrinth Consulting Services, Inc., *Professional Opinion of Proposed PennEast Pipeline Project* (Feb. 26, 2015)); *see also* Delaware Riverkeeper March 1, 2019 Comments at 6 (asserting that Adelphia has not identified underserved markets, discussed foreseeable issues in the current service offered, or identified the end-use of the natural gas).

<sup>44</sup> Lower Saucon Township May 17, 2018 Comments at 5-6

<sup>45</sup> *Id.*

proposed project,<sup>46</sup> and Ms. Lorraine Crown argues that the need for the project is driven by natural gas production, not by end-use need.<sup>47</sup>

29. Ms. Christina Zettner contends that removing a petroleum line from service would not be in the public interest because it will limit current transport options for shippers and adversely impact consumer prices for petroleum products.<sup>48</sup>

30. Next, commenters contend that the project will be used to export natural gas, which they aver does not serve the public interest.<sup>49</sup> Clean Air Council notes that the Marcus Hook Industrial Complex, which forms a terminus of the project, is a large, international export terminal for hydrocarbons, including crude oil and natural gas liquids. Pipeline Safety Council requests the Commission ensure that the project will not be used to export natural gas.<sup>50</sup>

31. Commenters also assert that the Adelpia project is redundant in light of the Commission's approval of the PennEast Project.<sup>51</sup> Commenters note that the Commission's order for the PennEast Project stated that expansion of existing pipelines was not feasible, but that is exactly what Adelpia is now proposing.<sup>52</sup> Ms. Susan

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<sup>46</sup> Christine Durst June 1, 2018 Comments.

<sup>47</sup> Lorraine Crown May 30, 2018 Comments.

<sup>48</sup> Christina Zettner February 12, 2018 Comments.

<sup>49</sup> Tamara Clements February 12, 2018 Comments; Tara Zrinski February 13, 2018 Motion to Intervene; Richard Grossman May 14, 2018 Comments; Susan Meacham May 29, 2018 Comments; Christine Durst June 1, 2018 Comments; Sondra Wolferman June 1, 2018 Comments; Clean Air Council June 1, 2018 Comments; Delaware Riverkeeper June 1, 2018 Comments; Pipeline Safety Coalition September 12, 2019 Comments; Bernard Greenberg September 13, 2019 Comments.

<sup>50</sup> Pipeline Safety Coalition June 4, 2018 Comments at 3.

<sup>51</sup> Tamara Clements February 12, 2018 Comments; Arianne Elinich March 2, 2018 Comments; Lower Saucon Township May 17, 2018 Comments at 5-6 (noting that the project will run nearly parallel to the PennEast Pipeline Hellertown Lateral); Carla Kelly Mackey May 31, 2018 Comments; Alice Orrichio May 31, 2018 Comments; Christine Durst June 1, 2018 Comments.

<sup>52</sup> Arianne Elinich March 2, 2018 Comments; Susan Meacham May 29, 2018 Comments; Pipeline Safety Coalition June 4, 2018 Comments at 3.

Meacham states that the two pipelines are built in the same area, but neither will serve customers along the route.<sup>53</sup>

32. Last, Commenters argue that the Commission should deny Adelpia's application because it would undermine the investment in renewable energy, which they allege would have less impacts on landowners and the environment.<sup>54</sup>

**b. Adelpia's Answer**

33. In its answer, Adelpia asserts that the project will continue serving the Existing Shippers and serve new gas consumers in Pennsylvania and the Northeast.<sup>55</sup> Adelpia notes that it has signed precedent agreements for capacity on the system and is negotiating additional agreements with other shippers.<sup>56</sup> Last, Adelpia argues that the project will benefit end-users of natural gas in the Philadelphia market by providing enhanced access to diverse and abundant natural gas supplies.<sup>57</sup>

34. With respect to the PennEast Project, Adelpia states that although the northern tip of the Adelpia Gateway Project intersects with PennEast's pipeline alignment, there is no interconnect currently proposed that would physically connect Adelpia to PennEast.<sup>58</sup> Additionally, Adelpia notes that the two projects deliver gas to different markets and each project has different sources of supply for natural gas.<sup>59</sup>

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<sup>53</sup> Susan Meacham May 29, 2018 Comments.

<sup>54</sup> Martha Edwards February 12, 2018 Comments; Tara Zrinski February 13, 2018 Motion to Intervene; Mark Canright May 29, 2018 Comments; Susan Meacham May 29, 2018 Comments; Carla Kelly Mackey May 31, 2018 Comments; Pipeline Safety Coalition June 4, 2018 Comments at 3.

<sup>55</sup> Adelpia February 28, 2018 Answer at 4.

<sup>56</sup> *Id.* (noting that the Commission has found that "service commitments constitute strong evidence that there is market demand for the project").

<sup>57</sup> *Id.* at 4-5.

<sup>58</sup> *Id.* at 11.

<sup>59</sup> *Id.*

**c. Discussion**

35. It is well established that precedent agreements are significant evidence of demand for a project.<sup>60</sup> As the court stated in *Minisink Residents for Environmental Preservation & Safety v. FERC*, and again in *Myersville Citizens for a Rural Community, Inc., v. FERC*, nothing in the Certificate Policy Statement or in any precedent construing it suggest that the policy statement requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's precedent agreements with shippers.<sup>61</sup> Given the substantial financial commitment required under these agreements by project shippers,<sup>62</sup> we find that these agreements are

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<sup>60</sup> Certificate Policy Statement, 88 FERC at 61,748 (precedent agreements, though no longer required, “constitute significant evidence of demand for the project”); *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (affirming Commission reliance on preconstruction contracts for 93 percent of project capacity to demonstrate market need); *Twp. of Bordentown v. FERC*, 903 F.3d 234, 263 (3d Cir. 2018) (“As numerous courts have reiterated, FERC need not ‘look[] beyond the market need reflected by the applicant's existing contracts with shippers.’”) (quoting *Myersville Citizens for a Rural Cmty., Inc., v. FERC*, 183 F.3d 1291, 1301, 1311 (D.C. Cir. 2015)); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*1 (D.C. Cir. Feb.19, 2019) (unpublished) (precedent agreements are substantial evidence of market need); *see also Midship Pipeline Co., LLC*, 164 FERC ¶ 61,103, at P 22 (2018) (long-term precedent agreements for 64 percent of the system's capacity is substantial demonstration of market demand); *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098, at P 16 (2018) (affirming that the Commission is not required to look behind precedent agreements to evaluate project need); *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 41 (2017), *order on reh'g*, 164 FERC ¶ 61,054 (2018), *aff'd*, *City of Oberlin v. FERC*, 937 F.3d 599, 605 (2019) (finding need for a new pipeline system that was 59 percent subscribed).

<sup>61</sup> *Minisink Residents for Envntl. Pres. & Safety v. FERC*, 762 F.3d 97, 110 n.10 (D.C. Cir. 2014); *see also Myersville Citizens for a Rural Cmty., Inc., v. FERC*, 183 F.3d at 1301, 1311. Further, Ordering Paragraph (E) of this order requires that Adelphia file a written statement affirming that it has executed contracts for service at the levels provided for in their precedent agreements prior to commencing construction.

<sup>62</sup> With respect to assertions that the Commission must examine whether there is an affiliate relationship between Adelphia and its shippers, when considering applications for new certificates, the Commission's primary concern regarding affiliates of the pipeline as shippers is whether there may have been undue discrimination against a non-affiliate shipper. Here, there is no allegation that Adelphia has discriminated against a non-affiliate shipper. *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085, at P 75 (2018).

the best evidence that the service to be provided by the project is needed in the markets to be served. Moreover, it is current Commission policy to not look beyond precedent or service agreements to make judgments about the needs of individual shippers.<sup>63</sup>

36. In addition to precedent agreements, applicants may rely on a variety of relevant factors to demonstrate need.<sup>64</sup> These factors might include, but are not limited to, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.<sup>65</sup> We will consider all such evidence submitted by the applicant regarding need. Here, Adelphia's shippers will provide gas to a variety of end users, including local distribution customers, electric generators, and marketers, and the shippers have determined, based on their assessment of the long-term needs of their particular customers and markets, that there is a market for the natural gas to be transported and the Adelphia Gateway Project is the preferred means for delivering or receiving that gas.<sup>66</sup>

37. We are also unpersuaded by commenters' assertions that there is insufficient demand for natural gas in the Philadelphia and Northeastern markets. Commenters provide no compelling evidence of overbuilding in the face of compelling evidence of need in the form of substantial customer support. Commission policy is to examine the merits of individual projects and assess whether each project meets the specific need demonstrated. While the Certificate Policy Statement permits the applicant to show need in a variety of ways, it does not suggest that the Commission should examine a group of projects together and pick which project(s) best serve an estimated future regional demand. Projections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental

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<sup>63</sup> Certificate Policy Statement, 88 FERC at 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)).

<sup>64</sup> Certificate Policy Statement, 88 FERC at 61,747. Prior to the Certificate Policy Statement, the Commission required a new pipeline project to have contractual commitments for at least 25 percent of the proposed project's capacity. See Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,743. Adelphia would have satisfied this prior, more stringent, requirement.

<sup>65</sup> *Id.* at 61,747.

<sup>66</sup> With respect to commenters' request that the shippers and precedent agreements be made public, we note that the Commission regulations provide for a process that allows parties to a proceeding to obtain non-public information. 18 C.F.R. § 388.112 (2019). However, no commenter has alleged that they made such a request or been improperly denied the information.

regulations, and legislative and regulatory decisions by the federal government and individual states. Given this uncertainty associated with long-term demand projections, including those presented in the studies noted by commenters above, where an applicant has precedent agreements for long-term firm service, the Commission deems the precedent agreements to be the better evidence of demand. The Commission evaluates individual projects based on the evidence of need presented in each proceeding. Where, as here, it is demonstrated that specific shippers have entered into precedent agreements for project service, the Commission places substantial reliance on those agreements to find that the project is needed.

38. We also disagree with Lower Saucon Township's assertion that the continuation of service to the Existing Shippers does not establish need for the project. Adelphia proposes to acquire, and convert into an interstate natural gas pipeline, Interstate Energy's existing system. Continuing to provide the Existing Shippers with firm transportation is critical to the ability of these power plants to reliably and efficiently supply energy, capacity, and ancillary services into the wholesale markets operated by PJM Interconnection, L.L.C.<sup>67</sup> The Existing Shippers will also benefit from the conversion to NGA jurisdictional service through the Commission's open access policies. Moreover, the Existing Shippers are served by a portion of the system that is already constructed, and therefore, there is limited environmental impact associated with this portion of the project. With respect to Ms. Zettner's concern that the project will adversely impact the transportation of petroleum products, we note that oil has not been transported on the project facilities since 2014.

39. Allegations that the project is not needed because gas that is transported by it may be exported through an LNG terminal are not persuasive. There is no evidence in the record that indicates that the project will be used to transport natural gas for export.<sup>68</sup> A number of the project shippers are end users, which will locally distribute gas or use it to generate electricity. Further, even if there was evidence that some of the gas would be exported, the Commission does not have jurisdiction over the exportation or importation

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<sup>67</sup> Adelphia Application at 11.

<sup>68</sup> Clean Air Council notes that the Marcus Hook Industrial Complex, which forms a terminus of the project, is a large, international export terminal for hydrocarbons, including crude oil and natural gas liquids. Oil and natural gas liquids are distinct products from LNG and no jurisdictional LNG export terminal interconnects with or is in the vicinity of the project.



of the natural gas commodity. Such jurisdiction resides with the Secretary of Energy, who must act on any applications for natural gas export or import authority.<sup>69</sup>

40. We also disagree with commenters' claim that the project is not needed because of the Commission's approval of the PennEast Project. The EA analyzed whether existing natural gas transmission pipelines in the project area, including the authorized PennEast Project, could possibly be used as system alternatives for Adelpia Project.<sup>70</sup> The EA concluded that these existing pipeline systems are fully subscribed and cannot provide additional capacity to the area that Adelpia is proposing to serve.<sup>71</sup> The EA further found that expansion of these systems would likely require more ground disturbance than Adelpia's proposed project which is comprised predominately of an existing system.<sup>72</sup> Therefore, the EA concluded that existing pipeline systems would not offer a significant environmental advantage.

41. Finally, renewable energy sources would not accomplish the project purpose of providing natural gas transportation service. The Commission cannot require individual energy users to use different or specific energy resources.<sup>73</sup>

42. In conclusion, we find that the Adelpia Gateway Project will provide reliable natural gas service to end use customers and the market. Precedent agreements signed by Adelpia for approximately 76 percent of the project's capacity adequately demonstrate that the project is needed.

## 5. Conclusion

43. Based on the foregoing, we find that the benefits that the Adelpia Gateway 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. Further, as set forth in the environmental discussion below, we agree with Commission staff's conclusion in the EA that, if constructed and operated in accordance with applicable laws and regulations and with the implementation of the applicant's

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<sup>69</sup> *Sierra Club v. FERC*, 827 F.3d 36, 40 (D.C. Cir. 2016) ("The Department of Energy maintains exclusive authority over the export of natural gas as a commodity.").

<sup>70</sup> EA at 176-178.

<sup>71</sup> *Id.* at 178.

<sup>72</sup> *Id.*

<sup>73</sup> *Rh energytrans, LLC*, 165 FERC ¶ 61,218, at P 21 (2018).

proposed mitigation and staff's recommendations, now adopted as conditions in the attached Appendix of this order, the project will not have a significant environmental impact. Therefore, we grant the requested authorizations, subject to conditions discussed below.

### **B. Eminent Domain**

44. Commenters argue that the Commission should not grant Adelphia eminent domain authority.<sup>74</sup> They argue that public need for the project has not been established, that there are many environmental impacts, and question Adelphia's characterization as a "public utility."<sup>75</sup>

45. In NGA section 7(c) and (e), Congress gave the Commission jurisdiction to determine if the construction and operation of proposed pipeline facilities are in the public convenience and necessity.<sup>76</sup> Once the Commission makes that determination, in NGA section 7(h), Congress gives the natural gas company authorization to acquire the necessary land or property to construct the approved facilities by the exercise of the right of eminent domain if it cannot acquire the easement by an agreement with the landowner.<sup>77</sup> Thus, the Commission itself does not grant the pipeline the right to take the property by eminent domain.<sup>78</sup>

### **C. Engineering Design**

46. Delaware Riverkeeper argues that Adelphia's project is overbuilt because the maximum allowable operating pressure (MAOP) of the new pipeline laterals and associated meter stations and compressor stations would be 1,440 pounds per square inch gauge (psig) even though the existing Zone South mainline can only operate at

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<sup>74</sup> See, e.g., Janice MacKenzie January 29, 2019 Comments.

<sup>75</sup> *Id.*; see also Delaware Riverkeeper March 1, 2019 Comments at 9-10.

<sup>76</sup> 15 U.S.C. § 717f(c) (2018).

<sup>77</sup> 15 U.S.C. § 717f(h) (2018); see also *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000) (holding that the Commission does not have the discretion to deny a certificate holder the power of eminent domain); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*2 (noting that eminent domain power is conferred to the certificate holder under section 7(h) of the Natural Gas Act).

<sup>78</sup> *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at PP 124-31 (2003).

1,200 psig.<sup>79</sup> Delaware Riverkeeper contends that it is possible that Adelphia intends further expansions of the project utilizing the higher MAOP on the newly built facilities.<sup>80</sup>

47. The MAOP is the maximum pressure at which a pipe may operate based upon the physical properties of the steel and class location, determined by the population density, as dictated by the U.S. Department of Transportation (DOT).<sup>81</sup> There is no requirement, however, that MAOPs be consistent at all times across a pipeline's entire system.<sup>82</sup> Commission staff examined the flow diagrams, engineering data, and hydraulic models provided in support of Adelphia's application and determined that the project was properly designed to provide up to 250,000 Dth/day of transportation service on the Zone South System, 250,000 Dth/day of transportation service on the Zone North A System, and 350,000 Dth/day of transportation service on the Zone North B System while meeting all design and contractual obligations. As Adelphia's system is currently proposed to be configured, the pressures in the new facilities will not approach its MAOP. Nor has Adelphia identified any future plans for expansion of its system in order to fully exploit the 1,440 psig MAOP.

#### **D. Interconnection with Exelon**

48. Exelon states that Adelphia's proposal contemplates sharing land or right-of-way owned by two Exelon affiliates, PECO and Delmarva.<sup>83</sup> Exelon requests that Adelphia be required to follow PECO's and Delmarva's procedures for occupancy of right-of-way and to abide by the outcome of such procedures. Exelon notes that it does not oppose Adelphia's application. Rather, Exelon asserts that it is unclear how Adelphia intends to locate its proposed facilities and whether Adelphia's proposal is counter to PECO's or Delmarva's existing or future needs and plans for full utilization of lands and right-of-way.

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<sup>79</sup> Delaware Riverkeeper March 1, 2019 Comments at 92.

<sup>80</sup> *Id.*

<sup>81</sup> 49 C.F.R. § 192.111 (2019).

<sup>82</sup> *Millennium Pipeline Co., L.L.C.*, 161 FERC ¶ 61,229, at P 41 (2017).

<sup>83</sup> Exelon February 13, 2018 Comments.

49. Since Exelon filed its comments, Adelphia has entered into a precedent agreement to deliver gas to PECO at the terminus of the Tilghman Lateral,<sup>84</sup> and Adelphia has provided a draft interconnect agreement to PECO, which is currently under review by PECO.<sup>85</sup> Additionally, in its June 27, 2019 comments, Exelon states that “Adelphia has indicated that the currently proposed route does not plan to use any [right-of-way] impacting PECO’s land or [right-of-way].”<sup>86</sup>

50. With respect to the interconnection with Delmarva on the Parkway Lateral, Adelphia states that it has met with each of the interconnecting parties on the lateral to review and coordinate the layout of the proposed facilities.<sup>87</sup> Adelphia asserts that once all parties concur that the proposed layout will not be detrimental to their operations, then easement agreements will be finalized.<sup>88</sup>

### E. Blanket Certificates

51. Adelphia requests a Part 284, Subpart G blanket certificate in order to provide open-access transportation services. Under a Part 284 blanket certificate, Adelphia would not need individual authorizations to provide transportation services to particular customers. Adelphia filed a *pro forma* Part 284 tariff to provide open-access transportation services. Because a Part 284 blanket certificate is required for Adelphia to participate in the Commission’s open-access regulatory regime, we will grant Adelphia a Part 284 blanket certificate, subject to the conditions imposed herein.

52. Adelphia also requests a Part 157, Subpart F blanket certificate. The Part 157 blanket certificate gives an interstate pipeline NGA section 7 authority to automatically, or after prior notice, perform a restricted number of routine activities related to the construction, acquisition, abandonment, and replacement and operation of existing pipeline facilities provided the activities comply with constraints on costs and environmental impacts.<sup>89</sup> Because the Commission has previously determined through a rulemaking that these blanket-certificate eligible activities are in the public convenience

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<sup>84</sup> Adelphia August 10, 2018 Data Response at 1.

<sup>85</sup> Adelphia August 13, 2018 Data Response at 2.

<sup>86</sup> Exelon June 27, 2019 Comments.

<sup>87</sup> Adelphia December 3, 2018 Data Response at 1.

<sup>88</sup> *Id.*

<sup>89</sup> 18 C.F.R. § 157.203 (2019).

and necessity,<sup>90</sup> it is the Commission's practice to grant new natural gas companies a Part 157 blanket certificate if requested.<sup>91</sup> Accordingly, we will grant Adelphia a Part 157 blanket certificate, subject to the conditions imposed herein.

## F. Rates

### 1. Initial Rates

53. Adelphia proposes to offer firm transportation service under Rate Schedule FTS, interruptible transportation service under Rate Schedule ITS, and parking and lending service under Rate Schedule PALS. Adelphia estimates the total cost of the project to be \$331,965,085, consisting of \$189,000,000 related to the acquisition of existing pipeline facilities and \$142,965,085 in costs for the construction of the new laterals, compressor stations, and other facilities, and the replacement and conversion activities necessary to convert oil transportation facilities into natural gas transportation service.

54. Adelphia derived its proposed rates based on a first-year cost of service of \$63,126,228. The factors used in developing the cost of service include a depreciation rate of 3.33 percent, based on an average remaining life of thirty years, for transmission facilities and a negative salvage rate of 0.25 percent, federal and state income tax rates of 21 percent and 9.56 percent, respectively, and an overall rate of return of 10 percent, which reflects a capital structure of 50 percent debt and 50 percent equity with a debt cost of 6 percent and a return on equity (ROE) of 14 percent.

55. Adelphia proposes to use zone-gate rates for each of the three zones (Zone South, Zone North A, and Zone North B) for its initial recourse rates for firm transportation service. The rates and facilities are proposed to be placed into service in two phases. Adelphia states that the first phase of rates and service, for Zone North A and Zone North B, will become effective immediately upon closing of the acquisition of the existing facilities. Following the conversion of the Zone South facilities, Adelphia proposes to place those facilities into service with rates applicable to service in that zone only. Adelphia proposes that the effective date for the Zone South rates be delayed until the

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<sup>90</sup> *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231, at P 9 (2006) (cross-referenced at 117 FERC ¶ 61,074), *order on reh'g*, Order No. 686-A, 119 FERC ¶ 61,303, *order on reh'g*, Order No. 686-B, 120 FERC ¶ 61,249 (2007).

<sup>91</sup> *Cf. Rover Pipeline LLC*, 161 FERC ¶ 61,244, at P 13 (2017) (denying a request for a blanket certificate where the company's actions had eroded the Commission's confidence it would comply with all the requirements of the blanket certificate program, including the environmental requirements).

Zone South facilities are converted and all new facilities in Zone South are placed into service.

56. In its Amendment Application, Adelphia proposes to modify its initial transportation rates to reflect that Zone North A facilities have the ability to deliver into the Zone South facilities, and, accordingly, additional capacity is available in Zone North A. Therefore, the Amendment reflects a modification to the design capacity of Zone North A from 175,000 Dth/day to 250,000 Dth/day. In light of the Amendment, Adelphia's proposed maximum monthly reservation recourse charge for Rate Schedule FTS in Zone South is \$17.496 per Dth and the maximum recourse usage charge is \$0.0030 per Dth. For Zone North, Adelphia's proposed maximum monthly reservation charges for Zone North A and Zone North B are \$3.0285 per Dth/d and \$0.2166 per Dth/d, respectively, with usage charges of \$0.0030 per Dth in each zone. The usage charges in these zones for Rate Schedule ITS and Rate Schedule PALS will equal \$0.1026 per Dth for Zone North A, \$0.0101 for Zone North B, and \$0.5782 for Zone South (each is the 100 percent load factor equivalent of the Rate Schedule FTS reservation and usage charges).

57. We have reviewed Adelphia's proposed cost of service and initial rates and find, with the exception of the proposed ROE discussed below, they reasonably reflect current Commission policy.

**a. Acquisition Adjustment**

58. Adelphia states that its rate base for the initial rates for the project includes the acquisition price of the existing facilities, which it states the Commission has determined is the correct cost to use for rate base purposes when the two prongs of the *Longhorn* test are met.<sup>92</sup> Under the *Longhorn* test, the acquiring company must (a) show that the facilities will be converted from one public use to a different public use or it must show that it is placing utility assets in FERC-jurisdictional service for the first time and (b) show clear and convincing evidence its acquisition of the facilities will still provide substantial and quantifiable benefits to ratepayers even if the purchase price, including the acquisition premium, is included in rate base for rate-making purposes.<sup>93</sup>

59. Adelphia represents that it meets both prongs of the *Longhorn* test. With respect to the first prong, Adelphia states that the acquisition will result in the project being placed into FERC-jurisdictional natural gas transportation service for the first time. Adelphia adds that the acquisition will also result in conversion of the existing facilities

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<sup>92</sup> *Longhorn Partners Pipeline*, 73 FERC ¶ 61,355 (1995) (*Longhorn*).

<sup>93</sup> *Id.* at 62,112-13.

from dual-use oil and natural gas service on the Zone North A and oil-only transportation service on the Zone South to solely interstate natural gas transportation service on all of the facilities. With respect to the second prong, Adelphia states that the acquisition will result in substantial, quantifiable benefits to ratepayers because the acquisition cost is lower than the cost to replicate these facilities for interstate natural gas transportation service with entirely new construction.<sup>94</sup>

60. Because the acquisition will result in the facilities being placed in FERC-jurisdictional service for the first time and Adelphia has shown that its acquisition price is considerably less than what it would cost to construct comparable facilities, and, therefore, provides substantial, quantifiable benefits to ratepayers, the Commission approves the acquisition adjustment and finds that the use of the acquisition price of the existing facilities for rate base purposes is appropriate.<sup>95</sup>

**b. Return on Equity**

61. Adelphia proposes a 14 percent ROE noting that the Commission has found a 14 percent ROE acceptable for new interstate pipeline projects<sup>96</sup> and that such projects typically involve construction. Adelphia states that, similar to the investment made in a new greenfield project, its proposal involves a substantial capital investment in facilities that will be placed into FERC-jurisdictional natural gas service for the first time. Unlike in *First ECA Midstream, LLC*,<sup>97</sup> where the Commission adopted a lower ROE for an acquisition involving no construction or capital expenditures of any kind by the applicant,

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<sup>94</sup> On September 13, 2018, Commission staff issued a data request asking Adelphia to provide actual cost estimates to substantiate its assertion that it meets the second prong of the *Longhorn* test. In its September 26, 2018 data response, Adelphia projects that the cost of constructing the existing facilities would be \$922,782,265, which substantially exceeds the acquisition price.

<sup>95</sup> See *Missouri Pub. Serv. Comm'n v. FERC*, 783 F.3d 310, 312 (D.C. Cir. 2015) (affirming the Commission's benefits exception set forth in *Longhorn* as allowing an acquisition premium to be included in a pipeline's rate base when the purchase price is less than the cost of constructing comparable facilities, the facility is converted to a new use, and the transacting parties are unaffiliated).

<sup>96</sup> Adelphia cites the following orders approving a 14 percent ROE: *Nexus Gas Transmission*, 160 FERC ¶ 61,022 at P 81; *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080 (2016); *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009).

<sup>97</sup> 155 FERC ¶ 61,222 (2016).

Adelphia asserts that it is making a substantial capital investment, along with the related investment risk, to acquire pipeline facilities utilized for the project, and will be required to undertake substantial construction, replacement, and conversion activities to convert oil transportation facilities into natural gas transportation service at significant expense and risk.

62. Adelphia further argues that unlike in rate proceedings involving an existing pipeline, which can design its rates based on billing determinants reflecting actual subscriptions for firm capacity on its system, Adelphia is basing its rates on the full capacity of its system comparable to the methodology for a greenfield pipeline where the Commission has approved a 14 percent ROE. As of the date of its Initial Application, Adelphia notes that there was unsubscribed capacity in Zone South, placing Adelphia at risk for recovery of the costs associated with that capacity in the same way that a greenfield pipeline would be at risk for such capacity. Accordingly, Adelphia proposes that a 14 percent ROE accurately reflects Adelphia's level of risk and investment in the acquisition, construction, and conversion activities necessary to place the project into service. If the Commission does not approve Adelphia's proposed ROE and instead looks to its most recently approved proxy group and ROE analysis from *El Paso Natural Gas Company*,<sup>98</sup> Adelphia requests that the Commission apply the highest ROE of 11.08 percent contained in that Commission-approved proxy group to reflect the additional risk Adelphia is assuming in connection with the project.

63. In approving 14 percent as the ROE for greenfield applications, the Commission has stated that a 14 percent ROE is an appropriate incentive for new pipeline companies to enter the market and reflects the fact that greenfield pipelines undertaken by a new market entrant face greater risks than existing pipelines because new entrants do not have an existing customer base, and they face greater risks constructing a new pipeline system and servicing new routes than established pipeline companies do when adding incremental capacity to their systems.<sup>99</sup> In contrast, for existing pipelines being converted to provide interstate natural gas transportation service, the Commission has found that these pipelines have more in common with existing pipelines that are expanding their systems than with greenfield pipeline projects and has approved the use

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<sup>98</sup> Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016).

<sup>99</sup> *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 102 (2017), *order on reh'g*, 164 FERC ¶ 61,100, at P 100 (2018). *See also Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*1 (D.C. Cir. Feb. 19, 2019) (unpublished) (14 percent ROE was reasonably based on the specific character of the pipeline project and the project applicant's status as a new market entrant).



of the most recent ROE approved in a litigated NGA section 4 rate case in determining the applicant's ROE.<sup>100</sup>

64. Although Adelphia will be spending significant capital to convert the facilities to interstate natural gas service, the Commission finds that for the purposes of determining the ROE, this project is closer to that of a conversion of an existing pipeline to interstate natural gas service than to that of constructing a greenfield pipeline. As stated above, the Commission authorizes a 14 percent ROE to greenfield pipelines to reflect the increased business risks to the pipeline from not having an existing customer base and having to construct a new pipeline system. These risks, however, do not exist to the same extent with Adelphia. The main pipeline system has been constructed (although Adelphia will construct two laterals and two compressor stations), and service on Zone North A and Zone North B has been subscribed by the Existing Shippers that are receiving service on the system now, prior to its conversion to interstate natural gas transportation service.

65. Because of the structure of Adelphia's project, the majority of which involves the acquisition and conversion of existing facilities, we find that it has more in common with an existing pipeline expansion project and therefore find, consistent with our precedent, that it is more appropriate for Adelphia to use the most recent ROE approved in a litigated NGA section 4 rate case in determining Adelphia's ROE.<sup>101</sup> The last litigated ROE applicable to this situation was from *El Paso Natural Gas Company*, where the Commission adopted an ROE of 10.55 percent.<sup>102</sup> We reject Adelphia's request to apply the highest ROE of 11.08 percent contained in the proxy group from *El Paso*. The Commission has declined to conduct a Discounted Cash Flow analysis or to examine various elements of the proxy group such as the pipeline's position within the zone of reasonableness with regard to risk in order to process NGA section 7 certificate applications in a timely manner and will not do so here.<sup>103</sup> Therefore, the Commission

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<sup>100</sup> *First ECA Midstream LLC*, 155 FERC ¶ 61,222, at P 23 (2016) (rejecting request for 15 percent ROE).

<sup>101</sup> See *Florida Southeast Connection, LLC*, 164 FERC ¶ 61,091, at P 19 (2018) (applying the last litigated ROE from *El Paso Natural Gas Company's* rate case which was 10.55 percent); *First ECA Midstream LLC*, 155 FERC ¶ 61,222 at P 23 (same); see also *ANR Pipeline Co. and TC Offshore, LLC*, 139 FERC ¶ 61,238 at P 127, *reh'g denied*, 143 FERC ¶ 61,225, at PP 61-62 (2013).

<sup>102</sup> *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016).

<sup>103</sup> *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098, at P 37 (2018) ("Conducting a more rigorous DCF analysis in an individual certificate proceeding when other elements of the pipeline's cost of service are based on estimates would not be the most effective or

approves an ROE of 10.55 percent for the project and directs Adelphia to revise its rates accordingly.

## 2. Fuel

66. Adelphia proposes to assess an initial in-kind fuel retainage to recover fuel and lost and unaccounted-for gas (L&U). The initial fuel retainage percentages will be 0.76 percent on Zone South and 0.00 percent on each of Zone North A and Zone North B. The L&U percentage for all zones will be 0.05 percent.

67. Adelphia proposes to use an in-kind fuel tracking mechanism to update the in-kind fuel retainage, which is referred to as Transporter's Use (%) (TUP), to recover fuel and L&U. Adelphia states that it will re-determine the TUP by zone by dividing Adelphia's projection of fuel usage and any L&U for the 12-month period beginning April 1, plus any under-collections and less any over-collections for the prior period, by its projection of applicable throughput for the same 12-month period. Adelphia states that it will make annual filings with the Commission to restate its TUP to be effective on April 1 of each year after the pipeline is placed into service. The Commission finds that Adelphia's proposed initial fuel and L&U recovery percentage is reasonable and finds that the proposed tariff recovery mechanism is consistent with Commission policy.<sup>104</sup>

## 3. Negotiated Rates

68. In General Terms and Conditions (GT&C) 6.30 of its *pro forma* tariff, Adelphia proposes the authority to charge its shippers negotiated rates. Adelphia states that it will provide service to project shippers at negotiated rates; therefore, Adelphia must file either a negotiated rate agreement or a tariff record setting forth the essential elements of any such agreement in accordance with the Alternative Rate Policy Statement<sup>105</sup> and the Commission's negotiated rate policies.<sup>106</sup> Adelphia must file negotiated rate agreements

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efficient way to determine an appropriate ROE.”); *Transcontinental Gas Pipe Line Co., LLC*, 156 FERC ¶ 61,092, at P 27 (2016) (same).

<sup>104</sup> 18 C.F.R. § 154.303 (2019); *ANR Pipeline Co.*, 108 FERC ¶ 61,050 (2004).

<sup>105</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996) (Alternative Rate Policy Statement).

<sup>106</sup> *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*,

or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.<sup>107</sup>

#### 4. Three Year Filing Requirement

69. Consistent with Commission precedent, Adelphia is required to file a cost and revenue study no later than three months after the end of its first three years of actual operation of the Zone South facilities to justify its existing cost-based firm and interruptible recourse rates.<sup>108</sup> In its filing, the projected units of service should be no lower than those upon which Adelphia's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.<sup>109</sup> Adelphia's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Adelphia is advised to include as part of the eFiling description a reference to Docket No. CP18-46-000 and the cost and revenue study.<sup>110</sup> After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. Alternatively, in lieu of this filing, Adelphia may make a NGA section 4 general rate filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

#### G. Non-Conforming Service Agreements

70. Adelphia requests approval of two new firm service agreements contemplated by the precedent agreements with the Existing Shippers that will contain non-conforming provisions; these two agreements will replace the Existing Shippers' long-term legacy

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114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

<sup>107</sup> Adelphia is also required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

<sup>108</sup> *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080, at P 139; *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29; *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224 at P 57; *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

<sup>109</sup> 18 C.F.R. § 154.313 (2019).

<sup>110</sup> *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

capacity commitments on the existing facilities to be acquired by Adelpia. The non-conforming provisions grant each of the Existing Shippers the one-time right to extend the initial ten-year primary term by one additional five-year period. This right may be exercised no later than eighteen months prior to the end of the Primary Term.

71. In *Columbia Gas Transmission Corp.*, the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties.<sup>111</sup> The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.<sup>112</sup> However, not all material deviations are impermissible. As the Commission explained in *Columbia*,<sup>113</sup> provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination.<sup>114</sup> In other proceedings, we have also found that non-conforming provisions may be necessary to reflect the unique circumstances involved with constructing new infrastructure and to provide the needed security to ensure the viability of a project.<sup>115</sup>

72. We find that the incorporation of the non-conforming provisions in Adelpia's service agreements do constitute material deviations from Adelpia's *pro forma* service agreement. Consistent with Commission precedent,<sup>116</sup> we find the non-conforming provisions identified by Adelpia are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing

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<sup>111</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

<sup>112</sup> *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

<sup>113</sup> *Columbia*, 97 FERC at 62,003-62,004.

<sup>114</sup> See also *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

<sup>115</sup> *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

<sup>116</sup> *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at P 101 (2017).

service, and do not result in any customer receiving a different quality of service.<sup>117</sup> When Adelphia files its non-conforming service agreements, Adelphia must identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.

73. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Adelphia must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Adelphia's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.<sup>118</sup> In addition, we emphasize that the above determination relates only to those items described by Adelphia in its application and not to the entirety of the precedent agreement or the language contained in the precedent agreement.<sup>119</sup>

## H. Tariff

74. Adelphia included a *pro forma* tariff applicable to service on its proposed pipeline. We approve the *pro forma* tariff as generally consistent with Commission policies, with the following exceptions.

### 1. North American Energy Standards Board (NAESB) Standards

75. Adelphia reflects tariff provisions in its proposed GT&C section 31, NAESB Standards, implementing the NAESB Wholesale Gas Quadrant (WGQ) Version 3.0 business practice standards.<sup>120</sup> In the time since Adelphia filed its proposed tariff in this

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<sup>117</sup> See, e.g. *Gulf South Pipeline Co., L.P.*, 115 FERC ¶ 61,123 (2006); *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

<sup>118</sup> 18 C.F.R. § 154.112 (2019).

<sup>119</sup> A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

<sup>120</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines; Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public*

proceeding, the Commission amended its regulations to incorporate by reference, with certain enumerated exceptions, the NAESB WGQ Version 3.1 business practice standards.<sup>121</sup> Thus, we direct Adelphia to file revised tariff records implementing the latest version incorporated by the Commission of the NAESB WGQ business practice standards.

76. On January 12, 2018, Adelphia requested<sup>122</sup> extensions of time of the NAESB WGQ business practice pertaining to storage information,<sup>123</sup> and various NAESB WGQ business practice standards pertaining to flowing gas, invoicing, and capacity release.<sup>124</sup> However, in its July 10, 2018 Data Response, Adelphia states that it will not be providing storage services, and it no longer anticipates needing extensions of time to implement various NAESB WGQ business practice standards regarding storage information, flowing gas, invoicing, and capacity release.<sup>125</sup> Thus, Adelphia is directed to revise its tariff to remove standards 0.4.1, 2.4.1 through 2.4.8, 2.4.17, 2.4.18, 3.4.1 through 3.4.4, 5.4.17, and 5.4.23 from the section titled “Standards for which Waiver or Extension of Time to Comply have been Requested.”

## 2. Right of First Refusal

77. Section 28.6(d)(2) of Adelphia’s proposed GT&C reads in part,

To determine whether Shipper has matched the Best Bid(s), Transporter shall use the same methodology as was used in the evaluation of the valid bids. *Shipper must agree that it will*

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*Utilities*, Order No. 587-W, 153 FERC ¶ 61,061 (2015), *order on reh’g*, 154 FERC ¶ 61,207 (2016).

<sup>121</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-Y, 83 Fed. Reg. 62,242 (2018), FERC Stats. & Regs. ¶ 61,109 (2018). Under Order No. 587-Y, interstate natural gas pipelines are required to file compliance filings with the Commission by April 1, 2019 and are required to comply with the Version 3.1 standards incorporated by reference in this rule on and after August 1, 2019.

<sup>122</sup> Adelphia Initial Application, Exhibit P at 149-150.

<sup>123</sup> NAESB WGQ Standard 0.4.1.

<sup>124</sup> NAESB WGQ Standards 2.4.1 through 2.4.8, 2.4.17, 2.4.18, 3.4.1 through 3.4.4, 5.4.17, and 5.4.23.

<sup>125</sup> Adelphia July 10, 2018 Data Response at 2-3.

*match (a) the longest term, and (b) the highest rate for such Transportation Service, up to the Maximum Recourse Rate, that is offered by any other [Right of First Refusal] Bidder[.]*

78. The emphasized language quoted above is contradicted by the sentence that precedes it. GT&C section 28.6(c)(1) states that “the “Best Bid(s)” shall be the bid(s) which yields to Transporter the highest net present value [NPV].” The Commission has found that “[u]nder an NPV bid evaluation method, shippers may bid whichever combination of rate and term best represents the value they place on the capacity.”<sup>126</sup> Thus, an existing shipper is not required to match the rate or term bid by a third party when the pipeline has posted in the notice that NPV will be the bid evaluation criteria.<sup>127</sup> Therefore, we direct Adelphia to delete the emphasized language quoted above from GT&C section 28.6(d)(2).

### **I. Accounting**

79. Exhibit S of the application includes proposed accounting entries recording Adelphia’s acquisition of pipeline facilities from Interstate Energy. Adelphia proposes to clear the acquisition through Account 102, Gas Plant Purchased or Sold, and record the original cost and related accumulated depreciation on its books. Additionally, Adelphia’s proposed accounting entries record an acquisition adjustment of \$171.6 million in Account 114, Gas Plant Acquisition Adjustments. Adelphia proposes to amortize the acquisition adjustment to Account 406, Amortization of Gas Plant Acquisition Adjustments, over a period not to exceed the estimated remaining life of the assets acquired, in accordance with the Commission’s regulations. The amortization of the acquisition adjustment to Account 406 is appropriate based on the Commission’s approval of the related rate recovery of the full purchase price to acquire the facilities.

### **J. Environmental Analysis**

80. On May 1, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Adelphia Gateway Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI). The NOI was published in the *Federal Register*<sup>128</sup> and mailed to 4,709 interested parties, including federal, state, and local government representatives and agencies; elected officials; affected landowners; environmental and public interest groups; Native

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<sup>126</sup> *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042 at P 156.

<sup>127</sup> *Id.*; *Transcontinental Gas Pipe Line Corp.*, 105 FERC ¶ 61,365, at P 20 (2003).

<sup>128</sup> 83 Fed. Reg. 20,802 (2018).

American tribes; other interested individuals and entities; and local libraries. On May 30 and 31, 2018, Commission staff conducted public scoping sessions in Center Valley and Essington, Pennsylvania, respectively, to provide the public with an opportunity to learn more about the project and comment on environmental issues that should be addressed in the Environmental Assessment (EA). Thirteen individuals provided oral comments on the project at the scoping sessions.<sup>129</sup>

81. We received a total of 531 comments on the project in response to the NOI. Comments on the project were filed by 1 federal agency, 1 state agency, 4 members of congress, 2 state utility commissions, 20 county or municipal entities, 17 non-governmental organizations, and 361 interested members of the public, including several landowners.<sup>130</sup>

82. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an EA for Adelphia's proposal. The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation-Pipeline and Hazardous Materials Safety Administration (DOT-PHMSA) participated as cooperating agencies in the preparation of the EA. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, socioeconomics, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received prior to issuance of the EA were addressed in the EA.<sup>131</sup>

83. The EA was issued for a 30-day comment period and placed into the public record on January 4, 2019. The *Notice of Availability* for the EA was mailed to 4,684 interested parties. On February 8, 2019, the Commission reopened the comment period until March 1, 2019, due to the funding lapse which affected certain federal agencies during the initial comment period. In response to the EA, we received over 230 comments from over 150 interested members of the public. The environmental issues raised in response to the EA include procedural concerns regarding the Commission's environmental review process, the EA's project purpose and need statement,<sup>132</sup> alternatives, land use impacts, impacts on geologic resources, wetland and water resources impacts, vegetation impacts,

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<sup>129</sup> Transcripts of the scoping sessions were entered into the public record in Docket No. CP18-46-000.

<sup>130</sup> Numerous stakeholders provided multiple comments.

<sup>131</sup> Table A-6 of the EA provide a detailed and comprehensive list of issues raised during scoping. EA at 27.

<sup>132</sup> Issues related to whether the project is needed are addressed in section III.A.4.



impacts on wildlife and special status species, socioeconomics, cultural resources, air quality impacts, noise impacts, project safety, cumulative impacts, indirect impacts, and greenhouse gas emissions. These concerns are addressed in the EA and below.

**1. Procedural Issues**

**a. Insufficient Comment Period and Request for Public Hearings**

84. Commenters request an extension of the public comment period to allow parties additional time to review the EA and provide comments.<sup>133</sup> The 30-day comment period established for this EA is the standard period of time provided to comment on EAs for natural gas projects and we believe it provides a reasonable amount of time for the public to review and provide comments on a project of this scope.<sup>134</sup> Moreover, in this proceeding, the comment period was reopened for an additional 21 days to accommodate agencies that had a lapse in federal funding during the original comment period. All stakeholders were able to submit timely comments during this extended time period. Additionally, we continued to accept and review comments beyond the close of the comment period. Therefore, further extensions of the comment period are not necessary.

85. Commenters also request that a public comment session be held to allow people the opportunity to comment on the EA.<sup>135</sup> Stakeholders were provided an opportunity to submit written comments on the EA, as is typical Commission practice for projects with a scope similar to that of Adelphia's. We received over 200 comments during the extended comment period addressing a variety of issues. While some commenters request a public comment session, no commenter alleges that they were denied an opportunity to comment on the EA or were unable to submit their comments in writing. Therefore, we

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<sup>133</sup> See, e.g., Christine Shelly February 4, 2019 Comments.

<sup>134</sup> See Environmental Assessment for the Southeastern Trail Project, CP18-186-000 (Feb. 8, 2019) (providing a 30-day comment period for a project consisting of installing new pipeline, modifying existing compressor stations, and other appurtenant facilities).

<sup>135</sup> See, e.g., Arianne Elinich January 14, 2019 Comments.

conclude that the public was afforded an adequate opportunity to review and comment on the EA.<sup>136</sup>

**b. Request for an Environmental Impact Statement**

86. Commenters request that an environmental impact statement (EIS) be prepared for the project, stating that the project would result in significant adverse impacts.<sup>137</sup> Delaware Riverkeeper asserts that where an action's effects are not precisely known, as in the case of upstream natural gas production caused by the project, the Council on Environmental Quality's regulations suggest that the action is more likely to warrant an EIS.<sup>138</sup> Delaware Riverkeeper also argues that the Commission's regulations require an EIS for any construction projects under section 7 of the NGA.<sup>139</sup>

87. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.<sup>140</sup> If an agency determines that a federal action is not likely to have significant adverse effects, it may prepare an EA. Additionally, the Commission's regulations state that even for major construction projects under section 7 of the NGA, an EA may be prepared first if the Commission believes that a proposed action may not be a major federal action significantly affecting the quality of the human environment.<sup>141</sup>

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<sup>136</sup> See *Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221, at P 51 (2018) (finding a 30-day comment period allowed adequate review time for the public to comment on an EA).

<sup>137</sup> See, e.g., Rebecca Canright February 28, 2019 Comments.

<sup>138</sup> Delaware Riverkeeper March 1, 2019 Comments at 20 (citing 40 C.F.R. § 1508.27(b)(5) (2018) and *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 154-55 (It is not "sufficient for the agency merely to state that the environmental effects are currently unknown," because uncertainty is "one of the specific criteria for deciding whether an [environmental impact statement] is necessary.")).

<sup>139</sup> Delaware Riverkeeper March 1, 2019 Comments at 3 (citing 18 C.F.R. § 380.6 (2018)).

<sup>140</sup> See 42 U.S.C. § 4332(2)(C) (2018); 40 C.F.R. § 1502.4 (2019).

<sup>141</sup> 18 C.F.R. § 380.6(b) (2019); see also *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App'x 472, 474 (2d Cir. 2012) (EIS not required for 39-mile-long greenfield pipeline project).

88. Here, Commission staff prepared an EA to determine whether the project would have a significant impact on the human environment, which would then require the preparation on an EIS. The EA assesses the project effects that could occur on a variety of resources. Based on the findings in the EA, we agree with its conclusion that approval of the project will not constitute a major federal action significantly affecting the quality of the human environment.<sup>142</sup> Therefore, preparation of an EIS is not required.<sup>143</sup>

**c. Privileged and Outstanding Information**

89. Commenters express concern that certain information was still outstanding at the time of the EA's issuance and that some reports were filed as privileged and confidential.<sup>144</sup> Commenters state that the EA's finding of no significant impact for the project was issued prematurely because some federal and state agencies have not completed their review and some information is still outstanding.<sup>145</sup>

90. With respect to the information filed as privileged, Adelphia initially filed multiple reports as privileged and confidential; however, Adelphia refiled most of the reports as public based on recommendations from Commission staff.<sup>146</sup> There is no evidence that any remaining privileged and confidential reports are not appropriately filed as such. Moreover, the Commission's regulations provide a procedure to allow parties access to such information,<sup>147</sup> and no commenter claims that they were improperly denied such access.

91. While some information was still outstanding at the time of issuance of the EA, the lack of this final information does not deprive the public of a meaningful opportunity to comment on the environmental effects of the project or a feasible way to mitigate or

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<sup>142</sup> With respect to Delaware Riverkeeper's contention regarding impacts of natural gas production, as discussed below, natural gas production is not an indirect impact of the project. Furthermore, there are no active or inactive oil and gas wells within 0.25 miles of the project and no planned oil and gas wells were identified in the project area. EA at 35.

<sup>143</sup> Concerns about specific resources are addressed below.

<sup>144</sup> See, e.g., West Rockhill Township February 1, 2019 Comments at 1.

<sup>145</sup> See, e.g., *id.*; Alexander Ulmer February 4, 2019 Comments.

<sup>146</sup> See Adelphia August 13 and October 10, 2018 Submissions.

<sup>147</sup> 18 C.F.R. § 388.112 (2019).

avoid such effects. Nor does the outstanding information prevent the Commission from finding that the project would not constitute a major federal action significantly affecting the quality of the human environment.<sup>148</sup>

92. In any event, any outstanding reports, plans, or mitigation measures will be filed in the docket for this proceeding and available for public review and inspection. To the extent any of the pending consultations or studies indicate a need for further review, or indicate a potential for significant adverse environmental impacts, the Director of the Office of Energy Projects will take appropriate action under his authority under the Environmental Conditions appended to this order, including, but not limited to, not authorizing the commencement of construction.<sup>149</sup>

**d. Impacts of the Existing System**

93. Commenters argue that the EA does not sufficiently disclose environmental impacts and provides an inadequate assessment of the Interstate Energy's Existing System, which includes the existing 18-inch-diameter mainline, 20-inch-diameter pipeline, and the four existing meter stations.<sup>150</sup> Cooks Creek Watershed Association asserts that the EA improperly concludes that there will be no project impacts on the Existing System because no new work is proposed.<sup>151</sup> Cooks Creek Watershed Association states that, at a minimum, there will be an increase in operational, repair, and maintenance activities as a result of the project.<sup>152</sup> Cooks Creek Watershed Association

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<sup>148</sup> See generally *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,097, at PP 25-28 (2009); see also *Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (holding that an agency can make "even a final decision" — e.g., granting a certificate before an environmental hearing was finished — as long as the agency assesses the environmental data before the certificate's effective date).

<sup>149</sup> See *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,097 at P 28 (explaining that environmental conditions designed to ensure that the additional environmental work and analyses are completed, the environmental protections are in place, and the site-specific plans are approved, must be completed before construction begins on the pipeline).

<sup>150</sup> See, e.g., Tina Stonorov Daly January 18, 2019 Comments at 2; Cooks Creek Watershed Association February 4, 2019 Comments at 1-2.

<sup>151</sup> Cooks Creek Watershed Association February 4, 2019 Comments at 1.

<sup>152</sup> *Id.*

also alleges that the EA's failure to properly address the Zone North A and B systems was improper segmentation under the Clean Water Act.<sup>153</sup>

94. As discussed in the EA, it is anticipated that Adelphia's purchase of the Existing System will not have any environmental impacts on most resources.<sup>154</sup> Operation and maintenance activities, including mowing and right-of-way inspections, will be similar to current operation and maintenance of the Existing System. Impacts on certain resources associated with the Existing System are addressed where applicable.<sup>155</sup> This includes impacts from construction and operation associated with geological hazards (including landslides, subsidence, and karst), groundwater resources, public land, recreation, special interest areas, property values, air quality, and reliability and safety. With respect to segmentation, Cooks Creek Watershed Association points to no other connected action from which review of the Adelphia Gateway Project was improperly segmented.<sup>156</sup>

**e. Future Modifications**

95. Commenters request additional information regarding future plans, including modifications or upgrades, as well as abandonment of the project facilities, and details regarding Adelphia's responsibilities at the end of the project life.<sup>157</sup> Thornbury Township also questions whether the project would transport natural gas liquids in the future.<sup>158</sup> Cooks Creek Watershed Association states that if the northern section of the Existing System is ever upgraded, the upgrade project should be subject to a new EIS.<sup>159</sup>

96. Adelphia has not proposed any activities beyond its current proposal. If Adelphia decides to modify or upgrade facilities, such changes would be subject to the

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<sup>153</sup> *Id.* at 2.

<sup>154</sup> EA at 6.

<sup>155</sup> *Id.*

<sup>156</sup> *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 49-50 (D.C. Cir. 2015) (*Sierra Club*) (The purpose of the segmentation doctrine is to "prevent the government from 'segment[ing]' its own 'federal actions into separate projects.'" (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014))).

<sup>157</sup> *See, e.g.*, Tina Stonorov Daly January 18, 2019 Comments at 1.

<sup>158</sup> Thornbury Township March 8, 2019 Comments.

<sup>159</sup> Cooks Creek Watershed Association February 4, 2019 Comments at 2.

Commission's authorization under section 7(c) of the NGA<sup>160</sup> and other applicable state and federal regulatory requirements. Similarly, any abandonment of the pipeline facilities in the future would be subject to Commission authorization under section 7(b) of the NGA<sup>161</sup> and other applicable state and federal regulatory requirements.<sup>162</sup> As such, if a future proposed action is determined to significantly impact the environment, an EIS would be prepared.<sup>163</sup>

**f. Compliance with State Statutes and Constitutions**

97. Commenters argue that the project is in conflict with the rights afforded to them by Pennsylvania's Constitution.<sup>164</sup> Commenters also assert that the siting of project facilities, most notably the Quakertown Compressor Station, is in violation of local and county zoning regulations.<sup>165</sup> West Rockhill Township states that Adelphia has represented that it does not plan to comply with local ordinances because of the Commission's jurisdiction over the project and argues that Adelphia must comply with certain township ordinances that are mandated by federal statutes, including the Clean Water Act and Clean Air Act.<sup>166</sup>

98. The Commission is the federal agency with siting authority under the NGA. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization.<sup>167</sup> We encourage our

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<sup>160</sup> 15 U.S.C. § 717f(c) (2018).

<sup>161</sup> *Id.* § 717f(b).

<sup>162</sup> This would include any request by Adelphia to remove its pipeline from interstate natural gas transportation service in order to transport other products, such as natural gas liquids.

<sup>163</sup> 40 C.F.R. § 1502.4 (2019).

<sup>164</sup> *See, e.g.*, Christine Shelly January 14, 2019 Comments.

<sup>165</sup> *See, e.g.*, Jeffrey Cunningham January 28, 2019 Motion to Intervene at 2.

<sup>166</sup> West Rockhill Township May 1, 2019 Comments at 1.

<sup>167</sup> *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

applicants to file for and receive the local and state permits, in good faith, as stewards of the community in which the facilities are located. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by the Commission.<sup>168</sup> With respect to needed federal authorizations, Environmental Condition 9 requires Adelphia to receive all applicable authorizations required under federal law prior to construction.

## 2. Alternatives

99. The EA reviewed a variety of system alternatives, route variations, and above ground facility alternatives for the proposed project to determine if the alternatives are both technically feasible and offer significant environmental advantages.<sup>169</sup> As stated in the EA, although the alternatives were technically feasible, none provide a significant environmental advantage over the project design.<sup>170</sup> Therefore, the EA concludes that the proposed project, as modified by Commission staff's recommendations, to be the preferred alternative.<sup>171</sup>

### a. Project Purpose

100. Commenters contend that the EA's description of the project's purpose improperly narrows the range of alternatives that the EA considers.<sup>172</sup> Delaware Riverkeeper argues that the EA's statement of need does not allow for the public to know the intent, purpose, or rationale for the project and fails to fairly balance the alleged need for the project with its adverse impacts.<sup>173</sup> Delaware Riverkeeper also asserts that the project purpose for the

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<sup>168</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d at 243 (holding state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

<sup>169</sup> *Id.* at 174-192.

<sup>170</sup> *Id.* at 192.

<sup>171</sup> *Id.*

<sup>172</sup> See, e.g., Tina Stonorov Daly January 18, 2019 Comments at 1; Delaware Riverkeeper March 1, 2019 Comments at 12-13.

<sup>173</sup> Delaware Riverkeeper March 1, 2019 Comments at 6, 9-10.

alternative section is narrower than the purpose and need stated in the EA, ensuring that only natural gas alternatives will be considered and preventing consideration of alternatives that would provide “energy” to the markets, such as energy efficiencies and renewable energy.<sup>174</sup>

101. We disagree. The applicant’s statement of purpose and need informs the choice of alternatives. The choice of alternatives, and the depth of discussion of those alternatives, must be reasonable.<sup>175</sup> The Council on Environmental Quality (CEQ) advises that “a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.”<sup>176</sup> An agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is “shaped by the application at issue and by the function that the agency plays in the decisional process.”<sup>177</sup> Here, the EA’s stated purpose and need for the project, to provide natural gas pipeline capacity to the Greater Philadelphia industrial region with potential to serve additional markets in the Northeast while continuing to provide uninterrupted service to two existing power plants, provided an appropriate basis on which to evaluate the project’s alternatives.<sup>178</sup> We also disagree with Delaware Riverkeeper’s assertion that the project purpose used to evaluate alternatives was different or narrower than the EA’s project purpose and need statement. The EA makes clear that when evaluating alternatives, the first consideration for including an alternative in the EA’s analysis is whether or not it could satisfy the stated purpose of the project.<sup>179</sup>

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<sup>174</sup> *Id.* at 13-14 (citing *Envntl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 F. App’x 440, 443 (9th Cir. 2007) (agencies cannot “define[] the objectives of the project so narrowly that the project [is] the only alternative that would serve those objectives”)).

<sup>175</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

<sup>176</sup> CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

<sup>177</sup> *Citizens Against Burlington, Inc.*, 938 F.2d at 195, 199.

<sup>178</sup> EA at 2.

<sup>179</sup> *Id.* at 175.



**b. No Action Alternative**

102. Delaware Riverkeeper contends that the EA wrongly dismisses the no action alternative by claiming that another pipeline would be built.<sup>180</sup> Delaware Riverkeeper asserts that the EA's basis for this claim is that the markets being served by the project need additional capacity and another entity would be willing to construct the necessary facilities, which is not the case.<sup>181</sup> Delaware Riverkeeper further avers that the Commission wrongly assumes the precedent agreements signed for other projects indicate that there is not sufficient capacity on those pipelines to meet the needs for the Adelpia Gateway Project.<sup>182</sup>

103. As stated, need for the project was demonstrated by signed precedent agreements for approximately 76 percent of the project's capacity. Moreover, Ordering Paragraph (E) requires that Adelpia execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements prior to the start of construction. This demonstrates that the project is needed and, in the absence of the project, the customers would need to seek construction of an alternative project to serve those needs.<sup>183</sup>

**c. Alternatives Considered**

104. Delaware Riverkeeper argues that the EA limited its alternatives analysis to only those facilities that the public commented on in violation of NEPA's requirement to consider alternatives.<sup>184</sup> Additionally, Delaware Riverkeeper states that the EA wrongly dismisses any alternative that would require additional construction, even if that alternative may be environmentally beneficial.<sup>185</sup>

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<sup>180</sup> Delaware Riverkeeper March 1, 2019 Comments at 15.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* (claiming that the Commission does not ensure actual need exists through verifying shippers, market demands, and alternatives).

<sup>183</sup> The Zone South system, where all new construction will occur, is 49 percent subscribed.

<sup>184</sup> *Id.* at 16.

<sup>185</sup> *Id.* at 16-17.

105. Comments during the scoping process were extensive. Where system, route, or site alternatives were identified by staff, agencies, or commenters, those alternatives were addressed within the EA based on staff's independent analysis. We disagree with Delaware Riverkeeper's contention that the EA improperly dismisses certain alternatives because they will result in increased construction. The EA compares the impacts on each resource as well as an analysis of impacts on resources that are not common to the alternatives being considered.<sup>186</sup> Commission staff then balances the overall impacts and all other relevant considerations to determine if an alternative provides a significant environmental advantage.<sup>187</sup>

106. Delaware Riverkeeper contends that the EA failed to consider alternatives to the blowdown assembly valves (BAV) in Chester County, noting that in its scoping comments it identified concerns regarding how close together the valves were.<sup>188</sup> Delaware Riverkeeper also avers that the EA failed to consider any alternative for the Tilghman lateral that would have addressed concerns regarding the lateral's construction in a densely populated area.<sup>189</sup>

107. DOT-PHMSA regulations require a blowdown valve between each mainline valve (MLV) to release natural gas as rapidly as practicable.<sup>190</sup> While it is true that alternative locations for only a subset of BAVs in Chester County were analyzed in the EA, that does not mean Commission staff did not assess the siting of the other BAVs during development of the EA. Commission staff issued several data requests asking Adelpia to evaluate alternatives for project facilities, including the BAVs in Chester County, based on scoping comments. Staff reviewed and assessed Adelpia's responses to these comments.<sup>191</sup> Further, in its October 2018 filing, Adelpia reported that the Pickering Creek BAV was removed from the project, which negated the need to address the comments raised regarding this BAV. Commission staff found that the proposed

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<sup>186</sup> EA at 175.

<sup>187</sup> *Birckhead v. FERC*, 925 F.3d 510, 516 (D.C. Cir. 2019) (upholding the Commission's determination that an alternative site would not have a significant environmental advantage based on an overall assessment of various factors).

<sup>188</sup> Delaware Riverkeeper March 1, 2019 Comments at 16-17.

<sup>189</sup> *Id.* at 17.

<sup>190</sup> 49 C.F.R. § 192.179 (2019).

<sup>191</sup> Adelpia August 13, 2018, October 2, 2018, and October 11, 2018 Filings.

installation of blowdown assemblies at the existing mainline valves is in accordance with regulatory requirements; and we concur.

108. For the Tilghman Lateral, the EA acknowledges that construction will occur in densely populated areas and analyzes three variations which generally follow existing rights-of-way or utility corridors.<sup>192</sup> The Tilghman Lateral, and the meter stations along the pipeline route, are all within the densely populated and industrial area of Marcus Hook. There is no alternative route that would provide access to the subscribers Adelpia seeks to interconnect with at the Delmarva, Monroe, Transco, and Tilghman Meter Stations that would avoid the densely populated parts of Marcus Hook. Therefore, the EA evaluated minor route variations that are smaller in scale and shorter than major route alternatives but would avoid site-specific resource issues or concerns. The EA finds that none of the alternatives considered would offer a significant environmental advantage.<sup>193</sup> We concur.

**d. Quakertown Compressor Station Alternatives**

109. Commenters assert that an alternative site, such as the Salford Alternative site or the Cromby Alternative site, should have been selected as the preferred location for the Quakertown Compressor Station.<sup>194</sup> Commenters argue that the Salford Alternative site is preferable because of the larger parcel size, increased distance to residences, immediate access for emergency vehicles, and the presence of existing infrastructure (e.g., sewer, water, electric).<sup>195</sup> Further, Vera Cole asserts that the Salford Alternative site is within the optimal hydraulic range identified by Adelpia (between mileposts 46.4 and 51.9).<sup>196</sup> Other commenters contend that the Cromby Alternative site is more suitable for a compressor station because of its size (acreage) and question the EA's statement that the

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<sup>192</sup> EA at 180.

<sup>193</sup> *Id.* at 180-182.

<sup>194</sup> *See, e.g.*, Kathy Weirback January 28, 2019 Comments; Vera Cole February 4, 2019 Comments 6-7.

<sup>195</sup> *See, e.g.*, Vera Cole February 4, 2019 Comments 6-7; West Rockhill Township September 10, 2019 Comments.

<sup>196</sup> *Id.* at 2.

alternative site would result in more emissions based on information provided by Adelpia.<sup>197</sup>

110. Adelpia proposes to construct the Quakertown Compressor Station at milepost 49.4 on the Existing System, within the fenceline of an existing meter station currently owned by Interstate Energy where there are multiple existing pipelines and natural gas infrastructure facilities.<sup>198</sup> Construction of the compressor station would require 3.7 acres (1.4 acres of open land, 0.7 acre of non-forested wetland, and 1.6 acres of developed land) and operation of the additional facilities would be entirely within the existing 1.5-acre meter station fenceline (and would occupy 1.2 acres within the developed site).<sup>199</sup> The proposed Quakertown Compressor Station would be adjacent to residential, open, and agricultural land in Richland Township, and adjacent to residential and agricultural land within West Rockhill Township.<sup>200</sup>

111. As stated in the EA, the existing Quakertown metering facility is adjacent to Rich Hill Road (about 525 feet from the road) with trees north and south of the site that would serve as a visual buffer for nearby residents.<sup>201</sup> The existing access road to the facility would also provide permanent access to the proposed compressor station. Land to the east and west of the existing site are a mix of agricultural and open land, providing unobstructed views of the existing station.<sup>202</sup> With the implementation of Adelpia's proposed mitigation and the Commission staff's Recommended Conditions 22 and 25, the EA finds that the proposed Quakertown Compressor Station would not result in significant impacts on the existing land use, viewshed, air quality, noise, and safety environment surrounding the proposed site. For the four alternative sites for the Quakertown facilities that were evaluated, the EA concludes that none of these sites provided a significant environmental advantage over the proposed site.<sup>203</sup>

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<sup>197</sup> See, e.g., Kathy Weirback March 4, 2019 Comments.

<sup>198</sup> EA at 183.

<sup>199</sup> *Id.* at 87.

<sup>200</sup> *Id.* at 133-134.

<sup>201</sup> *Id.* at 100.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 183-187. See also *id.* at 184, table C-2 (comparing the acres and types of land impacted by the proposed site with the four alternative sites).

112. Although the Salford Alternative site is larger than the proposed site by about one acre, it is about 4.5 miles south of the southernmost extent of the optimal hydraulic range.<sup>204</sup> Similarly, the Cromby Alternative site is also about an acre larger than the proposed site and is 19.1 miles south of the optimal hydraulic range.<sup>205</sup> Both alternatives would necessitate additional compression as compared to the proposed site and neither alternative would negate the need for the new meter station at the existing Quakertown facility.<sup>206</sup> Thus, both alternative sites would result in greater emissions of air pollutants, as compared to the proposed site.<sup>207</sup> Therefore, we agree with the EA's conclusion that the Cromby and Salford Alternative sites do not offer a significant environmental advantage over the Quakertown Compressor Station.<sup>208</sup>

e. **Electric-Driven Compressor Units**

113. Commenters recommend that the Quakertown and Marcus Hook Compressor Stations use electric motor-driven compressors to reduce air emissions, noise, and vibration.<sup>209</sup> Clean Air Council<sup>210</sup> argues that the EA improperly dismisses the use of electric compressor units as an alternative for the project.<sup>211</sup> First, Clean Air Council contends that the EA's assertion that additional acreage would be affected by the use of electric compressors is not justified for the Marcus Hook Compressor Station because

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<sup>204</sup> *Id.* at 184.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *See, e.g.*, Margaret Fitzgerald January 22, 2019 Comments.

<sup>210</sup> Clean Air Council's February 1, 2019 Comments were joined by Delaware Riverkeeper, the Pennsylvania Chapter of the Sierra Club, Earthworks, Pipeline Safety Coalition, the New Jersey Highlands Coalition, East Goshen Safety and Environmental Advocates, Edgmont Community Safety Coalition, West Whiteland Residents for Safety, Middletown Coalition for Community Safety, Goshen United for Public Safety, and Del-Chesco United for Pipeline Safety.

<sup>211</sup> Clean Air Council February 1, 2019 Comments at 7.

that station is located in the same industrial site as a power plant.<sup>212</sup> With respect to the Quakertown Compressor Station, Clean Air Council asserts that power lines are located less than one mile from the station and states that it is unclear whether the Commission considered if the electric transmission line could be collocated with the natural gas pipeline, reducing the acreage impacted.<sup>213</sup> Clean Air Council also notes that while the EA quantifies the new acreage affected by the use of electric compressors, the EA also states that Adelphia does not know the route or length of the new power lines required for power upgrades to compressor and meter stations and does not analyze the impacts of these upgrades.<sup>214</sup> Clean Air Council further contends that the EA wrongly considers the need to increase the station footprint due to electrical equipment, but not the ability to decrease it by removing gas turbine equipment, and notes that neither consideration is quantified.<sup>215</sup>

114. The EA states that use of electric-driven compressor units would require the installation of about 0.7 miles of an additional dedicated feeder connection from the nearest substation, which could not be routed along the existing right-of-way as they do not travel the same direction.<sup>216</sup> The EA does not quantify the additional acreage associated with this dedicated feeder, nor the acreage associated with expansion of the compressor station site to accommodate a larger main transformer, auxiliary transformer, additional electrical equipment, and additional generators for backup power needs for electric-driven compressor units, but additional acreage would likely be needed. The space required for the electric-driven compressor units themselves would be approximately equivalent to the space required for natural-gas driven units; therefore, the existing station footprint would not be reduced.

115. Next, Clean Air Council argues that the EA failed to consider the benefits of electric driven compressors.<sup>217</sup> Clean Air Council notes that electric systems provide a

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<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 7-8.

<sup>215</sup> *Id.* at 8.

<sup>216</sup> EA at 186.

<sup>217</sup> Clean Air Council February 1, 2019 Comments at 8. *See also* Delaware Riverkeeper March 1, 2019 Comments at 17.

wider range of speed control, reduce the risk of oil spills, reduce vibration, require less maintenance, and may even allow a reduction in station footprint.<sup>218</sup>

116. In order for the alternative of using electric-driven compressor units to be preferable to the proposed action, it must satisfy the stated purpose of the project, be technically and economically feasible, and present a significant environmental advantage over the proposed action.<sup>219</sup> Considering the impacts associated with the additional space requirement for the equipment listed above, the electric-driven compressor unit alternative does not present a significant environmental advantage in this case.<sup>220</sup>

117. Last, Clean Air Council avers that the EA improperly relies on the effects of electric-driven compressors on the electric power grid and higher emissions from the electric power generating stations to reject the alternative.<sup>221</sup> Clean Air Council asserts that the EA provides no support in asserting there would be higher emissions and notes that in Pennsylvania, the state is transitioning toward renewable generation and Adelphia could choose to source its power from renewable sources.<sup>222</sup> Clean Air Council also states that the EA only briefly addresses the impacts from electricity the project would require, dismissing the impacts as inconsequential, but cites those impacts in rejecting the electric compressor alternative.<sup>223</sup> Clean Air Council argues that in other cases, the Commission has made clear that it does not consider the air quality impacts from electricity generation for electrical compressors.<sup>224</sup>

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<sup>218</sup> Clean Air Council February 1, 2019 Comments at 8-9.

<sup>219</sup> In addition, “[a]n agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.” 40 C.F.R. § 1505.2(b) (2019).

<sup>220</sup> EA at 186-87.

<sup>221</sup> Clean Air Council February 1, 2019 Comments at 8-9.

<sup>222</sup> *Id.* at 9 (citing Pennsylvania Public Utility Commission, PAPowerSwitch, <https://www.papowerswitch.com/> (last visited Jan. 30, 2019) and the Pennsylvania Climate Action Plan).

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* (citing Environmental Assessment for the Garden State Expansion Project, CP15-89-000, at 40, 56 (Nov. 4, 2015)).

118. The EA considered and eliminated the electric-compressor unit alternative for several reasons. The EA noted that the alternative would affect more acres than the proposed natural gas-fired units to construct a dedicated feeder connection and to accommodate a larger main transformer, auxiliary transformer, additional electric equipment, and additional generators for backup power.<sup>225</sup> In addition, the EA explained that operators generally prefer gas-driven units for providing reliable, uninterrupted natural gas transmission.<sup>226</sup> The EA also noted that although local air emissions from electric-driven compressors would be lower than those from natural gas driven compressors, use of electric-driven compressors would result in a higher load on the electric power grid and higher emissions from electric power generating stations.<sup>227</sup>

119. We agree with Clean Air Council that the EA does not cite evidence to support the argument that the electric-driven compressor unit would result in higher emissions. However, we are unable to determine whether using an electric-driven compressor would result in lower or higher emissions from electric power generating stations because there is nothing in the record on the specific source of electricity that would power the alternative electric-driven compressor unit.<sup>228</sup> Although the project will be located in Pennsylvania, generation in Pennsylvania would not necessarily supply the electric-driven compressor alternative. All electric utilities located in the Eastern Interconnection are tied together during normal system conditions.<sup>229</sup>

120. Nevertheless, the electric-driven alternative is not preferable over the proposed natural gas-driven compressor as it will impact more acreage and operators generally prefer natural gas-driven compressor units for providing reliable, uninterrupted service. Therefore, the EA reasonably eliminated the electric-driven compressor unit alternative.

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<sup>225</sup> EA at 186.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 187.

<sup>228</sup> Because the generation source of the proposed alternative is not reasonably known, the EA also appropriately did not quantify emissions of the electric-driven compressor alternative. NEPA's "rule of reason" governs "both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them." *Citizens Against Burlington*, 938 F.2d at 195 (emphasis in original) (quotation marks omitted).

<sup>229</sup> Department of Energy, Office of Electricity, Learn More about Interconnections, <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/recovery-act-0> (last accessed Dec. 12, 2019).



### 3. Land Use and Visual Impacts

121. Construction of the project will affect approximately 46.7 acres, consisting of 36.7 acres of industrial or commercial land, 5.4 acres of open land, 3.4 acres of forest land, and 1.2 acres of residential land.<sup>230</sup> Operation of the project will affect approximately 21.6 acres, consisting of 18.5 acres of industrial or commercial land, 1.7 acres of open land, and 1.4 acres of forest land.<sup>231</sup> Given that the majority of impacts to lands would be temporary and minor, the EA concludes that impacts on these lands would not be significant.<sup>232</sup> We agree.

#### a. Floodplains

122. Delaware Riverkeeper states that portions of the Tilghman Lateral, the Paoli Pike and Schuylkill River BAVs, certain permanent access roads, and replacement activities of current BAVs will be within the Federal Emergency Management Agency 100-year floodplain and alleges the EA fails to account for the harm and impacts that could occur as a direct result of the project.<sup>233</sup> Delaware Riverkeeper also states that the EA does not consider the ramifications, individually and cumulatively, of the multitude of proposed stream crossings for flooding, flood peaks, flood damages, and erosion.<sup>234</sup> Nor does the EA consider the effects of the loss of floodplain on the Delaware River's health and the health of its tributary streams.<sup>235</sup>

123. The project components proposed in the 100-year floodplain require minor ground disturbance or are new components that would be buried; no new aboveground facilities are proposed within the 100-year floodplain. Therefore, no discernable alteration to the flood storage capacity of the floodplains is expected.<sup>236</sup> Further, we note that only two waterbodies (Marcus Hook Creek and Stoney Creek) would be crossed by the project. As discussed in the EA, Adelphia will cross Marcus Hook Creek by the horizontal

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<sup>230</sup> EA at 86-89.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 86.

<sup>233</sup> Delaware Riverkeeper March 1, 2019 Comments at 84.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> EA at 38.

directional drill (HDD) method, with a depth of cover of 33 feet, which would avoid in-stream disturbance, thereby eliminating cumulative impacts with the Stoney Creek crossing, and minimizing the potential for scour to expose the pipe during flash flooding.<sup>237</sup> Adelphia will install the pipeline in Stoney Creek with a minimum of 3 feet of cover, and will implement erosion controls to protect these waterbodies from sedimentation in accordance with Adelphia's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) and Erosion and Sediment Control Plans. In addition, Adelphia will maintain the pipeline in accordance with DOT-PHMSA's Part 192 pipeline standards, which include requirements for pipeline monitoring during operation. The EA concludes, and we agree, that project facilities would not be adversely impacted by bank erosion or scour hazards, including as a result of flash flooding.<sup>238</sup> Given the minimal activity planned for the 100-year floodplain and the lack of change in flood storage capacity anticipated, we conclude the project would not result in a loss of floodplain that would adversely impact the Delaware River.

**b. Cathodic Protection**

124. Tina Stonorov Daly requests additional detail regarding the location and facilities required for cathodic protection of the pipeline facilities and questions if additional access will be required.<sup>239</sup> Adelphia would install cathodic protection equipment along the new pipeline to prevent the corrosion of metal surfaces over time. The existing pipeline already has cathodic protection installed. For the new pipeline facilities, cathodic protection equipment could consist of rectifiers, test leads, and sacrificial anode beds. Additional area may be required for permanent ground beds to provide cathodic protection of the pipeline, but Adelphia has not stated if additional acreage is necessary. The design of ground beds is usually finalized following commencement of pipeline operations and are typically located near the ends of a pipeline within the project's certificated workspace. If Adelphia determines that new additional workspace is required for future cathodic protection facilities, it will need to comply with Environmental Condition 5 of this order or the standard environmental requirements under the Commission's regulations.<sup>240</sup>

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<sup>237</sup> *Id.* at 38-39 and 59-61.

<sup>238</sup> *Id.* at 39.

<sup>239</sup> Tina Stonorov Daly January 18, 2019 Comments at 2.

<sup>240</sup> 18 C.F.R. §§ 2.55, 157.206(b) (2019).

**c. Staging Areas**

125. West Rockhill Township asserts that the EA did not identify the location of, or address impacts from, staging areas or new access roads associated with the Quakertown Compressor Station.<sup>241</sup> The Quakertown Compressor Station facilities and the impacts associated with these facilities are discussed throughout the EA, and their locations are depicted in Appendix A of the EA.<sup>242</sup> With respect to the Quakertown Compressor Station, Adelphia is not proposing the use of staging areas or new access roads for construction or operation of the station.<sup>243</sup> An existing road will provide access during construction and operation, and two additional temporary workspaces, in conjunction with the existing facility site, will support the construction of the station.<sup>244</sup>

**d. Location of Project Facilities**

126. Chester County Planning Commission contends that the EA did not contain adequate location information for the project facilities and criticizes the maps that were included.<sup>245</sup> Information on the location of the project facilities was provided through several different map sets in Appendix A of the EA (which includes aerial alignments) as well as described in the text of the EA.<sup>246</sup> This information is supplemented with more detailed mapping for the existing facilities by reference,<sup>247</sup> along with topography based maps for each new aboveground facility filed by Adelphia that shows the latitude/longitude coordinates and nearby highways, roads, and features.<sup>248</sup> Thus, we find that the EA includes project location information in a variety of forms that provided the Commission and commenters sufficient information to evaluate the proposed project.

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<sup>241</sup> West Rockhill Township February 1, 2019 Comments at 2.

<sup>242</sup> EA at Appendix A.

<sup>243</sup> The Quakertown facilities include the proposed compressor station, meter station, and tap valve.

<sup>244</sup> EA at 13.

<sup>245</sup> Chester County Planning Commission February 12, 2019 Comments at 3-4.

<sup>246</sup> EA at 4.

<sup>247</sup> *Id.* at 3.

<sup>248</sup> Adelphia January 12, 2018 Submission.

e. **Size of the Quakertown Compressor Station**

127. Commenters argue that the size of the Quakertown Compressor Station site is inadequate for the facilities proposed.<sup>249</sup> Specifically, commenters state that typical acreage for a compressor station, as reported in the Commission's landowner pamphlet,<sup>250</sup> is between 10 to 40 acres, whereas the Quakertown Compressor Station is proposed to permanently occupy 1.2 acres.<sup>251</sup> As stated in the EA, while the Commission's landowner pamphlet does provide examples of typical acreages of compressor stations, compressor stations are not required to be sited on a parcel of this size.<sup>252</sup> Adelphia proposes to construct the Quakertown facilities adjacent to an existing meter station and the EA finds that the proposed location does not result in significant environmental impacts that would necessitate an alternative site location.<sup>253</sup> Therefore, we disagree that the site for the Quakertown Compressor Station is impermissibly small.

f. **Residential Impacts**

128. Several commenters raise concerns regarding the Quakertown Compressor Station's proximity to residential developments.<sup>254</sup> West Rockhill Township identifies potential residential developments to be constructed nearby and a stone quarry in proximity to the compressor station.<sup>255</sup> The EA addresses all potential impacts (including visual, traffic, socioeconomic, air quality, and noise, among others) on existing and planned residential developments within 0.25 miles of the project.<sup>256</sup> Additionally, the visual screening plan required in Environmental Condition 22 would mitigate visual impacts from the compressor station on nearby residential developments. Air quality and

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<sup>249</sup> See, e.g., Vera Cole February 4, 2019 Comments at 8.

<sup>250</sup> FERC, *An Interstate Natural Gas Facility on My Land? What Do I need to Know?* (Aug. 2015), <https://www.ferc.gov/resources/guides/gas/gas.pdf>.

<sup>251</sup> See, e.g., Vera Cole February 4, 2019 Comments at 8; Delaware Riverkeeper March 1, 2019 Comments at 72.

<sup>252</sup> EA at 28.

<sup>253</sup> *Id.* at 28, 183, 194.

<sup>254</sup> See, e.g., West Rockhill Township February 1, 2019 Comments at 2.

<sup>255</sup> *Id.*

<sup>256</sup> EA at 90-94.

noise impacts on nearby residents are discussed below. The stone quarry, which is 3.4 miles southwest of the Quakertown Compressor Station, is addressed in the cumulative impacts analysis of the EA as the Naceville Materials Project,<sup>257</sup> and, based on the distance between the quarry and the project, Adelpia's compliance with mitigation requirements, and that blasting is not proposed for the project, we find that impacts on the stone quarry or from the stone quarry are not likely.

129. Christine Durst expresses concern for impacts on septic systems.<sup>258</sup> As described in the EA, Adelpia committed to utilizing the state one-call systems in Delaware and Pennsylvania to identify underground utilities prior to construction.<sup>259</sup> Additionally, the landowner easement agreement process provides an opportunity for identification of sensitive areas within workspaces, which Adelpia will mark and avoid during construction. As stated in the EA, in the event that an existing utility is damaged during construction, Adelpia would notify the owner of the utility and stop work, if necessary due to safety concerns, in the vicinity of the utility until the facility is repaired.<sup>260</sup>

130. Tina Stonorov Daly questions whether imported fill used during construction would be contaminated and requests that only certified organic fill be used on her property.<sup>261</sup> Based on information provided by the commenter, it appears that her property is along the existing 18-inch-diameter mainline route about 2.5 miles south of any proposed work.

131. Clean Air Council asserts that the EA underestimates the duration of HDD construction as 2 to 14 days because the EA does not take into account differences between HDD sites and Pennsylvania's geology.<sup>262</sup> Clean Air Council argues that longer operations will lead to increased noise, land disturbance, limitations on property access, and other disruption for residents, and asks the Commission to require Adelpia to estimate the length of each HDD based on site-specific considerations.<sup>263</sup>

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<sup>257</sup> *Id.* at 117, 160 (Table B-30), and 165-168.

<sup>258</sup> Christine Durst March 4, 2019 Comments.

<sup>259</sup> EA at 16 and 22.

<sup>260</sup> *Id.* at 23.

<sup>261</sup> Tina Stonorov Daly January 18, 2019 Comments at 2-3.

<sup>262</sup> Clean Air Council February 1, 2019 Comments at 18.

<sup>263</sup> *Id.*

132. Adelphia conducted geotechnical investigations to confirm the feasibility of each HDD and estimated the duration of each HDD.<sup>264</sup> Adelphia's HDDs are of short distance relative to those often proposed as part of typical interstate natural gas pipeline projects; for example, the estimated 2-day-long HDD (HDD 9, at MP 4.3) is less than 0.1 mile long. In order to minimize impacts from the HDDs, and as discussed in the EA,<sup>265</sup> Adelphia will limit drilling operations to one HDD at a time for any HDDs within 0.5 mile of another HDD, install residential-grade exhaust mufflers on all noise-generating combustion equipment associated with HDD construction, and conduct drilling primarily during daytime hours. Therefore, while HDD construction could last longer than Adelphia's estimate of 2 to 14 days at any given HDD site due to unforeseen circumstances, such as equipment malfunction, we agree with the EA's conclusion that impacts from the HDD construction would not be significant.<sup>266</sup>

**g. Visual Resources**

133. Sheila McCarthy, who lives in proximity to the Quakertown Compressor Station, asserts that the statement in the EA that Adelphia is coordinating with landowners regarding visual screening is inaccurate and that the record wrongly identifies another individual as owning her property.<sup>267</sup> Environmental Condition 22 requires the development of visual screening plans in consultation with West Rockhill Township, which would mitigate visual impacts from the Quakertown Compressor Station.

**4. Geologic Resources – Karst Terrain**

134. Karst features, such as sinkholes and caves, form as a result of the long-term action of groundwater on subsurface soluble carbonate rocks (e.g., limestone and dolostone). These features could present a hazard to the pipeline due to cave or sinkhole collapse. The United States Geological Survey's *Karst in the United States: A Digital Map Compilation and Database* was used to determine areas where karst features exist, or could exist, in the proposed project area. The EA noted several locations along

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<sup>264</sup> See Adelphia August 10, 2018, October 2, 2018, November 19, 2018, and December 13, 2018 Submissions.

<sup>265</sup> EA at 135.

<sup>266</sup> *Id.* at 136.

<sup>267</sup> Sheila McCarthy January 9, 2019 Comments.

portions of the Existing System that could be affected by karst features and recommended Adelphia submit a Karst Monitoring Plan.<sup>268</sup>

135. Commenters express concern regarding karst along the Existing System.<sup>269</sup> Commenters assert that additional evaluation of locations along the pipeline that cross limestone, karst, and dolomite formations susceptible to sinkhole collapse is needed, and that any karst management plans should be shared with the public.<sup>270</sup> As stated above, the EA identifies locations where the Existing System crosses areas with the potential to form karst features,<sup>271</sup> and Environmental Condition 12 requires Adelphia to file a Karst Monitoring Plan for the Existing System prior to construction, which should be filed as public. For areas of new construction, the EA concludes that construction of the new project facilities would not affect karst areas, and that land subsidence will not occur in the project area.<sup>272</sup> Therefore, impacts from karst would be minimized to the extent practicable and are not significant.

## 5. Water Resources

136. Commenters state that the EA's finding that impacts on water resources would be temporary, minor, and not significant was unsupported and not compatible with science or observations from other pipeline projects.<sup>273</sup> The EA analyzes the project's impacts on water resources, including impacts due to stormwater, spills, and inadvertent returns during HDDs.<sup>274</sup> As discussed in the EA, Adelphia will avoid or minimize potential impacts on water resources through its adherence to several project-specific plans, including but not limited to: FERC's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan); Adelphia's Procedures, which are based on FERC's *Wetland and Waterbody Construction and Mitigation Procedures*; an Inadvertent Return Contingency Plan; a Spill Prevention, Control, and Countermeasures Plan; Erosion and Sediment Control Plan; an Unanticipated Discovery of Contamination Plan; and a

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<sup>268</sup> EA at 37-38.

<sup>269</sup> See, e.g., Arianne Elinich January 24, 2019 Comments.

<sup>270</sup> *Id.*

<sup>271</sup> EA at 37.

<sup>272</sup> *Id.* at 38.

<sup>273</sup> See, e.g., Chuck Graver Jr. January 30, 2019 Comments.

<sup>274</sup> EA at 51-61.

Sampling and Analysis Plan for the Tilghman and Parkway Laterals.<sup>275</sup> The EA concludes, and we agree, that with Adelphia's implementation of trenchless construction methods and adherence with our Plan, its Procedures, Inadvertent Return Contingency Plan, and our recommendations, impacts on water resources would not be significant.<sup>276</sup>

**a. Contamination**

137. Earthworks argues that the EA does not identify or quantify contaminants that could impact water quality in the project area.<sup>277</sup> Commenters note that project construction will occur near an EPA-regulated Superfund site and Resource Conservation and Recovery Act (RCRA) sites, and the EA failed to analyze the project's potential impacts on water quality as a result, stating only that consultation with EPA is ongoing.<sup>278</sup> Clean Air Council asks the Commission to require Adelphia to comply with EPA recommended measures to avoid spreading contamination from the Superfund site.<sup>279</sup> Delaware Riverkeeper further notes that two contaminated sites were identified near MLV 2, but asserts Adelphia will not conduct soil or groundwater investigations; instead relying on its Unanticipated Discovery of Contamination Plan.<sup>280</sup> Delaware Riverkeeper further argues that the Inadvertent Return Contingency Plan does not adequately address mitigation in the event of an inadvertent release in an area of existing contamination.<sup>281</sup> Delaware Riverkeeper asserts that the EA identifies no measures that will be taken to assure the public that contaminants can or will be contained.<sup>282</sup>

138. The EA provides a detailed discussion of known contaminated sites in the project area, which is based on Adelphia's research and consultation with EPA and Pennsylvania Department of Environmental Protection (PADEP), as well as Commission staff's

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<sup>275</sup> *Id.* at 55-56.

<sup>276</sup> *Id.* at 56, 61.

<sup>277</sup> Earthworks February 4, 2019 Comments at 2-3.

<sup>278</sup> *See, e.g., id.*

<sup>279</sup> Clean Air Council February 1, 2019 Comments at 19; *see also* Delaware Riverkeeper March 1, 2019 Comments at 88.

<sup>280</sup> Delaware Riverkeeper March 1, 2019 Comments at 89.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.* at 88-89.



independent research and agency consultation.<sup>283</sup> The EA also discusses potential impacts on water quality associated with project activities in proximity to these known contaminated sites, as well as unanticipated discovery of contamination and inadvertent releases.<sup>284</sup> As stated in the EA, EPA does not anticipate that the project would negatively affect future response actions associated with the Foote Mineral Company Superfund site, which has been subject to remediation since the early 1990s.<sup>285</sup> The Johnson Mathey-West Whiteland cleanup site is 0.6 mile from MLV 2 and is also under remedial action. The EA concludes, and we concur, that the project is not expected to negatively affect either site.<sup>286</sup>

139. Although Adelphia has not yet incorporated the EPA recommended mitigation measures into its Sampling Analysis Plan for the project, Environmental Condition 14 requires that Adelphia file the final Sampling Analysis Plan for the Parkway and Tilghman Laterals, including any EPA and PADEP comments, prior to construction, and that the plan include mitigation measures developed in consultation with those agencies. Environmental Condition 14 also requires that Adelphia include in its Sampling Analysis Plan identification of areas where project construction (including HDDs) could create a preferential migration path for contamination. In addition, Environmental Condition 15 requires that Adelphia file a revised Inadvertent Return Contingency Plan, which addresses containment and cleanup measures for inadvertent releases in areas of contamination. These measures are required prior to construction of the project and will minimize the potential for the spread of contamination during HDD construction. Therefore, we find that that implementation of the measures required in our Environmental Conditions will adequately mitigate impacts from contamination.

**b. Impacts on Groundwater**

140. Commenters argue that the EA should have analyzed water supplies further than 150 feet from the pipeline.<sup>287</sup> Citing inadvertent returns from the construction of Sunoco's Mariner East 2 pipeline, commenters state that contaminated water from HDD

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<sup>283</sup> EA at 45-50.

<sup>284</sup> *Id.* at 45-50, 56.

<sup>285</sup> *Id.* at 47.

<sup>286</sup> *Id.* at 47-48.

<sup>287</sup> *See, e.g.*, Christine Durst March 4, 2019 Comments; Clean Air Council February 1, 2019 Comments at 17-18; Earthworks February 4, 2019 Comments at 2-3.

operations can damage wells and aquifers further than the 150-foot radius.<sup>288</sup> Clean Air Council notes that Sunoco is now required to identify wells 450 feet from the pipeline prior to resuming HDD operations and Sunoco has acknowledged that water supplies up to 1,900 feet from the HDD alignment are potentially at risk.<sup>289</sup> Clean Air Council states that Adelphia should survey water supplies based on an analysis of hydrogeology of the proposed HDD sites and where site-specific data is unavailable, identify all water supplies 2,000 feet from the pipeline alignment.<sup>290</sup>

141. As stated in the EA, Adelphia will use HDD fluid additives certified for conformance with National Sanitation Foundation and American National Standards Institute Standard 60, which has been deemed acceptable by PADEP HDD Guidance.<sup>291</sup> Karst features are present in areas of Mariner East 2 pipeline construction, and present a greater potential for the spread of HDD fluids away from the drill alignment; however, as discussed in the EA, no karst was identified in the vicinity of the Tilghman and Parkway Laterals where HDD construction is proposed.<sup>292</sup> Therefore, we conclude that identification of wells further than 150 feet from construction would not be necessary. Further, the EA concludes, and we agree, that the project would not result in significant impacts on groundwater resources in the project area.<sup>293</sup>

142. Alexander Ulmer asserts that the additional temporary workspace associated with the Quakertown Compressor Station is within 100 feet of a water well, and therefore Adelphia could not meet the commitment to prohibit refueling or storage of hazardous substances within 400 feet of water wells.<sup>294</sup>

143. The EA identifies wells within 150 feet of project work areas, and does not include a well within 100 feet of the Quakertown Compressor Station or associated

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<sup>288</sup> See, e.g., Earthworks February 4, 2019 Comments at 3.

<sup>289</sup> Clean Air Council February 1, 2019 Comments at 18.

<sup>290</sup> *Id.*

<sup>291</sup> EA at 55.

<sup>292</sup> *Id.* at 38.

<sup>293</sup> *Id.* at 56.

<sup>294</sup> Alexander Ulmer February 4, 2019 Comments.

workspace.<sup>295</sup> However, if drinking water wells are identified during Adelphia's surveys, landowner negotiations, or other activities prior to construction, Adelphia has proposed to offer to affected landowners pre-construction and post-construction evaluations of water quality and yield of drinking water wells within 150 feet of any construction.<sup>296</sup> Additionally, if a well is discovered within 400 feet of project workspaces prior to construction, Adelphia will establish a no fueling buffer to maintain the restriction of 400 feet.<sup>297</sup>

144. Alexander Ulmer also asserts that the water source for the Quakertown Compressor Station is unclear.<sup>298</sup> As identified in the EA, municipal water will be transported to the site for hydrostatic testing during construction of the Quakertown Compressor Station.<sup>299</sup>

145. Cooks Creek Watershed Association states that the Existing System crosses a Sourcewater Protection Area (SWPA) for the village of Springtown, but the EA concludes that no SWPAs will be impacted by the project.<sup>300</sup> Cooks Creek Watershed Association argues that because the pipeline was installed prior to the designation of this SWPA, the proposed increase in use (based on operation and maintenance impacts) and new ownership requires that potential for impacts be addressed even though no work is currently proposed in this SWPA.<sup>301</sup> Earthworks asserts that project construction will be located within the Delaware River Streamflow Zone/New Jersey Coastal Plains Aquifer sole source aquifer zone.<sup>302</sup>

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<sup>295</sup> EA at 54.

<sup>296</sup> Environmental Condition 6 requires Adelphia to implement its proposed mitigation described in the project application and supplements.

<sup>297</sup> EA at 56.

<sup>298</sup> Alexander Ulmer February 4, 2019 Comments.

<sup>299</sup> EA at 61.

<sup>300</sup> Cooks Creek Watershed Association February 4, 2019 Comments at 2.

<sup>301</sup> *Id.*

<sup>302</sup> Earthworks February 4, 2019 Comments at 3 (noting the construction issues with the Mariner East natural gas liquids pipeline); *see also* Delaware Riverkeeper March 1, 2019 Comments at 77.

146. As stated in the EA, it is anticipated that Adelphia's purchase of the Existing System will not have any environmental impacts on most resources.<sup>303</sup> Operation and maintenance activities, including mowing and right-of-way inspections, will be similar to current operation and maintenance of the Existing System. There is low probability that pipeline operations would contaminate groundwater because methane is lighter than air. The methane would generally dissipate rapidly through the air in the event of a pipeline leak, thereby causing no impact on groundwater. Therefore, project operation is not anticipated to impact groundwater quality.<sup>304</sup> The EA acknowledges the Marcus Hook Compressor and the two laterals and associated interconnects would be within the Delaware River Streamflow Zone/New Jersey Coastal Plains Aquifer sole source aquifer zone.<sup>305</sup> As described above, the EA finds, and we agree, that with Adelphia's adherence to mitigation measures and consultation with EPA and PADEP, impacts on groundwater will not be significant.<sup>306</sup>

147. Delaware Riverkeeper contends that the installation of pipelines will create new pathways for water flow, thereby altering the hydrologic pattern of the watershed and adversely impacting (in quantity, quality, and seasonal timing) streams, wetlands, and drinking water sources, but that the EA failed to account for these changes.<sup>307</sup>

148. FERC's Plan requires Adelphia to install trench breakers (constructed of materials such as sand bags or polyurethane foam) at the same spacing as and upslope of permanent slope breakers (or in accordance with an engineer or similarly qualified professional) to bring any water flowing down the trench to the surface, minimizing any potential for the project creating new underground water pathways. In addition, the Tilghman and Parkway laterals will be installed predominantly in roadways and on developed lands. Further, no drinking water supply wells were identified within 150 feet of the pipelines and no wetlands will be crossed by the pipeline laterals. Given the limited impacts on water resources, Adelphia's implementation of FERC's Plan, and Adelphia's commitment to restoration of the right-of-way and waterbody banks following construction, we do not anticipate significant changes in water flow or hydrology resulting from the project.

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<sup>303</sup> EA at 6.

<sup>304</sup> *Id.* at 56.

<sup>305</sup> *Id.* at 53.

<sup>306</sup> *Id.* at 56.

<sup>307</sup> Delaware Riverkeeper March 1, 2019 Comments at 77.

149. Last, Pennsylvania American Water Company, Inc. requests notification of any construction activities within one mile of a drinking water source and requests that their contact information be included in any spill plans or emergency response plans.<sup>308</sup> Although the EA identifies drinking water wells within 150 feet of construction, the EA does not identify drinking water wells within one mile. As discussed further in the EA, Adelphia consulted with local water authorities responsible for public water supply service in the project area.<sup>309</sup> The project will not cross any wellhead protection areas in Delaware and water sources identified in Pennsylvania, including three water source wells and water facility assets, are 1.8 miles or more from the project.<sup>310</sup> Therefore, the EA concludes that impacts on these water protection areas are not expected.<sup>311</sup> Given construction disturbance will be limited to approved work areas, and Adelphia will adhere to several project-specific plans as discussed above, impacts on wells beyond 150 feet are not anticipated.

**c. Waterbodies**

150. Project construction activity would occur within the larger Delaware River watershed, and within 11 hydrologic unit code (HUC) 12 sub-watersheds.<sup>312</sup> Construction of the project will involve two waterbody crossings, and 81.2 percent of land that will be disturbed by construction includes previously developed residential or industrial/commercial habitat.<sup>313</sup> Marcus Hook Creek will be crossed by HDD, thereby avoiding or minimizing impacts on the creek, and Stoney Creek will be open cut, in accordance with Adelphia's Procedures and applicable state and federal permits, including those protective of water quality.<sup>314</sup> The EA addresses impacts on surface

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<sup>308</sup> Pennsylvania American Water Company, Inc. March 11, 2019 Comments.

<sup>309</sup> EA at 53.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 53-54.

<sup>312</sup> *Id.* at 57.

<sup>313</sup> *Id.* at 76.

<sup>314</sup> *Id.* at 58.

water resources that will be affected by project construction and concludes, with the implementation of mitigation measures, that impacts will not be significant.<sup>315</sup>

151. Commenters question the project's impacts on the Delaware River, Butter Creek, Morgan Creek, and Tohickon Creek watersheds.<sup>316</sup> As described in the EA, project construction activity will occur within the larger Delaware River Watershed; the Quakertown facilities will be in the Upper Tohickon Creek sub-watershed.<sup>317</sup> Neither Morgan Creek (which is north of the Quakertown facilities within the Upper Tohickon Creek sub-watershed), nor Butter Creek (which is south of the Quakertown facilities in the Unami Creek sub-watershed), will be affected, as no project work is proposed in Morgan or Butter Creek.

152. Delaware Riverkeeper contends that the EA did not provide sufficient baseline data of potentially impacted streams and states that although the EA acknowledged that dry-ditch crossing methods would alter water quality and could impact fish, the EA did nothing more than just identify these issues.<sup>318</sup>

153. The EA identifies the two waterbodies that will be crossed by the project as impaired for aquatic life use and reports their PADEP classifications indicating they support warm-water and migratory fishes. One waterbody will be crossed by HDD, thereby minimizing impacts; the other will be crossed by dry ditch methods. As stated in the EA, Adelphia will implement its Procedures, which includes measures to minimize impacts at the dry-ditch waterbody crossing, including ensuring all flow downstream of crossings is appropriately maintained for protection of aquatic life. Thus, impacts on fisheries and other aquatic resources from the project would not be significant.<sup>319</sup>

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<sup>315</sup> *Id.* at 61.

<sup>316</sup> *See, e.g.*, Kathy Weirback January 28, 2019 Comments; Jeffrey Cunningham January 28, 2019 Motion to Intervene at 1-2; Donna Yavorsky February 4, 2019 Comments.

<sup>317</sup> EA at 57.

<sup>318</sup> Delaware Riverkeeper March 1, 2019 Comments at 78.

<sup>319</sup> EA at 74.

154. Delaware Riverkeeper asserts that the EA failed to address comments regarding the potential effects of the project on Ridley Creek, only acknowledging prior comments and concluding that there would not be direct effects on waterbodies.<sup>320</sup>

155. As identified in Appendix C of the EA, Adelphia requested site-specific alternative measures from our Procedures for the placement of additional temporary workspace within 50 feet of Ridley Creek.<sup>321</sup> Adelphia will install double row erosion and sediment controls and limit refueling in accordance with its Procedures to minimize potential for impacts on Ridley Creek. We agree with the EA's conclusion that these measures are sufficiently protective of Ridley Creek.

156. Springfield Township expresses concern regarding the impact of pipeline leaks on water quality, including impacts on an exceptional value watershed in the Township.<sup>322</sup> The project will not cross Springfield Township; however, as discussed in the EA, Adelphia is required to maintain and operate the pipeline in accordance with DOT-PHMSA requirements (including cleaning of residual liquids in the pipeline).<sup>323</sup> In the unlikely event of a pipeline leak during operation, natural gas, which is buoyant at atmospheric temperatures, would dissipate rapidly upward into the atmosphere. Therefore, natural gas leaks would not have any direct impacts on waterbodies in the region.

157. Delaware Riverkeeper states that increased soil compaction will create a direct route for stormwater runoff from neighboring lands which may be treated by other property owners with herbicides, pesticides, fertilizers, or other chemicals that could then be transported and discharged into nearby water bodies either directly or through stormwater collection systems.<sup>324</sup>

158. Soil compaction is of particular concern in agricultural and wetland areas. Adelphia committed to several mitigation measures to minimize compaction, including segregating topsoil, using deep tillage implements to restore areas, and conducting compaction testing and decompaction, as necessary, to reduce further runoff during construction. Due to the lack of cultivated agricultural land in the project area and

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<sup>320</sup> Delaware Riverkeeper March 1, 2019 Comments at 76.

<sup>321</sup> EA at Appendix C.

<sup>322</sup> Springfield Township February 1, 2019 Comments at 2-3.

<sup>323</sup> EA at 15.

<sup>324</sup> Delaware Riverkeeper March 1, 2019 Comments at 78.

implementation of the measures described above, Commission staff concluded in the EA that impacts from soil compaction would not be significant. We agree.

159. Commenters also contend that stormwater runoff associated with the project was not sufficiently assessed.<sup>325</sup> Delaware Riverkeeper contends that the EA wrongly relies on FERC's Plan and Procedures and the Erosion and Sediment Control Plan to avoid harms, even though they have failed to protect resources in the past.<sup>326</sup> Additionally, Delaware Riverkeeper notes that water quality may be further affected due to erosion resulting from the increased volume of stormwater runoff that will result from removal of vegetation and increased soil compaction.<sup>327</sup> Delaware Riverkeeper argues that the EA must consider an analysis of areas where past projects have failed and what could happen if similar events occur during construction, operation, and maintenance of Adelpia's project.<sup>328</sup>

160. We disagree. The EA thoroughly reviews potential impacts on waterbodies and wetlands during project construction and operation and summarizes the mitigation measures to be implemented for all potential impacts, including the potential for sediment to leave the project construction workspaces and enter nearby wetlands and waterbodies.<sup>329</sup> In the event of a spill or leak of petroleum hydrocarbons or other hazardous materials during construction, Adelpia will follow measures outlined in its Spill Prevention, Control, and Countermeasures Plan.<sup>330</sup> During construction, Adelpia will minimize and mitigate impacts on surface waters, including sensitive surface waters, through implementation of trenchless construction methods and adherence with FERC's Plan, Adelpia's Procedures, and its Inadvertent Return Contingency Plan.<sup>331</sup> During construction, Adelpia will install erosion and sediment controls to minimize the potential for the migration of sediment from construction workspaces.<sup>332</sup> In addition,

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<sup>325</sup> See, e.g., Carol Armstrong January 29, 2019 Comments.

<sup>326</sup> Delaware Riverkeeper March 1, 2019 Comments at 27.

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> EA at 59-61.

<sup>330</sup> *Id.* at 55-56.

<sup>331</sup> *Id.* at 61.

<sup>332</sup> *Id.* at 18.



Adelphia has committed to developing site-specific Erosion and Sediment Control Plans in consultation with the Conservation Districts for each county in Pennsylvania that will be crossed to further minimize impacts.<sup>333</sup>

161. We also disagree with Delaware Riverkeeper's assertion that the EA wrongly relies on Adelphia's Erosion and Sediment Control Plan to avoid harms. Delaware Riverkeeper does not provide specific information on what mitigation measures are missing from Adelphia's plan, nor does it provide examples of what has failed on past projects and resulted in impacts on waterbodies.

162. Carrol Armstrong recommends that Adelphia and the Commission seek input on project-related stormwater impacts from additional agencies and organizations, including the Chester County Water Resources Authority, Valley Creek Restoration Partnership, and Valley Forge Trout Unlimited.<sup>334</sup> As described above, the EA was issued for public comment and we have reviewed and responded to comments issued during the scoping and EA comment periods. None of these organizations filed comments on the project.

163. Last, Carol Armstrong states that Adelphia's stormwater management plans should have been available for public review.<sup>335</sup> Erosion and Sediment Control Plans were not filed as privileged, but are pending completion, as discussed in the EA.<sup>336</sup>

**d. Wetlands**

164. Five wetlands (0.8 acres) would be affected by construction of the proposed project.<sup>337</sup> The majority of these effects (0.7 acre) would be short-term in nature and would cease when, or shortly after, the wetlands are restored and revegetated.<sup>338</sup> Adelphia would minimize wetland impacts by implementing the construction and mitigation measures outlined in its Procedures. Further, Environmental Condition 17 requires Adelphia to provide site-specific justification for permanent impacts on wetlands

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<sup>333</sup> *Id.* at 15.

<sup>334</sup> Carol Armstrong January 29, 2019 Comments.

<sup>335</sup> *Id.*

<sup>336</sup> EA at 15.

<sup>337</sup> *Id.* at 64.

<sup>338</sup> *Id.*

associated with an access road (AR-33.97-01) or identify an alternative access route for use during operation that avoids impacts on wetlands associated with this road.

165. Commenters object to the EA's analysis of wetland impacts in the project area, and argue that the EA did not identify wetland impacts affected by the Quakertown Compressor Station workspace.<sup>339</sup> The EA addresses wetland impacts and identifies two wetlands within the construction workspace for the Quakertown Compressor and Meter Stations.<sup>340</sup> Impacts on these wetlands will be temporary and limited to the period of construction. Therefore, we agree with the EA's conclusion that impacts on wetlands will not be significant given Adelphia's implementation of its Procedures and Environmental Conditions 16 and 17.

166. Delaware Riverkeeper contends that the EA wrongly concludes that "[f]ollowing revegetation, the wetland would transition back into a community similar to that of the pre-construction state," stating that this has not been the case for other pipelines.<sup>341</sup> Delaware Riverkeeper states that one exceptional value wetland would be impacted by construction and operation of the Paoli Pike BAV resulting in the permanent loss of 0.01 acre, but the EA fails to assess what the loss of this wetland will do to the surrounding ecosystems and presumes that FERC's Plan and Adelphia's Procedures will be adequate.<sup>342</sup> Delaware Riverkeeper further states that the EA fails to assess what impacts construction within 50 feet of wetlands will have even if Adelphia follows the procedures outlined by Commission staff.<sup>343</sup> Delaware Riverkeeper also notes that some of Adelphia's proposed construction is not in compliance with the FERC Plan and Procedures, yet the EA still concluded there was a finding of no significant impact based on Adelphia's plan to submit an alternative proposal at some point in the future.<sup>344</sup>

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<sup>339</sup> See, e.g., West Rockhill Township February 1, 2019 Comments at 4.

<sup>340</sup> EA at 64.

<sup>341</sup> Delaware Riverkeeper March 1, 2019 Comments at 81-83 (noting that final restoration phases by the operator are often not a priority, leading to unnecessary additional harm to sensitive species, due to improper timing or unnecessary delays).

<sup>342</sup> *Id.* at 82.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

167. As discussed throughout the EA,<sup>345</sup> Adelphia requested site-specific alternative measures from our Procedures such as additional temporary workspace within 50 feet of a waterbody/wetland, additional temporary workspace in a wetland, stormwater discharge into a wetland, and aboveground facilities/access roads in wetlands. Commission staff reviewed each site-specific justification and found them to be adequate with two exceptions: a stormwater discharge into a wetland at the Transco Meter Station, and an access road through a wetland at Perkiomen Creek BAV. Environmental Condition 16 in the appendix to this order requires Adelphia identify an alternative stormwater management configuration at the Transco Meter station that would not result in impacts on nearby wetlands, and Environmental Condition 17 requires Adelphia to provide additional site-specific justification or to identify an alternative access route for use during operation at Perkiomen Creek BAV that avoids impacts on wetlands. The remaining modifications were requested at the Chester Creek, Paoli Pike, Schuylkill River, Perkiomen Creek, East Perkiomen Creek BAVs, as well as areas along the Tilghman Lateral and at the Quakertown Compressor and Meter Stations. Commission staff found that Adelphia's ability to avoid wetlands or increase the buffer between wetlands and workspaces is constrained by the footprint of the existing facility. For wetlands not directly affected by the project, but that will be in close proximity to construction activities, Adelphia will install double row silt fence to prevent sedimentation into adjacent wetlands. Also, in accordance with the Adelphia's Procedures, refueling operations will not be conducted within 100 feet of these wetlands. Temporary board mats will be installed within wetlands areas to prevent compaction and rutting at the Quakertown Compressor and Meter Stations. At the Paoli Pike BAV, Adelphia will install low-ground-weight construction equipment or other measures in accordance with its Procedures to avoid impacts on the portion of the wetland containing suitable bog turtle habitat within ATWS-14.46-02. We agree with the EA's conclusion that these measures, in conjunction with other measures described in the EA, are sufficiently protective of wetlands.<sup>346</sup>

## 6. Vegetation

168. Construction of the facilities associated with the proposed project would occur in the Middle Atlantic Coastal Plain or Northern Piedmont Ecoregions and would predominantly affect lands that have been highly developed.<sup>347</sup> Vegetated land types affected by the project would include open land, forested vegetation, and non-forested

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<sup>345</sup> EA at 9, 16, 60, and 65-66.

<sup>346</sup> EA at 66.

<sup>347</sup> *Id.* at 67.

wetlands.<sup>348</sup> No actively cultivated land (i.e., agricultural land) would be affected by construction of the project.<sup>349</sup>

169. Alexander Ulmer states that the area around the Quakertown Compressor Station has low revegetation potential.<sup>350</sup> The EA acknowledges that soils at the Quakertown Compressor Station site have low revegetation potential.<sup>351</sup> Adelphia will implement the measures in our Plan, Adelphia's Procedures, the Erosion and Sediment Control Plans, and the Noxious Weed Plan to ensure successful revegetation of the temporary workspaces. Commission staff will monitor restoration progress of the project for a minimum of two years following project completion to ensure revegetation efforts are successful. If revegetation efforts have not been successful, Adelphia must continue revegetation efforts until they are successful (in accordance with the FERC Plan).

170. Cooks Creek Watershed Association asserts that the EA correctly notes that there are significant populations of invasive species in the current right-of-way of the pipeline and requests that Adelphia address not only the prevention of establishment of new invasive species, but also the current invasive populations within the right of way.<sup>352</sup> Delaware Riverkeeper contends that because most state agencies require quick establishment of groundcover through fertilization to stabilize soils, which takes the place of establishing more desired and diverse native habitats, biodiversity and soil health is lost.<sup>353</sup> Delaware Riverkeeper notes that invasive species thrive on the nutrient-enriched soil layers in the aftermath of construction and native herbaceous plants and shrubs almost never outcompete weeds.<sup>354</sup> Additionally, Delaware Riverkeeper contends that the maintenance of the right-of-way through mowing and herbicides will disturb the

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<sup>348</sup> *Id.* at 68-69.

<sup>349</sup> *Id.* at 51.

<sup>350</sup> Alexander Ulmer February 4, 2019 Comments.

<sup>351</sup> EA at 42.

<sup>352</sup> Cooks Creek Watershed Association February 4, 2019 Comments at 2.

<sup>353</sup> Delaware Riverkeeper March 1, 2019 Comments at 27.

<sup>354</sup> *Id.*

vegetation and habitats that were allowed to encroach on the right-of-way and could lead to contamination into tributary streams, wetlands, and the downstream Delaware River.<sup>355</sup>

171. Operation and maintenance activities, including mowing and right-of-way inspections, will be similar to the current operation and maintenance on the Existing System. As stated in FERC's Plan, in the absence of written recommendations from the local soil conservation authorities, Adelphia would seed all disturbed soils within 6 working days of final grading, weather and soil conditions permitting. Additionally, as discussed in the EA, Adelphia committed to removal and control of invasive species by a variety of measures to ensure that the percent of invasive species on the right-of-way is not greater than those off right-of-way, including use of approved herbicides in accordance with its Procedures, which state that it would not apply herbicides within 100 feet of (or within) wetlands or waterbodies unless approved by applicable agencies.<sup>356</sup> Adelphia will file with the Secretary of the Commission quarterly activity reports documenting the success of revegetation for at least the first 2 years following construction in accordance with FERC's Plan. Further, Commission staff will monitor restoration progress of the project to ensure revegetation efforts are successful. In accordance with FERC's Plan, revegetation is considered successful if upon visual survey, the density and cover of non-nuisance (i.e., non-invasive) vegetation is similar in density and cover to adjacent undisturbed lands. If revegetation efforts have not been successful, Adelphia must continue revegetation efforts and filing reports until they are successful (in accordance with the FERC Plan). To minimize impacts on vegetation, FERC's Plan states Adelphia must not conduct mowing or clearing over the full width of the permanent right-of-way more frequently than once every 3 years.

172. Delaware Riverkeeper argues that the EA fails to adequately address the impacts of the loss of vegetative buffers on forests and streams.<sup>357</sup> As discussed above and in the EA, Marcus Hook Creek will be crossed by HDD and as such, no impacts on vegetative buffers will occur. The EA acknowledges that impacts on lands adjacent to Stoney Creek will occur. However, the EA also finds that with Adelphia's adherence to our Plan and its Procedures, including limiting the construction right-of-way width to 50 feet, storing spoil a minimum of 10 feet from the from the waterbody edge, and the measures in its Erosion and Sediment Control Plan to minimize runoff to the waterbodies during construction, as well as restoring stream beds and banks to preconstruction conditions, and revegetating the stream buffers, these impacts would not be significant. We agree.

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<sup>355</sup> *Id.* at 26, 78.

<sup>356</sup> EA at 71-72.

<sup>357</sup> Delaware Riverkeeper March 1, 2019 Comments at 87.

173. Next, Delaware Riverkeeper asserts that the EA does not consider the cumulative impacts to key ecological systems over the lifetime of the pipeline.<sup>358</sup> For example, Delaware Riverkeeper avers that forests would be impacted throughout the life of the project through compacted soils and altered vegetative composition along the right-of-way and along the forest edge.<sup>359</sup> Delaware Riverkeeper contends that these impacts will have cascading impacts on the forest ecosystem, which will spread along the ROW and back into the core of the adjacent forest.<sup>360</sup> Delaware Riverkeeper notes that just because 80 percent of the pipeline is existing right-of-way, does not mean the EA can ignore the impacts that are currently occurring on the right-of-way.<sup>361</sup> Delaware Riverkeeper also states that right-of-way on steep slopes will alter run-off properties, including streams, wetlands, and riparian areas.<sup>362</sup>

174. The Existing System was built in the 1970s and is therefore considered the environmental baseline from which project impacts were analyzed in the EA. Operation and maintenance activities, including mowing and right-of-way inspections, will be similar to the current operation and maintenance on the Existing System. As stated in the EA, the project would result in new temporary impacts on 3.4 acres and permanent impacts on 1.4 acres of forest land; all of the permanent impacts would occur in the industrial and developed area near Marcus Hook. Lastly, we note that project sites will not transverse slopes greater than 25 percent.<sup>363</sup> Therefore, we agree with the EA's conclusion that the project would not result in significant impacts on forested land.

## 7. Wildlife and Special Status Species

### a. Wildlife

175. Wildlife habitats are based on the vegetative cover types within the project area and include open land, forested land, and wetlands.<sup>364</sup> Construction and operation of the

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<sup>358</sup> *Id.* at 26.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> EA at 37.

<sup>364</sup> *Id.* at 75.

project would result in short- and long-term impacts on wildlife.<sup>365</sup> A total of 46.7 acres of land would be disturbed for construction of the project; however, only 8.8 acres of land with vegetation conducive for wildlife habitat would be disturbed.<sup>366</sup> Based on Adelpia's proposed route within developed lands and previously fragmented forest habitat, and the implementation of its proposed impact avoidance and minimization measures, the EA concludes that construction and operation of the project would not have population-level impacts or significantly measurable negative impacts on wildlife.<sup>367</sup>

176. Commenters express concern regarding impacts on wildlife at the Quakertown Swamp and the Quakertown Swamp Important Bird Area (IBA).<sup>368</sup> Scott A. Schaffer states that the Quakertown Swamp is expanding closer to the Quakertown Compressor Station, which would reduce the buffer between the station and the swamp.<sup>369</sup>

177. We have not been able to independently verify if the Quakertown Swamp is expanding. However, based on publicly available mapping of the current swamp extent, the project is about 0.14 mile northwest of the closest extent of the swamp. While the Quakertown Swamp is 0.14 mile from the Quakertown Compressor Station, the portion of the swamp classified as an IBA is about 0.5 mile from the compressor station. Smaller species, such as reptiles and amphibians, are less mobile and not likely to migrate into active work areas at the Quakertown Compressor Station site. Additionally, as discussed in the EA, construction noise associated with the Quakertown facilities will be temporary and localized.<sup>370</sup> During construction, Adelpia will also minimize the potential for erosion and offsite migration of sediments by using temporary erosion control devices, such as silt fencing, straw bales, or temporary slope breakers in accordance with our Plan, and Adelpia's Procedures. Due to the distance between the Quakertown Station and the Quakertown Swamp, the swamp will not be affected by construction or operation (including noise or lighting) of the Quakertown facilities.

178. Commenters also state that the project may impact nesting bald eagles and wildlife (including reptiles and amphibians, such as the Jefferson's salamander) near a

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<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 76.

<sup>367</sup> *Id.* at 77.

<sup>368</sup> *See, e.g.*, Christine Shelly January 15, 2019 Comments.

<sup>369</sup> Scott A. Schaffer II March 5, 2019 Comments.

<sup>370</sup> EA at 134.

waterbody (Mud Run) in the forested land near the Quakertown Compressor Station.<sup>371</sup> Based on our review of available topographic maps, we were not able to locate Mud Run, but assume the commenter is referring to Bog Run, which is more than 0.5 mile from the project and will not be affected by construction and operation (including noise or lighting) of the Quakertown facilities. Additionally, as described in the EA, in the event that raptor nests (including bald eagle nests) are identified in the project vicinity during construction of the project, Adelphia will consult with the U.S. Fish and Wildlife Service (USFWS) and applicable state agencies to develop applicable avoidance measures.<sup>372</sup>

**b. Special-Status Species**

179. Special-status species are those species for which state or federal agencies afford an additional level of protection by law, regulation, or policy. Special-status species include federally-listed species protected under the Endangered Species Act (ESA), species proposed for listing by the USFWS, and those species that are state-listed as threatened or endangered, or other special status. Commission staff identified seven special-status species that could be present in the vicinity of the project: the bog turtle, eastern redbelly turtle, Indiana bat, northern long-eared bat, red knot, peregrine falcon, and the small whorled pogonia.<sup>373</sup> Based on the mitigation measures proposed by Adelphia and the environmental conditions required by this order, the EA concluded that the project would have *no effect* on the red knot and small whorled pogonia, *no significant impact* on the eastern redbelly turtle and peregrine falcon, and would be *not likely to adversely affect* the bog turtle, Indiana bat, and northern long-eared bat.<sup>374</sup>

180. Commenters argue that the project will impact threatened and endangered species and their habitats, including the potential for noise impacts on bats at the Quakertown Compressor Station.<sup>375</sup> In addition, Sandra Wolferman states that additional bat species have recently been listed as threatened by the Pennsylvania Game Commission, and that these state-listed species are not addressed in the EA.<sup>376</sup> As stated in the EA, Adelphia

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<sup>371</sup> See, e.g., Meredith Elinich January 7, 2019 Comments; Earthworks February 4, 2019 Comments at 1.

<sup>372</sup> EA at 78.

<sup>373</sup> *Id.* at 79-80.

<sup>374</sup> *Id.*

<sup>375</sup> See, e.g., Alexander Ulmer February 4, 2019 Comments.

<sup>376</sup> Sandra Wolferman February 4, 2019 Comments.



consulted with the Pennsylvania Game Commission to identify potential and known occurrences of state-listed threatened and endangered species in the project area; no bat species other than those addressed in the EA were identified.<sup>377</sup> In a letter dated October 10, 2018, the Pennsylvania Game Commission determined that no impacts on resources of concern are likely given the project location and scope.<sup>378</sup> On April 2, 2019, Commission staff utilized the USFWS' IPaC tool to verify that in Bucks County, Pennsylvania, the only listed bat species are the Indiana bat and northern long-eared bat. As stated above, the project is not likely to adversely affect either species.

181. Commenters express concern regarding project impacts on suitable bog turtle habitat, and request Phase 2 surveys to identify bog turtle presence at the Paoli Pike BAV site.<sup>379</sup> The commenters question Commission staff's determination that the project is not likely to adversely affect the bog turtle because Phase 2 surveys have not been completed.<sup>380</sup> Delaware Riverkeeper notes that some bog turtle surveys were not completed and the bog turtle survey reports recommend that work be done outside of the bog turtle's active season, but that the EA does not mention seasonal timing restrictions.<sup>381</sup>

182. The amount of suitable bog turtle habitat within the project area is minimal and Adelpia will implement measures, including the implementation of exclusion fencing and use of a USFWS Recognized Qualified Bog Turtle Surveyor during construction, to minimize the potential for a "take" of bog turtles.<sup>382</sup> The EA recognizes the potential for additional surveys and construction of the project will not commence until the Commission's consultation requirements under the Endangered Species Act are completed and any mitigation measures for work in and near wetlands with suitable bog turtle habitat are finalized with the USFWS, which may include seasonal timing restrictions.

183. Chester County Planning Commission questions whether the project would be in proximity to areas designated by the Pennsylvania Department of Conservation and

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<sup>377</sup> EA at 84.

<sup>378</sup> Adelpia October 19, 2018 Submission.

<sup>379</sup> *See, e.g.*, Eileen Reed February 25, 2019 Comments.

<sup>380</sup> *See, e.g., id.*

<sup>381</sup> Delaware Riverkeeper March 1, 2019 Comments at 74.

<sup>382</sup> EA at 81-82.

Natural Resources as core or supporting habitat.<sup>383</sup> As discussed in the EA, these designated areas will be crossed, or are in proximity of the project.<sup>384</sup> No formal protections are granted to areas designated as supporting habitat. Adelphia consulted with Pennsylvania Department of Conservation and Natural Resources, Pennsylvania Game Commission, and Pennsylvania Fish and Boat Commission on these areas, and no specific mitigation was requested; however, Adelphia will be required to restore these lands following construction in accordance with FERC's Plan. As stated above, permanent impacts on forested lands will be limited to 1.4 acres. Therefore, most impacts from the project on core or supporting habitat will be short-term and minor.<sup>385</sup>

## 8. Socioeconomics

184. The EA discusses potential impacts on local economics, including employment, housing, tax revenue, and property values, and concludes that most of the impacts from the project will be temporary and minor.<sup>386</sup> The employment of 7 to 10 new full-time employees and tax revenue associated with operation of the project will provide minimal positive impacts on the local communities.<sup>387</sup>

185. Delaware Riverkeeper argues that the EA overstates the economic benefits of the proposed project by overestimating short-term job "creation" impacts while underestimating or discounting entirely the environmental costs of the project.<sup>388</sup> Delaware Riverkeeper asserts the costs associated with the adverse impacts on environmental resources can run into the tens of billions of dollars over the life of the project.<sup>389</sup>

186. We disagree. The EA discloses the environmental impacts associated with the project, and concludes that most of those impacts would be temporary and would not be

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<sup>383</sup> Chester County Planning Commission February 12, 2019 Comments at 2.

<sup>384</sup> EA at 69.

<sup>385</sup> *Id.* at 70.

<sup>386</sup> *Id.* at 102-112.

<sup>387</sup> *Id.* at 103.

<sup>388</sup> Delaware Riverkeeper March 1, 2019 Comments at 49-50.

<sup>389</sup> *Id.* at 50 (citing Key-Log Economics LLC, *The Social Cost of Carbon and the Adelphia Gateway Project* (Feb. 2019) (filed Mar. 1, 2019) (Key-Log Study)).

significant.<sup>390</sup> Adelphia provided information on the construction workforce it estimates would be required to construct each facility composing the project.<sup>391</sup> Given the estimates were ranges, Commission staff used the maximum number of workers that could be required. While this estimate may overstate the actual number of workers employed for the entirety of the construction period, it allows for a conservative analysis (i.e., worst-case scenario) of the potential negative impacts on resources from the presence of these workers in the project area, such as impacts on traffic and transportation infrastructure, availability of housing, and increase demand for police, fire, and medical services. Despite Commission staff's use of a maximum workforce number for the socioeconomic analysis, the EA concludes that positive impacts on unemployment rates during the construction period would be temporary and negligible; therefore, the EA did not overstate the positive economic impacts. Similarly, as stated in the EA,<sup>392</sup> Adelphia provided the dollar estimate of payroll and materials to be purchased locally for operation of the project. Project details such as this are customarily provided by the applicant and Adelphia did not provide documentation of its estimate. Because Commission staff could not validate the accuracy of the estimate, the EA simply discloses this information and makes no attempt to quantify the degree of impact on the local economies.

187. Commenters assert that the project will have negative impacts on the local economy, including a reduction in the tax base and in property values.<sup>393</sup> Other commenters contend that the devaluation of property in proximity to the Quakertown Compressor Station is linked to negative public perception of these facilities, including concerns of health impacts from associated emissions,<sup>394</sup> and state that their property values have already been impacted due to the proposed Quakertown Compressor Station.<sup>395</sup> Delaware Riverkeeper contends that the economic impacts of compressor

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<sup>390</sup> See EA at Section B.

<sup>391</sup> Adelphia August 13, 2018 Submission.

<sup>392</sup> EA at 107.

<sup>393</sup> See, e.g., Tina Stonorov Daly January 18, 2019 Comments at 1; Leslie Leach January 28, 2019 Comments.

<sup>394</sup> See, e.g., Leslie Leach January 28, 2019 Comments.

<sup>395</sup> Shelia McCarthy January 9, 2019 Motion to Intervene; Leslie Leach January 28, 2019 Comments; Kathy Weirback January 28, 2019 Comments.

stations, including property losses, air pollution costs, health impacts, and economic losses from fires and explosions, were not analyzed in the EA.<sup>396</sup>

188. The impact the project could have on property values depends upon many variables, including the size of the parcel, the parcel's current value and land use, and the value of nearby properties. We acknowledge the potential that the new compressor station could impact resale values. The Quakertown Compressor Station will be a new facility within an existing facility site that is currently in operation, but which is adjacent to several residents; therefore, potential impacts on property values would be on adjacent or nearby properties and would likely be attributable to noise, visual impacts, and negative public perception. Commission staff assessed impacts from construction and operation of the project, including those associated with the compressor stations, and found that the project would not result in significant noise, health, or visual impacts on local residents and the surrounding communities.

189. Sheila McCarthy states that the EA provided inappropriate references in the property values discussion, and that an internet search yields reports that pertain to pine beetles and foster care.<sup>397</sup> Section E of the EA provides the full citations of the referenced reports, which we confirm are the applicable citations, and includes links to the specific reports referenced.<sup>398</sup>

190. John Sweriduk questions the ability of Rich Hill Road to support the movement of large construction equipment, and questions the statement in the EA that the traffic increase from the project on this road will be negligible.<sup>399</sup> In its Residential Access and Traffic Mitigation Plan, Adelphia states that it will require its contractors to adhere to all local weight restrictions and limitations. Use of any public road will be subject to the terms of the road and highway permits, and following construction, Adelphia will be responsible for ensuring that all public and private roadways, if damaged during construction, are repaired. With implementation of these mitigation measures, impacts on traffic and road use will be temporary and not significant.<sup>400</sup>

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<sup>396</sup> Delaware Riverkeeper March 1, 2019 Comments at 70.

<sup>397</sup> Sheila McCarthy February 4, 2019 Comments.

<sup>398</sup> EA at 203-218.

<sup>399</sup> John Sweriduk February 4, 2019 Comments.

<sup>400</sup> EA at 103-104.

191. Several commenters express concern that the project will impact the community's health and their quality of life.<sup>401</sup> Potential impacts on public health are addressed in the Air Quality section below. Once construction is completed, Adelphia will restore the pipeline rights-of-way and visual effects will be confined to areas where vegetation has been removed within the permanent and maintained pipeline rights-of-way. The buried pipeline will not otherwise visibly intrude on communities, and the mainline valves and BAVs will not be distinctly different from the existing facilities at these sites. As described throughout the EA, most of the new aboveground facilities will be within existing facility sites that are paved, contain similar infrastructure, are classified as industrial/commercial land, and will require limited vegetation clearing.<sup>402</sup> As discussed above, visual screening plans will also be developed for two of the aboveground facilities, which will further minimize visual impacts on nearby residences. Therefore, we conclude that with the mitigation proposed by Adelphia and required by the environmental conditions of this order, the project's impacts will be minimized to the greatest extent possible.

192. Clean Air Council argues that the EA should have considered the socioeconomic impacts of using eminent domain, including the displacing residents and businesses, court costs, and psychological stress.<sup>403</sup> Clean Air Council states that Adelphia should have provided community-level data on where and to what extent eminent domain might be used, including the types of land and whether entire parcels will be condemned.<sup>404</sup> Clean Air Council notes that in some instances Adelphia may displace residents prior to receiving other necessary permits, and if those permits are denied, Adelphia would have displaced residents or diminished the usefulness of their property for no reason.<sup>405</sup> Clean Air Council states that these effects may be mitigated by waiting to take people's property until the permitting process is complete and other similar hurdles have been cleared.<sup>406</sup>

193. Easements for the Existing System are held by Interstate Energy and will transfer to Adelphia upon purchase. As discussed in the EA, about 3.3 miles (70 percent) of the

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<sup>401</sup> See, e.g., Christine Shelly January 14, 2019 Comments.

<sup>402</sup> EA at 99.

<sup>403</sup> Clean Air Council February 1, 2019 Comments at 16.

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> *Id.*

new pipeline laterals would be constructed within roadways, where no permanent easement would be granted and which limits the number of easements with individual landowners.<sup>407</sup> Adelphia provided the current status of easement negotiations for all parcels where aboveground facilities will be located, and stated that all remaining easements associated with the project's aboveground facilities were expected to be obtained through voluntary measures, and thus eminent domain was not anticipated.<sup>408</sup> Additionally, only one landowner, Exelon, on the Tilghman Lateral and Parkway Lateral filed comments and its comments are addressed above. Regardless of whether an easement is negotiated or subject to eminent domain, all landowners will be compensated for use of their property, i.e., temporary (construction) and permanent right-of-way, and following construction, landowners will continue to have use of the permanent rights-of-way within the bounds of the easement agreement. As discussed above, the Commission itself does not grant the pipeline the right to take the property by eminent domain, nor does the Commission participate in the easement negotiation process.

## 9. Cultural Resources

194. In consultation with the State Historic Preservation Offices (SHPO) for Pennsylvania and Delaware, Adelphia identified nine aboveground resources in the project area. Archaeological surveys were recommended at four locations along the Tilghman Lateral; as well as the Chester Creek, French Creek, and East Perkiomen Creek BAVs; the access road to the Schuylkill River BAV; MLV 2; and the Transco Meter Station.<sup>409</sup>

195. West Rockhill Township states that because cultural resources survey reports and Pennsylvania SHPO comments would be provided prior to construction, but after issuance of the EA, the Township would not have time to comment on project impacts.<sup>410</sup> While some information was still outstanding at the time of issuance of the EA, the lack of this final information does not deprive the public of a meaningful opportunity to comment. The EA provides a summary of the cultural investigations undertaken for the project, including desktop analysis, field surveys, and associated consultation with the Pennsylvania and Delaware SHPOs.<sup>411</sup> As of the issuance of the EA, Adelphia had

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<sup>407</sup> EA at 20.

<sup>408</sup> Adelphia August 13, 2018 Submission.

<sup>409</sup> EA at 112-115.

<sup>410</sup> West Rockhill Township February 1, 2019 Comments at 1.

<sup>411</sup> EA at 112-115.

completed all cultural investigations for the project and received SHPO concurrence from the applicable state, with the exception of archaeological survey of five discrete locations along the Existing System, at the Transco Meter Station, and at four locations along the Tilghman Lateral.<sup>412</sup> The EA includes sufficient detail to enable the public to understand and consider the issues raised by the project and addresses a reasonable range of alternatives. Finally, as stipulated in Environmental Condition 24, Adelphia cannot begin construction of the project until: (1) Adelphia provides the remaining cultural resources reports and any required avoidance/treatment plans; (2) the Pennsylvania and Delaware SHPO comment on the cultural resources reports and applicable plans; (3) the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and (4) and Commission staff reviews and the Director of the OEP, or his designee, approves the cultural resources survey reports and plans.

## 10. Air Quality

196. Air quality in the project area would be affected by construction and operation of the project. The majority of air emissions associated with the project would result from operation of the new Quakertown and Marcus Hook Compressor Stations.<sup>413</sup> The EA concludes that air quality impacts will generally be temporary, localized, and not have a significant impact on air quality or contribute to a violation of applicable air quality standards.<sup>414</sup>

### a. General Air Quality Concerns

197. John Sweriduk requests that an air quality monitor be installed at the fenceline of the Quakertown Compressor Station to monitor air pollutants emitted from the station.<sup>415</sup> Based on the size of the compressor station, the volume of estimated emissions, and the site-specific modeling, we do not believe installation of an air quality monitor is necessary or warranted.

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<sup>412</sup> *Id.* at 113-115.

<sup>413</sup> *Id.* at 117.

<sup>414</sup> *Id.* at 129.

<sup>415</sup> John Sweriduk January 4, 2019 Comments.

198. Russell Zerbo asks if Adelphia will be required to meet its estimated emissions following construction.<sup>416</sup> Similarly, John Sweriduk asks the Commission to require Adelphia to commit to specific air pollution control technologies at compressor stations.<sup>417</sup> The review and enforcement of air quality permits and controls for the project is not under the Commission's jurisdiction. As identified in the EA, Adelphia submitted a Plan Approval to the PADEP for the Quakertown and Marcus Hook Compressor Stations and the state will require Adelphia to comply with all applicable air quality permits.<sup>418</sup>

**b. Public Health Impacts**

199. Commenters state that the EA does not adequately address impacts on public health due to air emissions, including those from the compressor stations and blowdown assembly valves (BAV), and request a project-specific human health risk assessment.<sup>419</sup> Two commenters who live in proximity to the Quakertown Compressor Station site express concern for impacts on family members who have respiratory conditions.<sup>420</sup> Delaware Riverkeeper contends that the EA should have examined the health effects as the result of short, sudden emissions, which are different than the effects of emissions occurring over one year.<sup>421</sup> Similarly, Clean Air Council contends that the EA ignores the acute health effects of blowdowns from BAVs and the MLVs.<sup>422</sup>

200. Additionally, Clean Air Council argues that the EA wrongly compares Adelphia's project to the New Market Project in finding that a health risk assessment is not warranted.<sup>423</sup> Clean Air Council states that the comparison only relates to operational

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<sup>416</sup> Russell Zerbo February 4, 2019 Comments.

<sup>417</sup> John Sweriduk January 4, 2019 Comments.

<sup>418</sup> EA at 122.

<sup>419</sup> *See, e.g.*, Jeffrey Cunningham January 28, 2019 Motion to Intervene at 3; Delaware Riverkeeper March 1, 2019 Comments at 68.

<sup>420</sup> Karen Weigner March 4, 2019 Comments; William M. Weigner March 4, 2019 Comments.

<sup>421</sup> Delaware Riverkeeper March 1, 2019 Comments at 68.

<sup>422</sup> Clean Air Council February 1, 2019 Comments at 6-7.

<sup>423</sup> *Id.* at 5.



emissions from the compressor stations and does not address fugitive emissions or site-specific factors such as topography and climate.<sup>424</sup> Clean Air Council notes that the New Market health risk assessment had a hazard index of 0.87 for a blowdown event, not far below a 1.0 threshold, and asserts the unique aspects of the Adelpia project, such as the size of the compressor station site or odorization, could increase the hazard index.<sup>425</sup> Clean Air Council contends that the EA wrongly cites a study of other compressor stations to reject the need for more analysis, but discounts a study of other compressor stations.<sup>426</sup>

201. Blowdown events will occur at the Quakertown and Marcus Hook Compressor Stations during maintenance and emergency events. Emissions at the BAVs will be limited to emergency releases during blowdowns. Blowdown events will release volatile organic compounds (VOC), methane (quantified as carbon dioxide equivalent), and hazardous air pollutants (HAP). All blowdown events are quantified in table B-21 of the EA.<sup>427</sup> The EA reviewed the health impacts of blowdowns that were analyzed in the human health risk assessment completed for the New Market Project EA.<sup>428</sup> The acute hazard risk of 0.87 that Clean Air Council references is in the context of an emergency shutdown blowdown event of transmission quality natural gas at the New Market Project's Horseheads Compressor Station. The gas that might be released during events at the Adelpia project compressor stations would be of similar quality to that transported by the New Market Project, and therefore, the risk assessment results are relevant and can advise the assessment of this project. The New Market risk assessment used conservative assumptions designed to overstate what any individual was likely to experience, and concluded that modeled HAPs emissions from both normal operations and blowdown events were below a level of health concern. Although the New Market compressor stations sites are not equivalent in topography and climate to the Adelpia project compressor stations, as the Clean Air Council notes, because the New Market risk assessment used conservative assumptions, and because the New Market pipelines were of larger diameter than those involved in the Adelpia project and would have a greater volume of emissions during a blowdown event, the EA concludes that conducting a project-specific human health risk assessment was not necessary. We concur.

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<sup>424</sup> *Id.* See also, Delaware Riverkeeper March 1, 2019 Comments at 69-70.

<sup>425</sup> Clean Air Council February 1, 2019 Comments at 5.

<sup>426</sup> *Id.* at 6.

<sup>427</sup> EA at 128.

<sup>428</sup> *Id.* at 130

202. While a human health risk assessment<sup>429</sup> was not done for the project, the broader issues are addressed in the EA.<sup>430</sup> The EA includes a quantitative modeling analysis, based on local topography and meteorological conditions, for the Quakertown and Marcus Hook Compressor Stations.<sup>431</sup> The modeling analysis incorporated existing background concentrations of each criteria pollutant combined with emissions from the proposed compressor units. The resulting modeled concentrations were compared to the National Ambient Air Quality Standards (NAAQS), which are established by EPA to protect human health, including sensitive populations such as children, the elderly, and those with asthma, and public welfare, and none of the concentrations will exceed the NAAQS criteria when combined with existing ambient pollutant concentrations.<sup>432</sup> Based on the analysis in the EA, we agree with its conclusion that the construction and operation of the project will not have a significant impact on air quality or human health.<sup>433</sup>

**c. Impacts from Blowdowns**

203. Clean Air Council argues that the EA does not properly analyze the impacts of blowdowns on air quality and wrongly aggregates all such emissions as “pipeline fugitive emissions.”<sup>434</sup> Clean Air Council also asserts that the increased capacity on the existing system could also result in higher vented emissions during emergency and planned releases, but the EA fails to quantify these impacts.<sup>435</sup>

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<sup>429</sup> A human health risk assessment is the process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated environmental media.

<sup>430</sup> EA at 130.

<sup>431</sup> *Id.* at 129.

<sup>432</sup> *Id.* at 132.

<sup>433</sup> *Id.*

<sup>434</sup> Clean Air Council February 1, 2019 Comments at 6. *See also* Delaware Riverkeeper March 1, 2019 Comments at 64-65.

<sup>435</sup> Clean Air Council February 1, 2019 Comments at 5; *See also* Delaware Riverkeeper March 1, 2019 Comments at 72-73.

204. As stated above, emissions at BAVs will be limited to emergency releases during blowdowns, which were quantified in table B-21 of the EA.<sup>436</sup> The increase in capacity that Adelphia requested in its amended application impacted only the North A system, and did not result in any design changes to the project compressor stations, meter stations, and BAVs, as those facilities were originally designed to accommodate the 250 million cubic feet per day of capacity that Adelphia requested in their amended application, and not the 175 million cubic feet per day that Adelphia originally proposed for the North A system. The increase in capacity on the North A system would result in a minor increase in pipeline fugitive emissions, and vented emissions at BAVs on the North A system only. We conservatively estimate that the total emissions from these facilities would result in approximately 4.2 tons per year (tpy) of VOCs, less than 0.1 tpy of HAPs, and 1,282 tpy of carbon dioxide equivalent (CO<sub>2</sub>e).

205. Delaware Riverkeeper also asserts that the EA failed to address the effects of multiple BAVs being in close proximity to each other, which it says could result in compounding risks.<sup>437</sup> Chester County's Planning Commission questions the spacing of the BAVs in its county as compared to BAVs in other counties.<sup>438</sup>

206. We disagree. The Cromby and Schuykill River BAVs are the two closest BAVs, located 0.7 mile from each other. All other BAVs are between 1.5 to 10 miles apart. Per DOT-PHMSA regulations, transmission lines are required to have sectionalizing block valves located every 2.5 to 10 miles of pipeline, depending on class location. Every segment between block valves must have a blowdown valve with enough capacity to allow the transmission line to be blown down as rapidly as possible. If Adelphia is exceeding the minimum safety requirements by installing additional BAVs beyond that which is required, it serves to provide an additional layer of safety in case of an emergency, while reducing the amount of natural gas that would need to be blown down at that particular location in an emergency. Therefore, additional BAVs would provide increased safety measures for the pipeline system.

**d. Natural Gas STAR Program**

207. Clean Air Council states that in analyzing the impact of blowdowns, the EA only describes Adelphia's "intent" to implement blowdown reinjection and asks that the Commission require reinjection as well as compliance with EPA's Natural Gas STAR Program. Additionally, East Goshen Township asks if the statement in the EA that

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<sup>436</sup> EA at 128.

<sup>437</sup> Delaware Riverkeeper March 1, 2019 Comments at 68.

<sup>438</sup> Chester County Planning Commission February 12, 2019 Comments at 3.

Adelphia intends to implement the EPA Natural Gas STAR Program is binding.<sup>439</sup> While participation in EPA's program is voluntary, Adelphia proposes to comply with this program, and Environmental Condition 6 in the appendix to this order requires Adelphia to implement its proposed mitigation described in the project application and supplements.

**e. Diesel Emissions**

208. Delaware Riverkeeper contends that the EA also failed to properly analyze diesel emissions from the project.<sup>440</sup> We disagree. Diesel emissions would be primarily limited to construction of the project. Construction emissions, inclusive of both gasoline- and diesel-fueled equipment, are summarized in table B-19 in the EA.<sup>441</sup> The emergency generators at the compressor stations also utilize diesel, and operational diesel emissions are summarized in table B-21 of the EA.<sup>442</sup>

**f. Radon**

209. Ruth Passo requests that radon testing be completed at the Quakertown Compressor Station due to potential health impacts, and states that the EA should have included the quantities of radon present in natural gas.<sup>443</sup> The U.S. Geological Survey found that concentrations of radon in natural gas samples from the Marcellus shale and overlapping Devonian sandstones, as measured at the wellhead, ranged from 1 to 79 picocuries per liter (pCi/L) and 7 to 65 pCi/L, respectively.<sup>444</sup> Additionally, a study using natural gas samples collected from Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC pipelines from the Marcellus shale gas field measured radon concentrations in natural gas pipelines ranging from 16.9 to 44.1 pCi/L, with resulting in-

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<sup>439</sup> East Goshen Township February 4, 2019 Comments.

<sup>440</sup> Delaware Riverkeeper March 1, 2019 Comments at 65.

<sup>441</sup> EA at 125.

<sup>442</sup> *Id.* at 128.

<sup>443</sup> Ruth Passo January 29, 2019 Comments.

<sup>444</sup> E.L. Rowan and T.F. Kraemer, *Radon-222 Content of Natural Gas Samples from Upper and Middle Devonian Sandstone and Shale Reservoirs in Pennsylvania: Preliminary Data* (U.S. Geological Survey 2012), <http://pubs.usgs.gov/of/2012/1159/ofr2012-1159.pdf>.

home concentrations estimated at 0.0042 to 0.0109 pCi/L.<sup>445</sup> These levels are significantly less than the average indoor and outdoor radon levels. The average home in the United States has a radon activity level of 1.3 pCi/L, while outdoor levels average approximately 0.4 pCi/L.<sup>446</sup> EPA has set the indoor action level for radon at 4 pCi/L.<sup>447</sup> If concentrations of radon are high enough to exceed these activity levels, EPA recommends implementing remedial actions, such as improved ventilation, to reduce levels below this threshold.<sup>448</sup> Because the radon concentrations associated with the natural gas would be well below the EPA indoor action level, the EA concludes that radon will not be present in the pipeline-quality gas in significant quantities that would result in health impacts on nearby populations.<sup>449</sup> We concur.

## 11. Noise

210. Noise levels are quantified according to decibels (dB), which are units of sound pressure. The A-weighted sound level, expressed as dBA, is used to quantify noise impacts on people. Sound level increases during pipeline construction will be intermittent and will generally occur during daylight hours, with the possible exception of some HDD activities.<sup>450</sup> For operations, Adelphia modeled noise levels at noise sensitive

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<sup>445</sup> L.R. Anspaugh, *Scientific Issues Concerning Radon in Natural Gas, Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC, New Jersey-New York Expansion Project* (2012), <https://www.slideshare.net/MarcellusDN/scientific-issues-concerning-radon-in-natural-gas> <http://energyindepth.org/wp-content/uploads/marcellus/2012/07/A-AnspaughReport.pdf>.

<sup>446</sup> EPA, *A Citizen's Guide to Radon - The Guide to Protecting Yourself and Your Family from Radon*, 402/K-12/002 (May 2012), [https://www.epa.gov/sites/production/files/2016-02/documents/2012\\_a\\_citizens\\_guide\\_to\\_radon.pdf](https://www.epa.gov/sites/production/files/2016-02/documents/2012_a_citizens_guide_to_radon.pdf).

<sup>447</sup> *Id.*

<sup>448</sup> EPA, *Consumer's Guide to Radon Reduction*, 402/K-10/005 (Mar. 2013), [https://www.epa.gov/sites/production/files/2016-02/documents/2013\\_consumers\\_guide\\_to\\_radon\\_reduction.pdf](https://www.epa.gov/sites/production/files/2016-02/documents/2013_consumers_guide_to_radon_reduction.pdf).

<sup>449</sup> EA at 131.

<sup>450</sup> *Id.* at 134-135.

areas (NSA) near each compressor station during operation.<sup>451</sup> Increases over existing ambient noise levels will likely not be noticeable, ranging from 0.3 dBA to 2.0 dBA.<sup>452</sup>

211. Delaware Riverkeeper asserts noise emitted at compressor stations is often above allowable standards, especially during construction, emergency venting, and blowdowns.<sup>453</sup> The Commission requires that the noise attributable to any new compressor engine or modifications during full load operation not exceed a day-night sound level of 55 decibels on the A-weighted scale at noise sensitive areas. This noise requirement is also typically applied to temporary nighttime construction noise. However, this noise requirement is not applied to daytime construction noise, emergency venting, or blowdowns because these activities are either temporary or intermittent and infrequent. Therefore, the EA concludes that these activities may result in noise impacts on nearby residents or noise sensitive areas; however, because these impacts would be limited to daytime hours, temporary, or intermittent, they would not be significant.

212. John Sweriduk asserts that the EA noise assessment addresses impacts at NSAs, but that landowners would experience impacts on the surrounding land because guideline levels are exceeded outside the facility fenceline.<sup>454</sup> April Pongitory contends that the allowable permissible sound levels established in local ordinances do not address the continuous noise that would be produced by the Quakertown Compressor Station.<sup>455</sup> John Sweriduk also asks what action would be taken if Adelphia is not able to meet the Commission's noise requirements during operation.<sup>456</sup>

213. As stated above, the EA estimates the sound levels associated with 24-hour compressor station operations, quantifies the potential increase above ambient sound levels resulting from compressor station operations,<sup>457</sup> and finds that impacts on nearby

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<sup>451</sup> *Id.* at 138.

<sup>452</sup> *Id.*

<sup>453</sup> Delaware Riverkeeper March 1, 2019 Comments at 72.

<sup>454</sup> John Sweriduk January 4, 2019 Comments.

<sup>455</sup> April Pongitory February 4, 2019 Comments.

<sup>456</sup> John Sweriduk January 4, 2019 Comments.

<sup>457</sup> EA at 137-138.

NSAs will not be significant.<sup>458</sup> Sound levels established under local noise ordinances apply to receiving land use categories,<sup>459</sup> which would be applicable at the fenceline. Adelphia committed to comply with local noise ordinances, which will minimize noise impacts on land near the Quakertown Compressor Station. Compliance with operational noise requirements for the compressor and meter stations are specified in Environmental Conditions 25 and 27, respectively. These conditions require Adelphia to complete a noise survey at full load operating conditions within 60 days of operation to confirm compliance with our noise survey. If noise levels are greater than the Commission's noise requirements, Adelphia would be required to identify additional noise controls, install the noise controls, and confirm compliance with a subsequent noise survey.

214. Delaware Riverkeeper also contends that low frequency noise during normal operation can lead to numerous health issues, including Vibroacoustic Disease.<sup>460</sup> Delaware Riverkeeper contends that the EA only assessed noise levels as compared to regulations established by the agency and local ordinances and did not consider the public nuisance and health effects result from the noise.<sup>461</sup>

215. Through the Commission's dispute resolution service helpline, we are aware that induced vibration, or a low frequency sound from pipelines, has occurred at a limited number of natural gas facilities in the over 300,000 miles of transmission pipeline in the United States. However, we are unaware of wide-scale cases of low frequency noise from natural gas transmission pipelines. With hundreds of thousands of residents near natural gas pipelines, we have seen no systemic evidence that natural gas pipelines are inducing noise effects on local residences. This appears to be an isolated issue that continues to be addressed through the dispute resolution service and landowner helpline.

216. Last, other commenters express concern regarding the noise associated with the proposed project, and specifically the noise impacts that the Quakertown Compressor Station will have on nearby residences and wildlife (including the native wood frog).<sup>462</sup> The Quakertown Compressor Station will be at a site that currently has existing natural gas infrastructure; wildlife (and the native wood frog) would be accustomed to existing noise levels. As described in the EA and discussed above, estimated noise from

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<sup>458</sup> *Id.* at 141-142.

<sup>459</sup> *Id.* at 133-134.

<sup>460</sup> Delaware Riverkeeper March 1, 2019 Comments at 72.

<sup>461</sup> *Id.*

<sup>462</sup> *See, e.g.,* Scott A. Schaffer II March 5, 2019 Comments.

operations of the Quakertown Compressor Station will not result in an audible sound level increase at the nearest NSA.<sup>463</sup>

## 12. Safety

217. Commenters question the safety of converting the existing pipeline from fuel oil to natural gas and are concerned that the natural gas would increase the pressure on the existing pipeline and that the aging pipe would be susceptible to leaking and corrosion.<sup>464</sup> Clean Air Council notes that DOT-PHMSA published an Advisory Bulletin that states flow reversals and product changes may significantly impact the integrity of the pipeline and recommends the submission of a comprehensive written plan before making such changes to ensure the changes are made in the safest manner.<sup>465</sup>

218. Commenters also contend that local public service providers may be unable to provide adequate response in an emergency situation, and state that an evacuation plan, including evacuation routes, must be developed and shared with the public.<sup>466</sup> Christine Shelly requests that a traffic impact study be done to assess impact on transportation from the Quakertown Compressor Station in the event of an emergency situation.<sup>467</sup> Additionally, Susan Bednar asks what components of the project would be automated or manual.<sup>468</sup>

219. As stated in the EA, DOT-PHMSA prescribes the minimum standards for operating and maintaining pipeline facilities, including requirements to establish an

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<sup>463</sup> EA at 138.

<sup>464</sup> See, e.g., Jeffrey Scott January 30, 2019 Motion to Intervene; Tina Stonorov Daly January 18, 2019 Comments at 2; Clean Air Council February 1, 2019 Comments at 19-20.

<sup>465</sup> Clean Air Council February 1, 2019 Comments at 20 (citing Pipeline and Hazardous Materials Safety Administration, Docket No. PHMSA-2014-0040, *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, 79 Fed. Reg. 56,121 (Sept. 12, 2014)).

<sup>466</sup> See, e.g., Christine Shelly January 23, 2019 Comments.

<sup>467</sup> Christine Shelly February 20, 2019 Comments.

<sup>468</sup> Susan Bednar February 4, 2019 Comments.



emergency plan and requirements for valve placement.<sup>469</sup> These standards, administered by DOT-PHMSA, include safety regulations and other approaches to risk management that ensure safety in the operation, maintenance, and emergency response of pipeline facilities. This work is shared with state agency partners and others at the federal, state, and local levels. Key elements of the plan include procedures for establishment of communication with local response officials and protecting people first. Adelphia's emergency plan will apply to the entire project, including the Existing System, and takes into consideration the associated resources along the route in order to handle emergencies appropriately and safely.

220. The EA also outlines numerous actions that Interstate Energy (the current owner of the Existing System) completed to ensure and verify the integrity of the southern segment of the Existing System in anticipation of the conversion of service.<sup>470</sup> Additionally, the EA states that Adelphia committed to comply with recommendations in the DOT-PHMSA Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service in the southern segment of the Existing System, where conversion would occur, and would submit its written procedures to the appropriate DOT-PHMSA regional office.<sup>471</sup> Lastly, the EA notes that Interstate Energy developed a Conversion to Service Plan that was submitted to DOT-PHMSA in 2017, which outlines the specific conversion requirements and what actions Interstate Energy has and would continue to take to ensure compliance with the plan. Therefore, the EA concludes that operation of the project, and conversion of the Existing System, would represent a minimal increase in risk to the nearby public as it would adhere to DOT-PHMSA's safety requirements.

221. Furthermore, the maximum allowable operating pressure of the Existing System will not change, remaining at 1,083 psig for the 18-inch-diameter pipeline and 1,200 psig for the 20-inch-diameter pipeline.<sup>472</sup> The new pipeline laterals, compressor stations, and associated meter stations will be designed to accommodate 1,440 psig. Therefore, we concur with the EA's findings that with implementation of the standard safety design criteria (developed by DOT-PHMSA), the project, including the conversion of the

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<sup>469</sup> 49 C.F.R. § 192.179 (2019).

<sup>470</sup> EA at 142.

<sup>471</sup> *Id.* at 143.

<sup>472</sup> *Id.* at 6.

Existing System, will be constructed and operated safely.<sup>473</sup> We further affirm that pipelines continue to be a safe and reliable means to transport natural gas.<sup>474</sup>

222. Zack McLane asks what safeguards were in place to ensure the public and environment's safety from a future act of terrorism or sabotage.<sup>475</sup> The likelihood of future acts of terrorism or sabotage occurring along the Adelpia Gateway Project's pipelines or at any of the myriad natural gas pipeline or energy facilities throughout the United States is unpredictable given the disparate motives and abilities of terrorist groups. In accordance with the DOT surveillance requirements, the applicants will incorporate air and ground inspection of its proposed facilities into its inspection and maintenance program. Security measures at the new aboveground facilities will include secure fencing.

223. Clean Air Council states that the EA only addresses the safety risk associated with the pipeline by citing general pipeline safety facts and existing regulations, and noting that Adelpia stated it would comply with the law.<sup>476</sup> Clean Air Council states that the EA should have addressed issues related to the age of the Existing System and the location of new facilities in densely populated areas.<sup>477</sup> Delaware Riverkeeper contends that the EA wrongly relies on generalized risk data.<sup>478</sup>

224. We disagree. The general pipeline safety facts that are addressed in the EA cover over 300,000 miles of new and old natural gas transmission pipelines nationwide in rural and urban areas, and are the most comprehensive data set available.<sup>479</sup> Neither the Clean Air Council nor the Delaware Riverkeeper state which data set would be more applicable to the project than the one used in the EA. As previously discussed, the EA reviews the numerous actions that Interstate Energy has completed to ensure and verify the integrity

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<sup>473</sup> *Id.* at 152.

<sup>474</sup> *Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at P 310 (2018).

<sup>475</sup> Zack McLane January 28, 2019 Comments.

<sup>476</sup> Clean Air Council February 1, 2019 Comments at 19-20.

<sup>477</sup> *Id.*

<sup>478</sup> Delaware Riverkeeper March 1, 2019 Comments at 69.

<sup>479</sup> EA at 149.

of the southern segment of the Existing System due to the age of system.<sup>480</sup> The EA also reviews and states which safety requirements, such as class location and high consequence areas, are applicable to the project based on nearby population density.<sup>481</sup> Therefore, we concur with the EA's findings that the project would represent a minimal increase in risk to the nearby public.

225. Delaware Riverkeeper contends that the EA wrongly relies on generalized risk data and failed to analyze the public safety risks compressor stations pose, including the risks associated with waste heat and the stresses on communities in the event of an emergency.<sup>482</sup> West Rockhill Township also expresses concern that Adelpia has never constructed a compressor station,<sup>483</sup> and Sheila McCarthy asserts that there is no specific design data for the Quakertown Compressor Station.<sup>484</sup>

226. Safety of the compressor stations during standard operation and emergency events is addressed in section 9.3 of the EA, while emergency response procedures are addressed in section 9.6.<sup>485</sup> During project operation, waste heat would not represent a hazard to public safety and would dissipate quickly when mixed with ambient air. In the event of an emergency, the engines would shut down and would therefore not be releasing waste heat. The EA concludes that the project would be designed to be in compliance with all applicable DOT-PHMSA requirements, and that operation of the facility represents a minimal increase in risk to the public.

227. Last, West Rockhill Township filed a report prepared by RT Environmental Services, Inc., which suggests that the proposed Quakertown Compressor Station site is too small, contending that there is an industry standard setback of 660 feet used for hazard evaluation purposes, which the EA failed to follow.<sup>486</sup>

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<sup>480</sup> *Id.* at 145.

<sup>481</sup> *Id.* at 146.

<sup>482</sup> Delaware Riverkeeper March 1, 2019 Comments at 69. *See also* Clean Air Council February 1, 2019 Comments at 19-20.

<sup>483</sup> West Rockhill Township February 1, 2019 Comments at 1.

<sup>484</sup> Sheila McCarthy January 9, 2019 Comments.

<sup>485</sup> EA at 144-148.

<sup>486</sup> West Rockhill Township September 10, 2019 Comments.

228. In evaluating the potential impact the proposed project could have on nearby structures and residences, the EA identified 22 structures and 15 residences that are within 50 feet of construction workspaces.<sup>487</sup> The EA also described the mitigation measures Adelphia would undertake to minimize these impacts and concluded impacts on residences would be temporary and not significant.<sup>488</sup> The 660-foot distance cited by West Rockhill Township is the distance used in the DOT-PHMSA Minimum Federal Safety Standards in determining class location units and high consequence areas associated with a pipeline.<sup>489</sup> Under DOT-PHMSA regulations, the class location provides an additional safety measure for areas with denser populations, and includes engineering design standards for pipe wall thickness, pipeline design pressures, maximum allowable pressure, and frequency of pipeline patrols and leak surveys.<sup>490</sup> This distance is also used for regular monitoring of population densities near pipelines to ensure that segments of pipe meet the safety requirements for the current population in an area. As stated above, Adelphia will be required to meet these standards. We note, however, that DOT-PHMSA regulations do not prevent the use or development of property within the radius.

### 13. Cumulative Impacts

229. CEQ defines cumulative impacts as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”<sup>491</sup> The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

230. 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.”<sup>492</sup> CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the

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<sup>487</sup> EA at 91-92, Table B-15.

<sup>488</sup> *Id.* at 92-93.

<sup>489</sup> 49 C.F.R. pt 192 (2019).

<sup>490</sup> *Id.* § 192.5

<sup>491</sup> 40 C.F.R. § 1508.7 (2019).

<sup>492</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

list of environmental effects must focus on those that are truly meaningful.”<sup>493</sup> 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.”<sup>494</sup> An agency’s analysis should be proportional to the magnitude of a proposed action; actions that will have no significant direct or indirect impacts usually only require a limited cumulative impacts analysis.<sup>495</sup> A meaningful cumulative impacts analysis must identify five things: “(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected *in that area* from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or expected to have impacts *in the same area*; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.”<sup>496</sup>

231. The EA considered the cumulative impacts of the project with other projects or actions within the geographic and temporal scope of the projects.<sup>497</sup> The types of other projects evaluated in the EA that could potentially contribute to cumulative impacts on a range of environmental resources include FERC-jurisdictional projects, utility projects, roadway improvements, industrial/commercial projects, residential projects, and remediation projects.<sup>498</sup> The EA concludes that, for resources where a level of impact could be ascertained, the project’s contribution to cumulative impacts on resources

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<sup>493</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (Jan. 1997), [https://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf](https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf) (1997 CEQ Guidance).

<sup>494</sup> *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

<sup>495</sup> See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005) (2005 CEQ Guidance).

<sup>496</sup> *TOMAC v. Norton*, 433 F.3d 852, 964 (D.C. Cir. 2006) (emphasis added) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002) (internal quotations omitted); see also *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

<sup>497</sup> EA at 152-173.

<sup>498</sup> *Id.* at 163.

affected by the project would not be significant, and that the potential cumulative impacts of the projects and the other projects considered would be minor or insignificant.<sup>499</sup>

**a. Impacts from Other Pipeline Projects**

232. Commenters express concerns for cumulative impacts on the region from Adelphia's project and the PennEast Pipeline Project based on the proximity of the two projects and the affiliate relationship between the two applicants.<sup>500</sup> Berks Gas Truth objects to the proximity between the PennEast Pipeline Project and Adelphia's project and is concerned of the impacts of construction of both projects in a populous area.<sup>501</sup> While the PennEast Pipeline Project crosses the Existing System in the northern portion of the pipeline, the PennEast project is entirely outside of the geographic scope of the cumulative impact assessment where construction is proposed (including for air quality).<sup>502</sup> Therefore, the EA appropriately did not consider those effects.

233. Delaware Riverkeeper argues that the EA should consider future expansions of Adelphia's system because they are reasonably foreseeable.<sup>503</sup> Delaware Riverkeeper asserts that other pipelines in the region have all added looping and compression recently, and therefore, the EA must account for the foreseeable expansion of the right-of-way to accommodate future upgrades.<sup>504</sup> We disagree. Adelphia has not indicated any plans to expand its system in the future and the fact that other pipelines have expanded is not an indication of Adelphia's intent to do so. Thus, any future expansion of Adelphia's system is not reasonably foreseeable.

**b. Land Use**

234. Commenters criticize the omission of prime farmland and farmland of statewide importance in the EA's cumulative impacts analysis.<sup>505</sup> As discussed in the EA, while

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<sup>499</sup> *Id.* at 173.

<sup>500</sup> *See, e.g.*, Arianne Elinich February 27, 2019 Comments.

<sup>501</sup> Berks Gas Truth February 28, 2019 Comments.

<sup>502</sup> EA at 157.

<sup>503</sup> Delaware Riverkeeper March 1, 2019 Comments at 27-29.

<sup>504</sup> *Id.* at 29.

<sup>505</sup> *See, e.g.*, Bernard Greenberg January 29, 2019 Comments; Earthworks February 4, 2019 Comments at 1.

soils classified as prime farmland and farmland of statewide importance will be impacted by the project, none of these lands are being actively cultivated.<sup>506</sup> Based on the defined geographic scope, the two remediation projects and non-jurisdictional facilities for the proposed project could, with the proposed project, contribute to cumulative impacts on soils in the project area, including those classified as prime farmland and farmland of statewide importance. However, soils impacted by the remediation projects are contaminated and are not desirable for cultivation purposes. Upgrades to existing infrastructure to support operation of Adelphia's aboveground facilities would be routed from existing power poles nearby, and would not require large tracts of land or routing of new transmissions lines. Therefore, we find the EA accurately addresses the resources with the potential for cumulative impacts in its analysis.

**c. Air Quality**

235. Earthworks states that compressors, mainline valves, and metering and regulation (M&R) stations are significant sources of air pollution and the EA failed to consider this in its cumulative impacts analysis.<sup>507</sup>

236. We disagree. The EA (including the air quality section and the cumulative impact analysis) is based on emissions for construction and operation of all project components,<sup>508</sup> and includes all emission sources at the compressor stations, meter stations, MLVs, BAVs, and along the pipeline laterals.<sup>509</sup>

**d. Water Resources**

237. Delaware Riverkeeper argues that the EA failed to consider the impacts of multiple utility and other linear projects that are proposed or constructed in the Delaware River watershed, in each subwatershed, and in each unique ecological community and human community.<sup>510</sup> Delaware Riverkeeper asserts there are significant concerns related to the cumulative impacts of the continuous water crossings and wetlands disturbances that pipeline construction activity has on the health and vitality of the

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<sup>506</sup> EA at 41.

<sup>507</sup> Earthworks February 4, 2019 Comments at 2.

<sup>508</sup> EA at 169.

<sup>509</sup> *Id.* at 126.

<sup>510</sup> Delaware Riverkeeper March 1, 2019 Comments at 25.

Delaware River basin and its tributaries.<sup>511</sup> Delaware Riverkeeper states that this is of particular concern with the Adelpia project because many subwatersheds could be impacted by construction activity from other pipeline projects, such as the PennEast project, the Northeast Supply Link project, the Southeast Leidy Expansion project, the Mariner East project, and the Atlantic Sunrise project.<sup>512</sup> Delaware Riverkeeper avers that each project individually depletes the natural and scenic resources of the region, and the combined impact becomes increasingly severe, unavoidable, unmitigatable, and irreversible.<sup>513</sup> Thus, Delaware Riverkeeper states that impacts must be considered on a subwatershed scale.<sup>514</sup>

238. The Mariner East Project is the only project listed by the Delaware Riverkeeper that is within the geographic scope of the cumulative impact analysis.<sup>515</sup> While some of the other projects (e.g., PennEast) may be near the Existing System, because there is no construction proposed along the Existing System, there would be no project-related impacts, and it would therefore not be included in the cumulative impact analysis. As stated in the EA, the geographic scope for evaluating impacts on groundwater, wetlands, vegetation, wildlife, and surface water resources is the watershed boundary (HUC 12), which is inclusive of subwatersheds that typically define the drainage area upstream of tributaries to major rivers, and range from 10,000 to 40,000 acres in size. Therefore, we concur with Delaware Riverkeeper's assertion that the cumulative impact analysis for water-resources, vegetation, and wildlife be inclusive of subwatersheds, and confirm that the HUC-12 watershed scale (which includes subwatersheds) was used as the geographic scope for the project's cumulative impact analysis.<sup>516</sup>

#### 14. Indirect Impacts

239. Indirect effects are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."<sup>517</sup>

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<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.* (describing impacts on the right-of-way of Buckeye Oil Gas Transmission).

<sup>515</sup> EA at 157.

<sup>516</sup> *Id.* at 154.

<sup>517</sup> 40 C.F.R. § 1508.8(b) (2019).



Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it is: (1) caused by the proposed action; and (2) reasonably foreseeable.<sup>518</sup>

240. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”<sup>519</sup> in order “to make an agency responsible for a particular effect under NEPA[.]”<sup>520</sup> As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”<sup>521</sup> Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if “the causal chain is too attenuated.”<sup>522</sup> Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>523</sup>

241. Courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a

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<sup>518</sup> See *id.*; see also *id.* § 1508.25(c).

<sup>519</sup> *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>520</sup> *Pub. Citizen*, 541 U.S. at 767.

<sup>521</sup> *Id.*; see also *Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (*Freeport LNG*) (finding that the Commission need not examine everything that could conceivably be a but-for cause of the project at issue); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (*Sabine Pass LNG*) (recognizing that the Commission’s order authorizing the construction of liquefied natural gas export facilities is not the legally relevant cause of increased production of natural gas).

<sup>522</sup> *Metro. Edison Co.*, 460 U.S. at 774.

<sup>523</sup> *Pub. Citizen*, 541 U.S. at 770; see also *Freeport LNG*, 827 F.3d at 49 (affirming that *Public Citizen* is explicit that the Commission need not consider effects, including induced production, that could only occur after intervening action by the DOE); *Sabine Pass LNG*, 827 F.3d at 68 (same); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (same).

decision.”<sup>524</sup> Although NEPA requires “reasonable forecasting,”<sup>525</sup> an agency “is not required to engage in speculative analysis”<sup>526</sup> or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>527</sup>

a. **Indirect Impacts of Upstream Natural Gas Development**

242. Commenters argue that the upstream natural gas production is sufficiently causally connected to the project to be an indirect impact,<sup>528</sup> stating that producers, industry groups, academic studies, and the U.S. Energy Information Administration have all found that additional pipeline takeaway capacity will increase natural gas production.<sup>529</sup> Delaware Riverkeeper contends that the Commission fails to consider the readily available and reasonably attainable analyses, projections, and assumptions that would inform the agency of the extent of the induced natural gas production that will result from

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<sup>524</sup> *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

<sup>525</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

<sup>526</sup> *Id.* at 1078.

<sup>527</sup> *Id.* (quoting *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006) (internal quotation marks and citation omitted)).

<sup>528</sup> *See, e.g.*, Chuck Graver, Jr. January 30, 2019 Comments; Berks Gas Truth February 28, 2019 Comments; Clean Air Council February 1, 2019 Comments at 10-11; Delaware Riverkeeper March 1, 2019 Comments at 19 (citing *Mid-States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003) and *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1138-9 (9th Cir. 2011)).

<sup>529</sup> Clean Air Council February 1, 2019 Comments at 10-11 (citing Pennsylvania Chamber of Business and Industry February 13, 2018 Comments; EIA, *Marcellus Region Drilling Productivity Report* (July 2017); Delaware Riverkeeper March 1, 2019 Comments at 31-33 (citing National Fuel. Investor Presentation: Q2 Fiscal 2016 Update at Slide 10 (April 2016); Argus Media, “US Gas Producers Boost Output Ahead of Expansions” (Aug. 29, 2016); Cabot Oil & Gas 2015 Annual Report at 3; Greater Philadelphia Energy Action Team, *A Pipeline for Growth* (Mar. 30, 2016)).

the project.<sup>530</sup> Delaware Riverkeeper contends that widely accepted tools and methods are available to the Commission to demonstrate that additional drilling will be necessary to support the project over the lifespan of its contracts, and to calculate the number of wells that will be needed to support the project, and where the new wells are likely to be located.<sup>531</sup> For example, Delaware Riverkeeper contends that analyzing historic drilling activity provides a strong indication of the location of new wells that will support Adelpia's project.<sup>532</sup>

243. Here, the specific source of natural gas to be transported via the Adelpia Gateway Project is currently unknown and will likely change throughout the project's operation. As we have previously concluded in other natural gas infrastructure proceedings and affirm with respect to the Adelpia Gateway Project, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations, where the supply source is unknown.<sup>533</sup> Delaware Riverkeeper provides only general information regarding drilling in the region and asks the Commission to extrapolate this data to determine specific project effects. However, the Adelpia Gateway Project will receive gas from other interstate pipelines and there is no evidence that the information cited would help predict the number and location of any additional wells that would be drilled as a result of any production demand associated with the project. Moreover, there is no evidence demonstrating that, absent approval of the Adelpia Gateway Project, this gas would not be brought to market by other means. Therefore, we conclude that the environmental impacts of upstream natural gas production are not an indirect effect of the project.<sup>534</sup> Last, where there is not even an identified general supply area for the gas that will be transported on

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<sup>530</sup> *Id.* at 21.

<sup>531</sup> *Id.* at 20.

<sup>532</sup> *Id.* at 32 (citing Delaware Riverkeeper's September 12, 2016 Comments in Docket No. CP15-558-000).

<sup>533</sup> *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App'x. 472, 474-75 (2d Cir. 2012) (unpublished opinion).

<sup>534</sup> *Birckhead v. FERC*, 925 F.3d 510, 517 (D.C. Cir. 2019) (holding the Commission did not violate NEPA in not considering upstream impacts where there was no evidence to predict the number and location of additional wells that would be drilled as a result of a project).

the project, any analysis of production impacts would be so generalized it would be meaningless.<sup>535</sup>

**b. Indirect Impacts of Downstream Greenhouse Gas Emissions**

244. Commenters contend the Commission must estimate the greenhouse gas emissions from the burning of the delivered gas, which they allege is an indirect impact.<sup>536</sup> Delaware Riverkeeper asserts that downstream estimates should also include the leakage of natural gas infrastructure that occurs prior to final delivery.<sup>537</sup> Clean Air Council notes that Adelphia estimated the downstream greenhouse gas emissions assuming all the delivered gas were burned, but the EA failed to include this data.<sup>538</sup>

245. Clean Air Council asserts that Adelphia describes the alternatives to the project to be other combustion sources, such as oil and coal, and therefore, it is expected that the gas will be burned.<sup>539</sup> Clean Air Council states that the EA admits that the project would increase service to industrial facilities in the Philadelphia area while also claiming not to know the use of the gas delivered on the southern portion of the pipeline.<sup>540</sup> Clean Air Council notes that Adelphia stated that it will deliver gas to “existing power plants,” and “the Marcus Hook Industrial Complex,” which includes a power plant and other facilities

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<sup>535</sup> See *Sierra Club v. DOE*, 867 F.3d 189, 200 (D.C. Cir. 2017) (accepting DOE’s “reasoned explanation” as to why the indirect effects pertaining to induced natural gas production were not reasonably foreseeable where DOE noted the difficulty of predicting both the incremental quantity of natural gas that might be produced and where at the local level such production might occur, and that an economic model estimating localized impacts would be far too speculative to be useful).

<sup>536</sup> See, e.g., Clean Air Council February 1, 2019 Comments at 12 (citing *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017)); Delaware Riverkeeper March 1, 2019 Comments at 22.

<sup>537</sup> Delaware Riverkeeper March 1, 2019 Comments at 48.

<sup>538</sup> Clean Air Council February 1, 2019 Comments at 12. See also Delaware Riverkeeper March 1, 2019 Comments at 23.

<sup>539</sup> Clean Air Council February 1, 2019 Comments at 13.

<sup>540</sup> *Id.* at 13.

that burn gas, such as the Energy Transfer Partners natural gas liquids fractionation and terminalling operations.<sup>541</sup>

246. Additionally, Clean Air Council asserts that Adelphia stated that “[t]he proposed interconnection on the Parkway Lateral will serve to directly connect the Adelphia system with two existing Calpine Corporation (Calpine) power plants to provide those plants with an alternative source of gas,” and the EA wrongly does not quantify emissions because Calpine has not signed a precedent agreement.<sup>542</sup> Clean Air Council also states the Tilghman Lateral is designed to serve a Kimberly-Clark gas-fired cogeneration facility and that Adelphia has signed a precedent agreement with Kimberly-Clark’s natural gas supplier.<sup>543</sup> Thus, Clean Air Council concludes that, taking the record evidence as a whole, it is reasonable to conclude that the delivered gas would be burned and it is improper to for the Commission to demand a higher level of certainty when calculating greenhouse gas emissions and their effects than any other environmental impact.<sup>544</sup>

247. Last, Delaware Riverkeeper contends that the Commission must consider the end use effects of exporting the natural gas.<sup>545</sup> Delaware Riverkeeper contends that given that the Marcus Hook Industrial Complex is a terminalling and natural gas liquids storage facility and that natural gas can sell at a significantly higher price overseas, it is both reasonable and foreseeable that gas will be transported to Marcus Hook for export.<sup>546</sup>

248. The D.C. Circuit Court of Appeals in *Sierra Club v. FERC* held that where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should “estimate[] the amount of power-plant carbon

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<sup>541</sup> *Id.* at 13-14.

<sup>542</sup> *Id.* at 12. *See also* Delaware Riverkeeper March 1, 2019 Comments at 23, 45.

<sup>543</sup> Clean Air Council February 1, 2019 Comments at 13. *See also* Delaware Riverkeeper March 1, 2019 Comments at 22, 45-46.

<sup>544</sup> Clean Air Council February 1, 2019 Comments at 14-15 (noting that the Commission could have requested additional information to clear up any disputes) (citing *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 at PP 2-3 (2018) (Glick, Comm’r, *dissenting in part*)).

<sup>545</sup> Delaware Riverkeeper March 1, 2019 Comments at 24.

<sup>546</sup> *Id.* at 12.

emissions that the pipelines will make possible.”<sup>547</sup> However, outside the context of known specific end use, the D.C. Circuit affirmed in *Birckhead v. FERC*, the fact that “emissions from downstream gas combustion are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project.”<sup>548</sup>

249. In this case, not all of the combustion is reasonably foreseeable. Adelpia has signed precedent agreements with four shippers and, as detailed below, with the exception of the gas being delivered to the Kimberly-Clark cogeneration facility, we do not find that approval of the project will spur additional identifiable gas consumption. Two precedent agreements, totaling 175,000 Dth/day on the Zone North A system and 350,000 Dth/day on the Zone North B system, are designed to replicate service currently being provided, and therefore, will not alter the downstream usage of the gas being provided by the facilities. The third precedent agreement is for 22,500 Dth/day for delivery to a Kimberly-Clark power plant. Accordingly, the greenhouse emissions from this power plant are quantified below. With respect to the volumes associated with the fourth precedent agreement for 100,000 Dth/day on the Zone South system, consistent with the court’s directive, the Commission sought out information regarding the end-use of this gas.<sup>549</sup> Adelpia responded that gas would be delivered for further transportation on the interstate grid and the end-use of this gas is unknown.<sup>550</sup> Because the end-use of this volume of gas as well as the uncontracted for volumes is unknown, any potential greenhouse gas emissions associated with the ultimate combustion of the transported gas are not reasonably foreseeable, and therefore not an indirect impact of the Adelpia Gateway Project. We disagree with commenters’ assertions that we should rely on generalized statements regarding the end-use of gas delivered by the project. Adelpia’s generalized statements do not provide evidence that it is reasonably foreseeable that the gas will be consumed in Calpine’s power plants or at the Marcus Hook Industrial

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<sup>547</sup> *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sierra Club*).

<sup>548</sup> *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (citing *Calvert Cliffs’ Coordinating Committee, Inc. v. U.S. Atomic Energy Commission*, 449 F.2d 1109, 1122 (D.C. Cir. 1971)). The court in *Birckhead* also noted that “NEPA . . . requires the Commission to at least attempt to obtain the information necessary to fulfill its statutory responsibilities,” but citing to *Delaware Riverkeeper Network*, the court acknowledged that NEPA does not “demand forecasting that is not meaningfully possible.” *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019) (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014)).

<sup>549</sup> Commission staff July 12, 2018 Data Request.

<sup>550</sup> Adelpia July 27, 2018 Data Response.

Complex.<sup>551</sup> Therefore, with the inclusion of the downstream emissions from the Kimberly-Clark facility quantified below, we have considered all reasonably foreseeable downstream greenhouse gas emissions caused by the project.

### 15. Climate Change Impacts of Greenhouse Gas Emissions

250. Commenters identify climate change as a significant global issue, and state that the greenhouse gas emissions from the project would result in adverse effects on the climate.<sup>552</sup> Delaware Riverkeeper states that the CEQ's August 1, 2016 Guidance directs federal agencies to consider: (1) the potential effects of a proposed action on climate change as indicated by assessing greenhouse gas emissions and (2) the effects of climate change on a proposed action and its environmental impacts.<sup>553</sup> Delaware Riverkeeper acknowledges that the CEQ Guidance has been "rolled back," but asserts that under NEPA, agencies have an obligation to review the climate change impacts of a proposal.<sup>554</sup>

251. Delaware Riverkeeper contends that the EA wrongly assumes that greenhouse gas emissions from the project would be cumulatively insignificant, noting that the court in *Sierra Club* specifically stated that there must be a "discussion of the 'significance' ... as well as 'the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.'"<sup>555</sup> Delaware Riverkeeper further notes that the court stated that "quantification would permit the agency to compare the emissions from this project to emissions from other projects, to total emissions from the state or the region, or to regional or national emissions-control goals ... [and] [w]ithout such

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<sup>551</sup> As stated above, there is also no evidence that gas transported by the project will be exported.

<sup>552</sup> See, e.g., Clean Air Council Comments February 1, 2019 Comments at 15 ("The single biggest impact that the Adelphia Gateway Project will have on the natural and human environment is its worsening of the climate crisis.").

<sup>553</sup> Delaware Riverkeeper March 1, 2019 Comments at 35, 41 (citing CEQ, *Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (Aug. 1, 2016)).

<sup>554</sup> *Id.* at 35. Delaware Riverkeeper also asserts that under the NGA, the Commission must consider "all factors bearing on the public interest," including the project's impact on climate change. *Id.* at 40 (citing *Texas Eastern Transmission, LP*, 164 FERC ¶ 61,037 (2018) (Glick, Comm'r, *dissenting in part*)).

<sup>555</sup> *Id.* at 52 (citing *Sierra Club v. FERC*, 867 F.3d at 1374).

comparisons, it is difficult to see how FERC could engage in ‘informed decision making’ with respect to the greenhouse-gas effects of this project, or how “informed public comment” could be possible.<sup>556</sup> Delaware Riverkeeper asserts that because the Commission fails to fully consider the climate change impacts, it fails to fully analyze mitigation, focusing solely on methane leak prevention and repair.<sup>557</sup>

252. Commenters further assert that the EA fails to accurately quantify the greenhouse gas emissions from the project and note that the project’s climate change impacts cannot be adequately considered where the end-users of the project are not disclosed.<sup>558</sup> Additionally, commenters assert that the amendment, which increased capacity on the Zone North A System, failed to consider the additional greenhouse gas emissions even though the EA acknowledges that the greater capacity could result in higher vented emissions during emergency and planned releases.<sup>559</sup> Delaware Riverkeeper also contends that the EA fails to discuss how the increase in capacity will lead to higher operational emissions from the project.<sup>560</sup>

253. Last, Delaware Riverkeeper argues that the EA improperly uses a global warming potential of 25 for methane.<sup>561</sup> Delaware Riverkeeper states that EPA has found that methane is estimated to have a global warming potential of 28-36 over 100 years,<sup>562</sup> and by using the lower number the EA understates the associated global warming potential by at least 12 to 44 percent.<sup>563</sup> Delaware Riverkeeper further notes that based on the 2018 United Nations Intergovernmental Panel on Climate Change Report, and using a 20-year

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<sup>556</sup> *Id.* (citing *Sierra Club v. FERC*, 867 F.3d at 1374).

<sup>557</sup> *Id.*

<sup>558</sup> *See, e.g.*, Mark Hutchins Canright February 1, 2019 Comments; Arianne Elinich January 7, 2019 Comments.

<sup>559</sup> Arianne Elinich January 7, 2019 Comments; Delaware Riverkeeper March 1, 2019 Comments at 43-44.

<sup>560</sup> Delaware Riverkeeper March 1, 2019 Comments at 44.

<sup>561</sup> *Id.* at 42.

<sup>562</sup> *Id.* (citing US Environmental Protection Agency, *Understanding Global Warming Potentials*, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>).

<sup>563</sup> *Id.*



timeframe, the global warming potential of methane is actually between 84 and 87.<sup>564</sup> Delaware Riverkeeper contends that at a minimum, the EA should include a climate change assessment of the proposed pipeline using both the 100-year and the 20-year time frame.<sup>565</sup>

254. The EA discusses the direct greenhouse gas impacts from construction and operation of the project, the climate change impacts in the region, and the regulatory structure for greenhouse gases under the Clean Air Act.<sup>566</sup> The EA estimated that construction of the Adelpia Gateway Project may result in emissions of up to 12,318.3 metric tons of CO<sub>2</sub>e over the duration of construction.<sup>567</sup> Additionally, the EA estimated that operation of the project will result in emissions of up to 81,458 metric tons of CO<sub>2</sub>e per year during project operation.<sup>568</sup>

255. However, as discussed above, we agree with commenters that the EA should have included an estimate of the downstream burning of gas at Kimberly-Clark's generation facilities. The project will enable Adelpia to provide 22,500 Dth/day of additional firm natural gas transportation service to PECO, which would in turn distribute the gas to a Kimberly-Clark facility in Chester, Pennsylvania. The combustion for this amount of natural gas will result in 0.44 million metric tons per year of downstream CO<sub>2</sub> emissions, which would represent a 0.20 percent increase in CO<sub>2</sub> emissions in Pennsylvania, and a 0.01 percent increase at the national level. To provide additional context to the emissions estimate, according to the national net CO<sub>2</sub>e emissions estimate in EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks (EPA 2019), 5,742.6 million metric tons of CO<sub>2</sub>e were emitted at the national level in 2017 (inclusive of CO<sub>2</sub>e sources and sinks).<sup>569</sup>

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<sup>564</sup> *Id.* (citing Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5 degrees C, Summary for Policymakers* (2018)).

<sup>565</sup> *Id.* at 43.

<sup>566</sup> EA at 117-132, 169-172.

<sup>567</sup> *Id.* at 125. CO<sub>2</sub>e emissions in the EA are expressed in short tons, which have been converted to metric tons in this Order so the emissions may be viewed in context with the EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks.

<sup>568</sup> *Id.* at 128.

<sup>569</sup> The national emissions reduction targets expressed in the EPA's Clean Power Plan and the Paris climate accord are pending repeal and withdrawal, respectively.

256. We disagree with Delaware Riverkeeper's assertion that the EA calculated greenhouse gas emissions using an improper global warming potential for methane. The EA appropriately selected the Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report (AR4, 2007) global warming potential values for methane and nitrous oxide for the 100-year timescale because these are the values EPA established for reporting of greenhouse gas emissions, EPA's methane reduction voluntary programs, and the EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks. EPA acknowledged the Fifth Assessment Report could lead to more accurate assessments of climate impacts in the future. However, when balanced with the benefit of retaining consistency across agencies, and national and international programs, the potential gain in accuracy does not justify the loss of consistency in reporting and likely would cause stakeholder confusion among the various global warming potentials used in different programs. EPA identified that it may consider adoption of the Fifth Assessment Report global warming potentials in the future, at which time we will ensure that Commission staff use the revised global warming potential values for methane and nitrous oxide in its NEPA evaluations.

257. The EA also included a qualitative discussion that addressed various effects of climate change.<sup>570</sup> The EA acknowledges that the quantified greenhouse gas emissions from the construction and operation of the project will contribute incrementally to climate change.<sup>571</sup> Further, the Commission has previously concluded it could not determine a project's incremental physical impacts on the environment caused by greenhouse gas emissions.<sup>572</sup> The Commission has also previously concluded it could not determine whether a project's contribution to climate change would be significant.<sup>573</sup>

**a. Social Cost of Carbon**

258. Commenters assert that the Commission must include an analysis of climate change impacts of the project utilizing the Social Cost of Carbon or similar tool.<sup>574</sup> Clean Air Council argues that NEPA directs that "an agency [to] seek out or, if not available,

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<sup>570</sup> EA at 169-172.

<sup>571</sup> *Id.* at 171-172.

<sup>572</sup> *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 at PP 67-70 (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

<sup>573</sup> *Id.*

<sup>574</sup> *See, e.g.*, Chuck Graver, Jr. January 30, 2019 Comments; Arianne Elinich January 7, 2019 Comments; Delaware Riverkeeper March 1, 2019 Comments at 51.

develop proper methods to conduct a complete analysis, in compliance with the statutory purpose, related to evaluating carbon emissions and consequent future damages from each project.”<sup>575</sup> Clean Air Council contends that ignoring the tools and resources available to assist in predicting the impacts of releases of greenhouse gases is an arbitrary and capricious failure by the Commission to conduct the “hard look” required of it by NEPA.<sup>576</sup> Similarly, Delaware Riverkeeper notes that the court in *Sierra Club* explained “in the face of indefinite variables, ‘agencies may sometimes need to make educated assumptions about an uncertain future’” and that the tools exist, and conservative estimates based on best science and economics can be calculated.<sup>577</sup>

259. Delaware Riverkeeper argues that the Commission wrongly claims that there is “no widely accepted standard to ascribe significance to a given rate or volume of greenhouse emissions” and that “it cannot ‘determine how a project’s contribution to greenhouse gas emissions would translate into physical effects on the environment.”<sup>578</sup> Delaware Riverkeeper asserts that this is precisely what the Social Cost of Carbon is used for.<sup>579</sup> Clean Air Council notes that there is no objectively scientific way of determining significance for any particular type of environmental impact, because the natural environment is extraordinarily complex and qualitative, and that outside the context of climate impacts, the Commission does make such qualitative judgments.<sup>580</sup>

260. Delaware Riverkeeper notes that the Social Cost of Carbon is an available and appropriate methodology for assessing the significance of the project’s impacts and states that the Social Cost of Carbon would allow the Commission to weigh the economic costs

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<sup>575</sup> Clean Air Council February 1, 2019 Comments at 15 (citing November 8, 2017 Letter from Senators Whitehouse and Bennett (Exhibit 7 to Clean Air Council’s filing)).

<sup>576</sup> *Id.*

<sup>577</sup> Delaware Riverkeeper March 1, 2019 Comments at 59 (citing *Sierra Club v. FERC*, 867 F.3d at 1374).

<sup>578</sup> Delaware Riverkeeper March 1, 2019 Comments at 54-55 (citing *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, at 2, 5-8 (2018) (Glick, Comm’r, *dissenting*); *Texas Eastern Transmission, LP*, 164 FERC ¶ 61,037 (LeFleur, Comm’r, *dissenting*)); *see also* Clean Air Council February 1, 2019 Comments at 14-15.

<sup>579</sup> Delaware Riverkeeper March 1, 2019 Comments at 55 (citing *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, at 2, 5-8 (2018) (Glick, Comm’r, *dissenting*)).

<sup>580</sup> Clean Air Council February 1, 2019 Comments at 15.

and benefits of the project.<sup>581</sup> Delaware Riverkeeper contends that the EA wrongly asserts that the Social Cost of Carbon is not appropriate for use in the Commission's project-specific analyses.<sup>582</sup> Delaware Riverkeeper states that facts about the residual adverse impacts of the project are exactly what is meaningful to the Commission's decision and that the EA must present those facts in a meaningful way.<sup>583</sup> Delaware Riverkeeper notes that cost monetization, as provided by the Social Cost of Carbon, is appropriate and required where available "alternative mode[s] of [NEPA] evaluation [are] insufficiently detailed to aid the decision-makers in deciding whether to proceed, or to provide the information the public needs to evaluate the project effectively."<sup>584</sup>

261. With respect to the Commission's assertion that the Social Cost of Carbon has methodological limitations, Delaware Riverkeeper asserts that if the Commission ignores economic information developed using any tools that have methodological limitations, then the Commission could not employ estimates of the economic impact (which are included in the EA) of natural gas transmission projects in its decision-making.<sup>585</sup> Moreover, Delaware Riverkeeper notes that the Social Cost of Carbon likely underestimates the impact, and despite acknowledging that models naturally lag behind the most recent research, the 2009 Interagency Working Group on the Social Cost of Greenhouse Gases concluded that the Social Cost of Carbon is a useful measure to assess the climate impacts of emission changes.<sup>586</sup> Delaware Riverkeeper concludes that the Commission's claim that it lacks the means to account, at least conservatively or

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<sup>581</sup> Delaware Riverkeeper March 1, 2019 Comments at 51-53.

<sup>582</sup> *Id.* at 53-54.

<sup>583</sup> *Id.* at 56 (citing Key-Log Study at 1-2). Delaware Riverkeeper further notes that EPA has also recommended the use of the Social Cost of Carbon in its comments on the Commission's pending review of its Policy Statement, explaining that estimates of the Social Cost of Carbon "may be used for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in [greenhouse gas] emissions provides useful information in its environmental review or public interest determination." *Id.* at 56.

<sup>584</sup> *Id.* at 60 (citing *Columbia Basin Land Prot. Ass'n v. Schlesinger*, 643 F.2d 585, 594 (9th Cir. 1981)).

<sup>585</sup> *Id.* at 57 (citing Key-Log Study at 1-2).

<sup>586</sup> *Id.* (citing Key-Log Study at 5 and United States Government, Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis* (2016)).

partially, for climate change impacts is absurd because the Social Cost of Carbon does just that.<sup>587</sup>

262. Last, Delaware Riverkeeper asserts that the Commission ignored an ecosystem services model to measure impacts.<sup>588</sup> An ecosystem services model describes the benefits that flow from nature to people and can be used to estimate ecosystem service value produced (or lost) per year.<sup>589</sup> Delaware Riverkeeper argues that by failing to consider ecosystem service losses means many of the economic consequences of environmental impacts have not been accounted for by the Commission.<sup>590</sup>

263. The Social Cost of Carbon has been described as an estimate of the monetized climate change damage associated with an incremental increase in CO<sub>2</sub> emissions in a given year.<sup>591</sup> The Commission has provided extensive discussion on why the Social Cost of Carbon is not appropriate in project-level NEPA review, and cannot meaningfully inform the Commission's decisions on natural gas infrastructure projects under the NGA.<sup>592</sup> We adopt that reasoning here.

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<sup>587</sup> *Id.* at 58-59 (citing EPA, *Fact Sheet, Social Cost of Carbon* (Dec. 2016) and Key-Log Study at 1-2).

<sup>588</sup> *Id.* at 59.

<sup>589</sup> *Id.* at 63 (“methodologies are outlined in *Federal Resource Management and Ecosystem Services or Best Practices for Integrating Ecosystem Services into Federal Decision Making.*”).

<sup>590</sup> *Id.* at 64.

<sup>591</sup> Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document – Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866* at 1 (Aug. 2016), [https://www.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf).

<sup>592</sup> *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*2 (D.C. Cir. Feb. 19, 2019) (“[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”).

## 16. Environmental Conclusion

264. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Adelpia's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

265. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>593</sup>

266. At a hearing held on December 19, 2019, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

### The Commission orders:

(A) A certificate of public convenience and necessity is issued to Adelpia, authorizing it to acquire, construct, and operate the proposed Adelpia Gateway Project,

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<sup>593</sup> See 15 U.S.C. § 717r(d) (2018) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Adelphia's:

- (1) Completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Compliance with the environmental conditions listed in the appendix to this order.

(C) A blanket construction certificate is issued to Adelphia under Subpart F of Part 157 of the Commission's regulations.

(D) A blanket transportation certificate is issued to Adelphia under Subpart G of Part 284 of the Commission's regulations.

(E) Adelphia shall file a written statement affirming that they have executed firm contracts for the capacity levels and terms of service represented in the signed precedent agreements, prior to commencing construction.

(F) Adelphia's initial recourse rates, as amended, fuel retainage and lost and unaccounted-for gas percentages, and *pro forma* tariff are approved, as conditioned and modified above.

(G) Adelphia shall file actual tariff records that comply with the requirements contained in the body of this order prior to the commencement of interstate service consistent with Part 154 of the Commission's regulations.

(H) Within three months after its first three years of actual operation, as discussed herein, Adelphia must make a filing to justify its existing cost-based firm and interruptible recourse rates. Adelphia's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Adelphia is advised to include as part of the eFiling description, a reference to Docket No. CP18-46-000 and the cost and revenue study.

(I) Adelpia shall account for the proposed transaction recording the acquisition of facilities in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts.<sup>594</sup> Adelpia shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(J) Adelpia shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Adelpia. Adelpia shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

Commissioner McNamee is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>594</sup> See 18 C.F.R. pt. 201 (2019).



## Appendix Environmental Conditions

1. Adelphia Gateway, LLC (Adelphia) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the Environmental Assessment (EA), unless modified by the Order. Adelphia must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Federal Energy Regulatory Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the Project. This authority shall allow:
  - a. the modification of conditions of the Order;
  - b. stop work authority; and
  - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, Adelphia shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Adelphia shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Adelphia's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Adelphia's right of eminent domain granted under NGA Section 7(h) does not authorize it to increase the size of its natural gas pipeline or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Adelphia shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*, and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the authorization and before construction begins**, Adelphia shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Adelphia must file revisions to the plan as schedules change. The plan shall identify:
- a. how Adelphia will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Adelphia will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Adelphia will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Adelphia's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Adelphia will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Adelphia shall employ at least two EIs. The EIs shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see Condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of that Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Adelphia shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Adelphia's efforts to obtain the necessary federal authorizations;
  - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and



the HDD alignments. Adelphia shall also include in the assessment an evaluation of the potential for hydrofracture and an inadvertent return using the U.S. Army Corps of Engineers' Delft method<sup>595</sup> (or an equivalent method) for drilling through unconsolidated material, and/or a qualitative analysis for an inadvertent return through bedrock utilizing rock quality designation values obtained from the bedrock cores.

14. **Prior to construction**, Adelphia shall file with the Secretary the Final Sampling and Analysis Plan for the Tilghman and Parkway Laterals (SAP), including any U.S. Environmental Protection Agency (USEPA) and Pennsylvania Department of Environmental Protection (PADEP) comments on the SAP, for review and written approval by the Director of OEP. The Final SAP shall include:
- a. a clear definition of the number of samples, depth of sample collection, and analysis for each sampling location;
  - b. a commitment to plug and abandon borings/monitoring wells in accordance with state and federal guidelines;
  - c. sampling every 100 feet near the PADEP contaminated sites listed in table B-3 of the EA and expanded analytical testing to include known contaminants;
  - d. addition of polychlorinated biphenyl to the SAP for soil and groundwater samples collected adjacent to the Metro Container Corporation site; and
  - e. site-specific plans for construction in areas of contamination, based on USEPA and PADEP consultations that include:
    - (1) the extent of contamination in relation to construction work areas;
    - (2) description of the contamination plumes (i.e., migrating, stable), where available;
    - (3) identification of areas where Project construction (including HDDs) could create a preferential migration path for contamination; and
    - (4) proposed mitigation measures developed in consultation with the USEPA and PADEP.

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<sup>595</sup> *Recommended Guidelines for Installation of Pipelines beneath Levees using Horizontal Directional Drilling*, prepared for USACE, Kimberlie Staheli [*et al.*], April 1998.

15. **Prior to construction**, Adelphia shall file with the Secretary a revised Inadvertent Return Contingency Plan, for review and written approval by the Director of OEP, which addresses containment and cleanup measures for inadvertent releases in areas of contamination.
16. **Prior to construction**, Adelphia shall file with the Secretary, for review and written approval by the Director of OEP, results of consultation with the PADEP and the Delaware County Conservation District to identify any potential alternative stormwater management configuration at the Transco Meter Station that will not result in impacts on nearby wetlands.
17. **Prior to construction**, Adelphia shall file with the Secretary, for review and written approval by the Director of OEP, site-specific justification for operational use of AR-33.97-01 for access to the Perkiomen Creek blowdown assembly valve (BAV), or identify an alternative access route for use during operation that avoids impacts on wetlands.
18. Adelphia shall **not begin construction** of the Project **until**:
  - a. FERC staff completes Endangered Species Act Section 7 consultations with the U.S. Fish and Wildlife Service; and
  - b. Adelphia has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin.
19. **Prior to construction**, Adelphia shall confirm in a filing with the Secretary that it will install a super silt fence barrier at the Schuylkill River BAV during the inactive period of the eastern red belly turtle (October 15 – April 15), and if this timing window cannot be met, then Adelphia will have a qualified biologist on-site to conduct a clearance survey prior to construction.
20. **Prior to construction**, Adelphia shall file with the Secretary, for review and written approval by the Director of OEP:
  - a. results of consultation with the applicable managing entity for the portion of the Schuylkill River Trail that will be impacted by construction and operation of the Schuylkill River BAV, generally between MPs 27.3 and 28.1 of the existing mainline, including copies of any correspondence; and
  - b. mitigation measures that Adelphia will implement during construction and operation, including signage for trail users.
21. **Prior to construction**, Adelphia shall file with the Secretary a copy of PADEP's Coastal Zone Management Act determination for the Adelphia Gateway Project.

22. **Prior to construction**, Adelphia shall file with the Secretary, for review and written approval by the Director of OEP, site-specific visual screening plans for the Quakertown Compressor and Meter Stations and the Delmarva Meter Station. Adelphia shall develop the visual screening plan for the Quakertown facilities in consultation with West Rockhill Township. The plans shall include photo simulations of the resulting viewshed from the perspective of nearby visual receptors.
23. **Prior to construction**, Adelphia shall identify parking areas for construction workers at the Marcus Hook Compressor Station and for the two new laterals and associated meter stations and file the information with the Secretary for review and written approval by the Director of OEP.
24. Adelphia shall **not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- for Pennsylvania, Adelphia files with the Secretary remaining cultural resources survey reports(s); site evaluation report(s), as required; avoidance/treatment plan(s), as required; and comments on the cultural resources reports and plans from the Pennsylvania State Historic Preservation Office;
  - for Delaware, Adelphia files with the Secretary the Delaware State Historic Preservation Office's comments on the visual screening plan for the Delmarva Meter Station;
  - the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
  - FERC staff reviews and the Director of the OEP approves the cultural resources reports and plans, and notifies Adelphia in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CUI//PRIV - DO NOT RELEASE.”**

25. Adelphia shall file with the Secretary noise surveys for the Marcus Hook Compressor Station and Quakertown Compressor and Meter Stations **no later than 60 days** after placing the stations into service. If full power load condition noise surveys are not possible, Adelphia shall file an interim survey at the maximum possible power load **within 60 days** of placing the stations into service



and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at the station under interim or full power load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, Adelphia shall:

- a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
  - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
  - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.
26. **Prior to construction of the Delmarva Meter Station**, Adelphia shall file with the Secretary, for review and written approval by the Director of OEP, a description of the specific noise mitigation measures it will install at the Delmarva Meter Station and the associated noise levels predicted for full flow/load condition operations.
27. Adelphia shall file with the Secretary noise surveys for the Transco, Monroe, Tilghman, and Delmarva Meter Stations **no later than 60 days** after placing the stations into service. If full flow/load condition noise surveys are not possible, Adelphia shall file an interim survey at the maximum possible power load **within 60 days** of placing the stations into service and file the full flow/load survey **within 6 months**. If the noise attributable to operation of all equipment at each meter station under interim or full power load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, Adelphia shall:
- a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
  - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
- confirm compliance with this requirement by filing a second full power load noise survey with the Secretary for review and written approval by the Director of OEP **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Adelphia Gateway, LLC

Docket Nos. CP18-46-000  
CP18-46-001

(Issued December 20, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because it violates both the Natural Gas Act<sup>1</sup> (NGA) and the National Environmental Policy Act<sup>2</sup> (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order authorizing Adelphia Gateway, LLC's (Adelphia) proposed Adelphia Gateway project (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions from the Project's construction and operation as well as a fraction of its downstream GHG emissions. That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"<sup>3</sup> and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity. Claiming that a project has no significant environmental impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

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<sup>1</sup> 15 U.S.C. § 717f (2018).

<sup>2</sup> National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

<sup>3</sup> *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 264 (2019) (Certificate Order); Adelphia Gateway Project Environmental Assessment at 194 (EA).

**I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking**

3. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and the consumption of fossil fuels, including natural gas. The Commission recognizes this relationship, finding, as it must, that climate change is driven by the “accumulation of GHGs in the atmosphere through combustion of fossil fuels (coal, petroleum, and natural gas)” along with other anthropogenic actions<sup>4</sup> and that emissions from the Project’s construction and operation would “contribute incrementally to future climate change impacts.”<sup>5</sup> In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project’s contribution to climate change, both in order to fulfill NEPA’s requirements and to determine whether the Project is in the public interest and required by the public convenience and necessity.<sup>6</sup>

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<sup>4</sup> EA at 170. It is worth noting that the Commission used to acknowledge the combustion of fossil fuels as the primary cause behind the accumulation of GHGs in the atmosphere, see, for example, Environmental Assessment, Docket No. CP18-332-000, at 11 (2018) (South Mainline Expansion Project—the Commission’s most recent NGA section 7 order), but, for reasons that are not explained, appears to have backed off that conclusion in the EA.

<sup>5</sup> EA at 170-72.

<sup>6</sup> Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline’s benefits outweigh its harms. 15 U.S.C. § 717f. Furthermore, NEPA requires the Commission to take a “hard look” at the environmental impacts of its decisions. See 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline’s contribution to climate change by actually evaluating the magnitude of the pipeline’s environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. See *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (“The [FEIS] needed to include a discussion of the ‘significance’ of this indirect effect.”); 40 C.F.R. § 1502.16 (a)–(b) (An agency’s environmental review must “include the environmental impacts of the alternatives including the proposed action,” as well as a discussion of direct and indirect effects *and their significance*. (emphasis added)).

4. Today's order falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the facility's impact on climate change.<sup>7</sup> That is now clearly established D.C. Circuit precedent.<sup>8</sup> The Commission, however, insists that it need not consider whether the Project's contribution to climate change is significant because it lacks a method for ascribing discrete physical impacts to any particular level of GHG emissions.<sup>9</sup> Why the Commission needs such a model to assess significance is not explained. But the most troubling part of the Commission's rationale is what comes next. Based on this alleged inability to assess significance, the Commission concludes that the Project will have no significant environmental impact.<sup>10</sup> Think about that. The Commission is saying out of one side of its mouth that it need not assess the significance of the Project's impact on climate change while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant. That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the "hard look" that the law demands.<sup>11</sup>

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<sup>7</sup> See *Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); see also *Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

<sup>8</sup> See *Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019), *reh'g en banc granted, judgment vacated*, 2019 WL 6605464 (D.C. Cir. Dec. 5, 2019); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019); *Sabal Trail*, 867 F.3d at 1371-72.

<sup>9</sup> See EA at 172.

<sup>10</sup> See Certificate Order, 169 FERC ¶ 61,220 at P 264 (approval of Project would not constitute a major federal action significantly affecting the quality of the human environment); EA at 194.

<sup>11</sup> E.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (agencies cannot overlook a single environmental consequence if it is even "arguably significant"); see *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) ("Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." (internal quotation marks omitted)); see also *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that agency action is "arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the

5. It also means that the volume of emissions caused by the Project does not play a meaningful role in the Commission's public interest determination, no matter how many times the Commission assures us otherwise. Using the approach in today's order, the Commission will always be able to conclude that a project will not have any significant environmental impact irrespective of the project's actual GHG emissions or those emissions' impact on climate change. So long as that is the case, a project's impact on climate change cannot, as a logical matter, play a meaningful role in the Commission's public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

## **II. The Commission's NEPA Analysis of the Project's Contribution to Climate Change Is Deficient**

6. The Commission's NEPA analysis is similarly flawed. When conducting a NEPA review, an agency must consider both the direct and the indirect effects of the project under consideration.<sup>12</sup> The D.C. Circuit has repeatedly instructed the Commission that the GHG emissions caused by the reasonably foreseeable combustion of natural gas transported through a pipeline is an indirect effect and must, therefore, be included within the Commission's NEPA analysis.<sup>13</sup> Although the Commission quantifies the potential GHG emissions associated with gas delivered to the Kimberly-Clark cogeneration facility,<sup>14</sup> the Commission refuses to consider GHG emissions associated with any of the Project's remaining incremental capacity.<sup>15</sup> Once again the Commission takes the position that if it does not know the specific end-use of the natural gas, any associated GHG emissions are categorically not reasonably foreseeable.<sup>16</sup>

7. I remain baffled by the Commission's continued refusal to take any step towards considering climate change unless specifically and expressly directed to do so by the courts (and even that does not always seem to be the case<sup>17</sup>). Here there are plenty of

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agency").

<sup>12</sup> 40 C.F.R. §§ 1502.16(b), 1508.8(b); *Sabal Trail*, 867 F.3d at 1371.

<sup>13</sup> See *Allegheny Def. Project*, 932 F.3d at 945-46; *Birckhead*, 925 F.3d at 518-19; *Sabal Trail*, 867 F.3d at 1371-72.

<sup>14</sup> Certificate Order, 169 FERC ¶ 61,220 at P 255.

<sup>15</sup> *Id.* P 249.

<sup>16</sup> *Id.*

<sup>17</sup> *El Paso Natural Gas Co., L.L.C.*, 169 FERC ¶ 61,133 (2019) (Glick, Comm'r,

steps that the Commission could take to consider the GHGs associated with the Project's incremental capacity were actually inclined to take a 'hard look' at climate change. For example, we know that the vast majority, 97 percent, of all natural gas consumed in the United States is combusted.<sup>18</sup> That fact on its own might be sufficient to make downstream emissions reasonably foreseeable, at least absent contrary evidence. After all, the D.C. Circuit has recognized that NEPA does not require absolute certainty and that "some educated assumptions are inevitable in the NEPA process."<sup>19</sup>

8. In any case, even where the Commission quantifies the Project's GHG emissions, it fails to "evaluate the 'incremental impact' that [those emissions] will have on climate change or the environment more generally."<sup>20</sup> In *Sabal Trail*, the court explained that the Commission was required "to include a discussion of the 'significance' of" the indirect effects of the Project, including its GHG emissions.<sup>21</sup> That makes sense. Identifying and evaluating the consequences that the Project's GHG emissions may have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed.<sup>22</sup> But neither today's order nor the accompanying EA provide that discussion or even attempt to assess the significance of the Project's GHG emissions.

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dissenting in part at PP 10-11) (criticizing the Commission for failing follow the D.C.'s guidance in *Birckhead* and consider GHG emissions associated with natural gas transportation capacity that it was told would be used to serve electricity generation).

<sup>18</sup> U.S. Energy Info. Admin., *September 2019 Monthly Energy Review* 22, 97 (2019) (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption), <https://www.eia.gov/totalenergy/data/monthly/archive/00351908.pdf>.

<sup>19</sup> *Sabal Trail*, 867 F.3d at 1374; *see id.* (stating that "the effects of assumptions on estimates can be checked by disclosing those assumptions so that readers can take the resulting estimates with the appropriate amount of salt").

<sup>20</sup> *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *see also WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 51 (D.D.C. 2019) (explaining that the agency was required to "provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute" to the "impacts of climate change in the state, the region, and across the country").

<sup>21</sup> *Sabal Trail*, 867 F.3d at 1374.

<sup>22</sup> *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA's purposes is to ensure that "relevant information will be made available to the larger audience that may also play a role in both the

9. Instead, the Commission insists that it need not assess the significance of the Project's GHG emissions because it cannot tie a specific level of GHG emissions to a specific environmental impact.<sup>23</sup> But the Commission does not explain why that excuses its failure to evaluate the significance of these emissions' contribution to climate change. As an initial matter, the Commission has several tools to assess the harm from the Project's contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary "hard look" at the Project's environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a single project's climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harms from climate change in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.<sup>24</sup>

10. Regardless of tools or methodologies available, the Commission also can use its expertise to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a significant effect on issues as diverse as "vegetation,"<sup>25</sup> "wildlife" (including "special status species"),<sup>26</sup> or "open land."<sup>27</sup> In each of those cases, the Commission managed to use its judgment to conduct a qualitative review and assess the significance of the Project's effect on those

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decisionmaking process and the implementation of that decision"); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) ("The idea behind NEPA is that if the agency's eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.").

<sup>23</sup> See EA at 172.

<sup>24</sup> See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

<sup>25</sup> EA at 72.

<sup>26</sup> *Id.* at 77-85.

<sup>27</sup> *Id.* at 86.

considerations. The Commission's refusal to, at the very least, exercise similar qualitative judgment to assess the significance of GHG emissions here is arbitrary and capricious.

11. That refusal is even more mystifying because NEPA “does not dictate particular decisional outcomes.”<sup>28</sup> NEPA “merely prohibits uninformed—rather than unwise—agency action.”<sup>29</sup> In other words, taking the matter seriously—and rigorously examining a project's impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

12. Even if the Commission were to determine that a project's GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project is not in the public interest or required by the public convenience and necessity. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that, when a project may cause potentially significant environmental impacts, the relevant environmental impact statement must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.<sup>30</sup> The Court explained that, “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.<sup>31</sup> The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA,<sup>32</sup> which could encompass measures to mitigate a project's GHG emissions.

13. Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against

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<sup>28</sup> *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

<sup>29</sup> *Id.* (quoting *Robertson*, 490 U.S. at 351).

<sup>30</sup> *Robertson*, 490 U.S. at 351.

<sup>31</sup> *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

<sup>32</sup> 15 U.S.C. § 717f(e); Certificate Order, 169 FERC ¶ 61,220 at P 264 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . .”).



adverse effects. By refusing to assess significance, however, the Commission short circuits any discussion of mitigation measures for the Project's GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

\* \* \*

14. Today's order is not the product of reasoned decisionmaking. Its analysis of the Project's contribution to climate change is shoddy and its conclusion that the Project will not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges that the Project will contribute to climate change, but refuses to consider whether that contribution might be significant before proclaiming that the Project will have no significant environmental impacts. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the Project's consequences for climate change does not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Adelphia Gateway, LLC

Docket Nos. CP18-46-000  
CP18-46-001

(Issued December 20, 2019)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Adelphia Gateway, LLC (Adelphia) a certificate to construct and operate its proposed Adelphia Gateway Project (Project).<sup>1</sup> I agree that the order complies with the Commission's statutory responsibilities under the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA). The order determines that the Project is in the public convenience and necessity, finding that the project will not adversely affect Adelphia's existing customers or competitor pipelines and their captive customers, and the project is designed to minimize adverse impacts on landowners.<sup>2</sup> The order also finds that the project will not significantly affect the environment.<sup>3</sup> Further, the Commission quantified and considered greenhouse gas (GHG) emissions that are directly associated with the construction and operation of the Project and emitted by the Kimberly-Clark generation facility,<sup>4</sup> consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*.<sup>5</sup>

2. Although I fully support this order, I write separately to address what I perceive to be a misinterpretation of the Commission's authority under the NGA and NEPA. There have been contentions that the NGA authorizes the Commission to deny a certificate application based on the environmental effects that result from the upstream production and downstream use of natural gas, that the NGA authorizes the Commission to establish measures to mitigate GHG emissions, and that the Commission violates the NGA and

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<sup>1</sup> *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (2019).

<sup>2</sup> *Id.* P 43.

<sup>3</sup> *Id.*

<sup>4</sup> Environmental Assessment (EA) at 125, 128; *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 at P 249.

<sup>5</sup> 867 F.3d 1357 (D.C. Cir. 2017). This case is commonly referred to as "Sabal Trail" because the Sabal Trail Pipeline is one of the three pipelines making up the Southeast Market Pipelines Project.

NEPA by not determining whether GHG emissions significantly affect the environment. I disagree.

3. A close examination of the statutory text and foundation of the NGA demonstrates that the Commission does not have the authority under the NGA or NEPA to deny a pipeline certificate application based on the environmental effects of the upstream production or downstream use of natural gas nor does the Commission have the authority to unilaterally establish measures to mitigate GHG emissions. Further, the Commission has no objective basis to determine whether GHG emissions will have a significant effect on climate change nor the authority to establish its own basis for making such a determination.

4. It is my intention that my discussion of the statutory text and foundation will assist the Commission, the courts, and other parties in their arguments regarding the meaning of the “public convenience and necessity” and the Commission’s consideration of a project’s effect on climate change. Before I offer my arguments, it is important that I further expound on the current debate.

### **I. Current debate**

5. When acting on a certificate application, the Commission has two primary statutory obligations: (1) to determine whether the project is required by the “public convenience and necessity” as required by the NGA;<sup>6</sup> and (2) to take a “hard look” at the direct,<sup>7</sup> indirect,<sup>8</sup> and cumulative effects<sup>9</sup> of the proposed action as required by NEPA and the Council on Environmental Quality’s (CEQ) implementing regulations. Recently, there has been much debate concerning what factors the Commission can consider in determining whether a proposed project is in the “public convenience and necessity,” and

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<sup>6</sup> 15 U.S.C. § 717f(e) (2018).

<sup>7</sup> Direct effects are those “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a) (2019).

<sup>8</sup> Indirect effects are those “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b) (2019). The U.S. Supreme Court held that NEPA requires an indirect effect to have “a reasonably close causal relationship” with the alleged cause; “a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004).

<sup>9</sup> Cumulative effects are those “which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7 (2019).

whether the effects of upstream production and downstream use of natural gas are indirect effects of a certificate application as defined by NEPA.

6. My colleague equates “public convenience and necessity” with a “public interest” standard, arguing that such a standard requires the Commission to weigh GHGs emitted from the project facilities and related to the upstream production and downstream use of natural gas.<sup>10</sup> In support of his contention, my colleague cites the holding in *Sabal Trail* and dicta in *Atlantic Refining Co. v. Public Service Commission of State of New York (CATCO)*.<sup>11</sup> My colleague argues that the Commission must determine whether GHG emissions have a significant impact on climate change in order for climate change to “play a meaningful role in the Commission’s public interest determination.”<sup>12</sup> And he argues that by not determining the significance of those emissions, the “public interest determination [] systematically excludes the most important environmental consideration of our time” and “is contrary to law, arbitrary and capricious” and is not “the product of reasoned decisionmaking.”<sup>13</sup>

7. My colleague also argues that the emissions from all downstream use of natural gas are indirect effects of the Project and must be considered in the Commission’s EA.<sup>14</sup> In other proceedings, he argues that the Commission must also consider GHG emissions from upstream natural gas production.<sup>15</sup> He asserts that the Commission must determine whether GHG emissions will have a significant effect on climate change and that the Commission could make that determination using the Social Cost of Carbon or its own expertise.<sup>16</sup> Further, he contends that the Commission could mitigate any GHG

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<sup>10</sup> *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 at P 3 (Glick, Comm’r, dissenting) (Dissent).

<sup>11</sup> *Id.* P 4 n.7 (citing *CATCO*, 360 U.S. 378, 391 (1959)). The case *Atlantic Refining Co. v. Public Service Commission of State of New York* is commonly known as “*CATCO*” because the petitioners were sometimes identified by that name.

<sup>12</sup> Dissent P 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* P 6.

<sup>15</sup> *See Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at P 10 (2019) (Glick, Comm’r, dissenting).

<sup>16</sup> Dissent PP 8-10.

emissions in the event that it made a finding that the GHG emissions had a significant impact on climate change.<sup>17</sup>

8. Several recent cases before the United States Court of Appeals for the D.C. Circuit have also considered the Commission's obligations under the NGA and NEPA as they apply to what environmental effects the Commission is required to consider under NEPA.<sup>18</sup> In *Sabal Trail*, the D.C. Circuit vacated and remanded the Commission's order issuing a certificate for the Southeast Market Pipelines Project, finding that the Commission inadequately assessed GHGs emitted from downstream power plants in its environmental impact statement (EIS) for the project.<sup>19</sup> The court held that the downstream GHG emissions resulting from burning the natural gas at the power plants were a reasonably foreseeable indirect effect of authorizing the project and, at a minimum, the Commission should have estimated those emissions.

9. Further, the *Sabal Trail* court found the Commission's authorization of the project was the legally relevant cause of the GHGs emitted from the downstream power plants "because FERC could deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment."<sup>20</sup> The court stated the Commission could do so because, when considering whether pipeline applications are in the public convenience and necessity, "FERC will balance 'the public benefits against the adverse effects of the project,' see *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 101-02 (D.C. Cir. 2014) (internal quotation marks omitted), including adverse environmental effects, see *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C.

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<sup>17</sup> *Id.* P 12.

<sup>18</sup> The courts have not explicitly opined on whether the Commission is required to determine whether GHG emissions will have a significant impact on climate change or whether the Commission must mitigate GHG emissions. The D.C. Circuit, however, has suggested that the Commission is not required to determine whether GHG emissions are significant. *Appalachian Voices v. FERC*, 2019 WL 847199, \*2 (D.C. Cir. Feb. 19, 2019) (unpublished) ("FERC provided an estimate of the upper bound of emissions resulting from end-use combustion, and it gave several reasons why it believed petitioner's preferred metric, the Social Cost of Carbon, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.").

<sup>19</sup> *Sabal Trail*, 867 F.3d 1357.

<sup>20</sup> *Id.* at 1373.

Cir. 2015).”<sup>21</sup> Relying on its finding that the Commission could deny a pipeline on environmental grounds, the court distinguished *Sabal Trail* from the Supreme Court’s holding in *Public Citizen*, where the Court held “when the agency has no *legal* power to prevent a certain environmental effect, there is no decision to inform, and the agency need not analyze the effect in its NEPA review”<sup>22</sup> and the D.C. Circuit’s decision in *Sierra Club v. FERC (Freeport)*, where it held “that FERC had *no legal authority to prevent* the adverse environmental effects of natural gas exports.”<sup>23</sup>

10. Based on these findings, the court concluded that “greenhouse-gas emissions are an indirect effect of authorizing this project, which FERC could reasonably foresee, and which the agency has legal authority to mitigate.”<sup>24</sup> The court also held “the EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions . . . or explained more specifically why it could not have done so.”<sup>25</sup> The court impressed that “[it did] not hold that quantification of greenhouse-gas emissions is required *every* time those emissions are an indirect effect of an agency action” and recognized that “in some cases quantification may not be feasible.”<sup>26</sup>

11. More recently, in *Birckhead v. FERC*,<sup>27</sup> the D.C. Circuit commented in dicta on the Commission’s authority to consider downstream emissions. The court stated that because the Commission could “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment, the agency is the legally relevant cause of the direct and indirect environmental effects of pipelines it approves’—even

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<sup>21</sup> *Id.*

<sup>22</sup> *Sabal Trail*, 867 F.3d at 1372 (citing *Pub. Citizen*, 541 U.S. at 770) (emphasis in original).

<sup>23</sup> *Id.* at 1373 (citing *Freeport*, 827 F.3d 36, 47 (D.C. Cir. 2016)) (emphasis in original).

<sup>24</sup> *Id.* at 1374 (citing 15 U.S.C. § 717f(e)).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* (emphasis in original).

<sup>27</sup> 925 F.3d 510 (D.C. Cir. 2019).

where it lacks jurisdiction over the producer or distributor of the gas transported by the pipeline.”<sup>28</sup>

12. I respect the holding of the court in *Sabal Trail* and the discussion in *Birckhead*, and I recognize that the *Sabal Trail* holding is binding on the Commission. However, I respectfully disagree with the court’s finding that the Commission can, pursuant to the NGA, deny a pipeline based on environmental effects stemming from the production and use of natural gas, and that the Commission is therefore required to consider such environmental effects under the NGA and NEPA.<sup>29</sup>

13. The U.S. Supreme Court has observed that NEPA requires an indirect effect to have “a reasonably close causal relationship” with the alleged cause.<sup>30</sup> Whether there is a reasonably close causal relationship depends on “the underlying policies or legislative intent” of the agency’s organic statute “to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.”<sup>31</sup> Below, my review of the text of the NGA and subsequent acts by Congress demonstrates that the “public convenience and necessity” standard in the NGA is not so broad as to include environmental effects of the upstream production or downstream use of natural gas, and that the Commission cannot be responsible for those effects. Further, my review of appellate briefs filed with the court and the Commission’s orders suggests that the court may not have been presented with the arguments I make here.

14. As for GHGs emitted from the pipeline facilities themselves, I believe that the Commission can consider such emissions in its public convenience and necessity determination and is required to consider them in its NEPA analysis. As I set forth below, however, the Commission cannot unilaterally establish measures to mitigate GHG emissions, and there currently is no suitable method for the Commission to determine whether GHG emissions are significant.

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<sup>28</sup> *Id.* (citing *Sabal Trail*, 867 F.3d at 1373) (internal quotations omitted).

<sup>29</sup> Though the D.C. Circuit’s holding in *Sabal Trail* is binding on the Commission, it is not appropriate to expand that holding through the dicta in *Birckhead* so as to establish new authorities under the NGA and NEPA. The Commission is still bound by the NGA and NEPA as enacted by Congress, and interpreted by the U.S. Supreme Court and the D.C. Circuit. Our obligation is to read the statutes and case law in harmony. This concurrence articulates the legal reasoning by which to do so.

<sup>30</sup> *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)

<sup>31</sup> *Id.* at 774 n.7.

**II. The NGA does not permit the Commission to deny a certificate application based on environmental effects related to the upstream production or downstream use of natural gas**

15. To interpret the meaning of “public convenience and necessity,” we must begin with the text of the NGA.<sup>32</sup> I recognize that the Commission<sup>33</sup> and the courts have equated the “public convenience and necessity” standard with “all factors bearing on the public interest.”<sup>34</sup> However, the phrase “all factors bearing on the public interest” does not mean that the Commission has “broad license to promote the general public welfare”<sup>35</sup> or address greater societal concerns. Rather, the courts have stated that the words must “take meaning from the purposes of regulatory legislation.”<sup>36</sup> The Court has

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<sup>32</sup> 15 U.S.C. § 717f(e) (2018). *See infra* PP 41-47. It is noteworthy that the phrase “public interest” is not included in NGA section 7(c)(1)(A) (requiring pipelines to have a certificate) or NGA section 7(e) (requiring the Commission to issue certificates). Rather, these provisions use the phrase “public convenience and necessity.” NGA section 7(c)(1)(B) does refer to public interest when discussing how the Commission can issue a temporary certificate in cases of emergency. *Id.* § 717f(c)(1)(B). Congress is “presumed to have used no superfluous words.” *Platt v. Union Pac. R.R. Co.*, 99 U.S. 48, 58 (1878); *see also U.S. ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488, 499 (D.C. Cir. 2004) (“It is, of course, a ‘cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” (citing *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, n.13 (2004))).

<sup>33</sup> *See, e.g., North Carolina Gas Corp.*, 10 FPC 469, 475 (1950).

<sup>34</sup> *CATCO*, 360 U.S. at 391 (“This is not to say that rates are the only factor bearing on the public convenience and necessity, for § 7(e) requires the Commission to evaluate all factors bearing on the public interest.”). The Court never expounded further on that statement.

<sup>35</sup> *NAACP v. FERC*, 425 U.S. 662, 669 (1976).

<sup>36</sup> *Id.*; *see also Office of Consumers’ Counsel v. FERC*, 655 F.2d 1132, 1147 (D.C. Cir. 1980) (“Any such authority to consider all factors bearing on the ‘public interest’ must take into account what the ‘public interest’ means in the context of the Natural Gas Act. FERC’s authority to consider all factors bearing on the public interest when issuing certificates means authority to look into those factors which reasonably relate to the purposes for which FERC was given certification authority. It does not imply authority to issue orders regarding any circumstance in which FERC’s regulatory tools might be useful.”).



made clear that statutory language “cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”<sup>37</sup> The Court has further instructed that one must “construe statutes, not isolated provisions.”<sup>38</sup>

16. Indeed, that is how the Court in *CATCO* – the first U.S. Supreme Court case including the “all factors bearing on the public interest” language – interpreted the phrase “public convenience and necessity.” In that case, the Court held that the public convenience and necessity requires the Commission to closely scrutinize initial rates *based on the framework and text* of the NGA.<sup>39</sup>

17. Following this precedent, the phrase “public convenience and necessity” must therefore be read within the overall statutory scheme of the NGA. As set forth below, construing the NGA *as a statute* demonstrates that Congress determined the public interest required (i) the public to have access to natural gas and (ii) economic regulation of the transportation and sale of natural gas to protect such public access.

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<sup>37</sup> *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989).

<sup>38</sup> *Graham Cty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 290 (2010) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995)).

<sup>39</sup> *CATCO*, 360 U.S. 378, 388-91. The Court stated “[t]he Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.” *Id.* at 388. The Court found that the text of NGA sections 4 and 5 supported the premise that Congress designed the Act to provide complete protection from excessive rates and charges. *Id.* (“The heart of the Act is found in those provisions requiring . . . that all rates and charges ‘made, demanded, or received’ shall be ‘just and reasonable.’”); *id.* at 389 (“The overriding intent of the Congress to give full protective coverage to the consumer as to price is further emphasized in § 5 of the Act . . .”). The Court recognized that the Commission’s role in setting initial rates was a critical component of providing consumers complete protection because “the delay incident to determination in § 5 proceedings through which initial certificated rates are reviewable appears nigh interminable” and “would provide a windfall for the natural gas company with a consequent squall for the consumers,” which “Congress did not intend.” *Id.* at 389-90.

**A. The text of the NGA does not support denying a certificate application based on the environmental effects of the upstream production or downstream use of natural gas**

**1. NGA section 1(a)—limited meaning of “public interest”**

18. Section 1 of the NGA sets out the reason for its enactment. NGA section 1(a) states, “[a]s disclosed in reports of the Federal Trade Commission [(FTC)] made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public *is affected with a public interest*, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the *public interest*.”<sup>40</sup>

19. A review of the FTC Report referred to in NGA section 1 demonstrates that the NGA was enacted to counter activities that would limit the public’s access to natural gas and subject the public to abusive pricing. Specifically, the FTC Report stated “[a]ll communities and industries within the capacity and reasonable distance of existing or future transmission facilities should be assured a natural-gas supply and receive it at fair, nondiscriminatory prices.”<sup>41</sup>

20. The FTC Report further stated “[a]ny proposed Federal legislation should be premised, in part at least, on the fact that natural gas is a valuable, but limited, natural resource in Nation-wide demand, which is produced only in certain States and limited areas, and the conservation, production, transportation, and distribution of which, therefore, under proper control and regulation, are matters charged with high national public interest.”<sup>42</sup>

21. The text of NGA section 1(a) and its reference to the FTC Report make clear that “public interest” is directly linked to ensuring the public’s access to natural gas through

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<sup>40</sup> 15 U.S.C. § 717(a) (2018) (emphasis added).

<sup>41</sup> FEDERAL TRADE COMMISSION, UTILITY CORPORATIONS FINAL REPORT OF THE FEDERAL TRADE COMMISSION TO THE SENATE OF THE UNITED STATES PURSUANT TO SENATE RESOLUTION NO. 83, 70TH CONGRESS, 1ST SESSION ON ECONOMIC, CORPORATE, OPERATING, AND FINANCIAL PHASES OF THE NATURAL-GAS-PRODUCING, PIPE-LINE, AND UTILITY INDUSTRIES WITH CONCLUSIONS AND RECOMMENDATIONS NO. 84-A at 609 (1936) (FTC Report), <https://babel.hathitrust.org/cgi/pt?id=ien.35556021351598&view=1up&seq=718>.

<sup>42</sup> *Id.* at 611.

regulating its transport and sale. Moreover, the NGA is designed to promote the “public interest” primarily through economic regulation. This is apparent in the text of the NGA and by its reference to the FTC Report that identified the concern with monopolistic activity that would limit access to natural gas.<sup>43</sup>

22. Therefore, there is no textual support in NGA section 1 for the claim that the Commission may deny a pipeline application due to potential upstream and downstream effects of GHG emissions on climate change. But, this is not the end of the analysis. We must also examine the Commission’s specific authority under the NGA section 7.

**2. NGA section 7—Congress grants the Commission and pipelines authority to ensure the public’s access to natural gas**

23. Like NGA section 1, the text of NGA section 7 makes clear that its purpose is to ensure that the public has access to natural gas. A review of the various provisions of NGA section 7 make this point evident:

- Section 7(a) authorizes the Commission to “direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell

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<sup>43</sup> 15 U.S.C. § 717(a) (2018) (“Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest”). The limited, economic regulation meaning of “public interest” was clear at the time the NGA was adopted. The NGA’s use of the phrase “affected with the public interest” is consistent with the States’ use of this phrase when enacting laws regulating public utilities. Historically, state legislatures used the phrase “affected with the public interest” as the basis of their authority to regulate rates charged for the sale of commodities, rendered services, or use of private property. *Munn v. Illinois*, 94 U.S. 113, 125-26 (1876). The Court found that businesses affected with a public interest or “said to be clothed with a public interest justifying some public regulation” include “[b]usinesses, which, though not public at their inception, may be fairly said to have risen to be such and have become subject in consequence to some government regulation.” *Charles Wolff Packing Co. v. Court of Indus. Relations*, 262 U.S. 522, 535 (1923). In essence, these businesses became quasi-public enterprises and were determined to have an “indispensable nature.” *Id.* at 538. Such a conclusion also meant that if these businesses were not restrained by the government, the public could be subject to “the exorbitant charges and arbitrary control to which the public might be subjected without regulation.” *Id.*

natural gas . . . to the public . . . .”<sup>44</sup> The Commission has stated that “[s]ection 7(a) clearly established the means whereby the Commission could secure *the benefits* of gas service for certain communities, markets and territories adjacent to those originally established by the gas industry, where in the public interest.”<sup>45</sup>

- Section 7(b) requires Commission approval for a natural gas pipeline company to “abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities.”<sup>46</sup> That is, Congress considered access to natural gas to be so important that it even prohibited natural gas pipeline companies from abandoning service without Commission approval.
- Section 7(c)(1)(B) authorizes the Commission to “issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate.”<sup>47</sup> The underlying presumption of this section is that the need for natural gas can be so important that the Commission can issue a certificate without notice and hearing.
- Section 7(e) states “a certificate *shall* be issued” when a project is in the public convenience and necessity,<sup>48</sup> leaving the Commission no discretion after determining a project meets the public convenience and necessity standard.
- Section 7(h) grants the pipeline certificate holder the powers of the sovereign to “exercise of the right of eminent domain in the district court of

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<sup>44</sup> 15 U.S.C. § 717f(a) (2018).

<sup>45</sup> *Arcadian Corp. v. Southern Nat. Gas Co.*, 61 FERC ¶ 61,183, at 61,676 (1992) (emphasis added). The Commission’s analysis in this regard was unaffected by the opinion in *Atlanta Gas Light Co. v. FERC*, 140 F.3d 1392 (11th Cir. 1998) (vacating the Commission’s 1991 and 1992 orders on other grounds).

<sup>46</sup> 15 U.S.C. § 717f(b) (2018).

<sup>47</sup> *Id.* § 717f(c)(1)(B).

<sup>48</sup> *Id.* § 717f(e) (emphasis added).

the United States.”<sup>49</sup> By granting the power of eminent domain, Congress made clear the importance of ensuring that natural gas could be delivered from its source to the public by not allowing traditional property rights to stand in the way of pipeline construction. Furthermore, the sovereign’s power of eminent domain must be for a public use<sup>50</sup> and Congress considered natural gas pipelines a public use.

24. Each of these textual provisions illuminate the ultimate purpose of the NGA: to ensure that the public has access to natural gas because Congress considered such access to be in the public interest.<sup>51</sup> To now interpret “public convenience and necessity” to mean that the Commission has the authority to deny a certificate for a pipeline due to upstream or downstream emissions because the pipeline may result in access to, and the use of, natural gas would radically rewrite the NGA and undermine its stated purpose.

**3. NGA section 1(b) and section 201 of the Federal Power Act (FPA)—authority over environmental effects related to the upstream production and downstream use of transported natural gas reserved to States**

25. Statutory text also confirms that control over the physical environmental effects related to the upstream production and downstream use of natural gas are squarely reserved for the States. NGA section 1(b) provides that “[t]he provisions of this chapter . . . shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities for such distribution or to the production or gathering of natural gas.”<sup>52</sup> The Ninth Circuit and the D.C. Circuit have interpreted the

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<sup>49</sup> *Id.* § 717f(h).

<sup>50</sup> *Miss. & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 406 (1878) (“The right of eminent domain, that is, the right to take private property for public uses, appertains to every independent government.”).

<sup>51</sup> This interpretation is also supported by the Commission’s 1999 Certificate Policy Statement. *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, 61,743 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement) (“[I]t should be designed to foster competitive markets, protect captive customers, and avoid unnecessary environmental and community impacts *while serving increasing demands for natural gas.*”) (emphasis added); *id.* at 61,751 (“[T]he Commission is urged to authorize new pipeline capacity to meet an anticipated increase in demand for natural gas . . .”).

<sup>52</sup> 15 U.S.C. § 717(b) (2018); *see Pennzoil v. FERC*, 645 F.2d 360, 380-82 (5th Cir. 1981) (holding that FERC lacks the power to even interpret gas purchase

reference to distribution as meaning that States have exclusive authority over the gas once the gas moves beyond high-pressure mainlines.<sup>53</sup> Likewise, FPA section 201 specifically reserves the authority to make generation decisions to the States.<sup>54</sup>

26. U.S. Supreme Court precedent and legislative history confirm that the regulation of the physical upstream production and downstream use of gas is reserved for the States.<sup>55</sup> The Court has observed that Congress enacted the NGA to address “specific

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agreements between producers and pipelines for the sale of gas that has been removed from NGA jurisdiction).

<sup>53</sup> See *S. Coast Air Quality Mgmt. Dist. v. FERC*, 621 F.3d 1085, 1092 (9th Cir. 2010) (“In sum, the history and judicial construction of the Natural Gas Act suggest that all aspects related to the direct consumption of gas . . . remain within the exclusive purview of the states.”); *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 277 (D.C. Cir. 1990) (“[T]he state . . . has authority over the gas once it moves beyond the high-pressure mains into the hands of an end user.”). I note that the court in *Sabal Trail* did not discuss or distinguish *Public Utilities Commission of State of Cal v. FERC*.

<sup>54</sup> 16 U.S.C. § 824(b)(1) (2018) (“The Commission . . . shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy . . .”). Despite Congress explicitly denying the Commission jurisdiction over generation decisions in the FPA, some argue that the Commission has the authority to prevent natural gas generation through general language in the NGA regarding public convenience and necessity. Such an approach violates the principle that explicit language trumps general provisions. See, e.g., *Passamaquoddy Tribe v. State of Me.*, 897 F. Supp. 632, 635 (“In this case, the unequivocal language in the Maine Settlement Act clearly trumps the Gaming Act’s general provisions that are silent as to Maine.”).

<sup>55</sup> Some will argue that the Court’s dicta in *FPC v. Hope Natural Gas Co.* (*Hope*)—“[t]he Commission is required to take account of the ultimate use of the gas,” 320 U.S. 591, 639 (1944)—means that the Commission can consider environmental effects related to the downstream use of natural gas. However, such argument takes the Court’s statement out of context. In fact, that Court makes that statement in support of its argument that while the 1942 amendments to the NGA eliminated the language, “the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest,” “there is nothing to indicate that it was not and is still not an accurate statement of purpose of the Act.” *Id.* at 638. Such argument further supports that Congress enacted the NGA to provide access to natural gas and to protect consumers

evils” related to non-transparent rates for the interstate transportation and sale of natural gas and the monopoly power of holding companies that owned natural gas pipeline company stock.<sup>56</sup> The Court has also found that Congress enacted the NGA to

fill the regulatory void created by the Court’s earlier decisions prohibiting States from regulating interstate transportation and sales for resale of natural gas, while at the same time leaving undisturbed the recognized power of the States to regulate all in-state gas sales directly to consumers. Thus, the NGA “was drawn with meticulous regard for the continued exercise of state power, not to handicap it any way.”<sup>57</sup>

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from monopoly power.

<sup>56</sup> *Id.* at 610 (“state commissions found it difficult or impossible to discover what it cost interstate pipe-line companies to deliver gas within the consuming states”); *id.* (“[T]he investigations of the Federal Trade Commission had disclosed the majority of the pipe-line mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipe-line transportation, had been acquired by a handful of holding companies.”). Senate Resolution 83, which directed the FTC to develop the report that the NGA is founded on, also demonstrates that Congress was only concerned with consumer protection and monopoly power. The resolution directed the FTC to investigate capital assets and liabilities of natural gas companies, issuance of securities by the natural gas companies, the relationship between company stockholders and holding companies, other services provided by the holding companies, adverse impacts of holding companies controlling natural gas companies, and potential legislation to correct any abuses by holding companies. FTC Report at 1.

<sup>57</sup> *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 292 (1997) (internal citations omitted) (quoting *Panhandle E. Pipeline Co. v. Pub. Serv. Comm’n of Ind.*, 332 U.S. 507, 516-22 (1947) (*Panhandle*)); *see also Nw. Cent. Pipeline v. State Corp. Comm’n*, 489 U.S. 493, 512 (1989) (“The NGA ‘was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other.’” (quoting *Panhandle*, 332 U.S. at 513)); *Panhandle*, 332 U.S. at 520 (In recognizing that the NGA articulated a legislative program recognizing the respective responsibilities of federal and state regulatory agencies, the Court noted that the NGA does not “contemplate ineffective regulation at either level as Congress meant to create a comprehensive and effective regulatory scheme, complementary in its operation to those of the states and in no manner usurping their authority.”). Congress continued to draw the NGA with meticulous regard to State power when it amended the NGA in 1954 to add the Hinshaw pipeline exemption so as “to preserve state control over local distributors who purchase gas from interstate

27. In *Transco*,<sup>58</sup> the Court also recognized that “Congress did not desire that an important aspect of this field be left unregulated.”<sup>59</sup> Thus, the Court held that where congressional authority is not explicit and States cannot practicably regulate a given area, the Commission can consider the issue in its public convenience and necessity determination.<sup>60</sup>

28. Based on this rule, and legislative history,<sup>61</sup> the *Transco* Court found that in its public convenience and necessity determination, the Commission appropriately considered whether the end-use of the gas in a non-producing state was economically wasteful as there was a regulatory gap and no State could be expected to control how gas is used in another State.<sup>62</sup> The Court also impressed that

The Commission ha[d] not attempted to exert its influence over such “*physically*” wasteful practices as improper well spacing and the flaring of unused gas which result in the entire loss of gas and are properly of concern to the producing State; nor has the Commission attempted to regulate the “economic” aspects of gas used within the producing State.<sup>63</sup>

29. In contrast, there is no legislative history to support that the Commission may consider environmental effects related to the upstream production or downstream use of gas and the field of environmental regulation of such activities is not one that has been left unregulated.<sup>64</sup> Unlike in *Transco*, states can reasonably be expected to regulate air

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pipelines.” *Louisiana Power & Light Co. v. Fed. Power Comm’n*, 483 F.2d 623, 633 (5th Cir. 1973).

<sup>58</sup> *Transco*, 365 U.S. 1 (1961).

<sup>59</sup> *Id.* at 19.

<sup>60</sup> *Id.* at 19-20.

<sup>61</sup> *Id.* at 10-19.

<sup>62</sup> *Id.* at 20-21.

<sup>63</sup> *Id.* at 20 (emphasis added).

<sup>64</sup> I note that the Federal Power Commission, the Commission’s predecessor, at times previously considered environmental impacts in its need analysis when weighing the beneficial use of natural gas between competing uses. The Federal Power Commission did not consider negative environmental impacts of downstream end use as



emissions from the upstream production or downstream use of natural gas: “air pollution control at its source is the primary responsibility of States and local governments.”<sup>65</sup> The Clean Air Act vests States with authority to issue permits to regulate stationary sources related to upstream and downstream activities.<sup>66</sup> In addition, pursuant to their police powers, States have the ability to regulate environmental effects related to the upstream production and downstream use of natural gas within their jurisdictions.<sup>67</sup> The FTC

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a reason to deny the use of natural gas. *See, e.g., El Paso Natural Gas Co.*, 50 FPC 1264 (1973) (denying a certificate because the proposed project would impact existing customers dependent on natural gas and use of gas was not needed to keep sulfur emissions within the national ambient air quality standards); *Transwestern Pipeline Co.*, 36 FPC 176 (1966) (discussing use of gas instead of oil or coal and noting potential air pollution benefits); *El Paso Nat. Gas Co.*, 22 FPC 900, 950 (1959) (“[T]he use of natural gas as boiler fuel in the Los Angeles area should be considered as being in a different category than gas being used for such a purpose in some other community where the smog problem does not exist and that the use of gas for boiler fuel in this area should not be considered an inferior use.”); *see also* FPC ANNUAL REP. at 2 (1966) (“Any showing that additional gas for boiler fuel use would substantially reduce air pollution merits serious consideration. Important as this factor may be, however, it cannot be considered in isolation.”). Often these orders discussed sulfur and smog air pollution that occurred in the area where the natural gas would be transported when determining need as compared to the need or use of natural gas somewhere else. All of this was premised on the Commission’s NGA authority to use its public convenience and necessity authority to provide access to natural gas and to conserve gas by preventing economic waste. The Commission appears to have stopped this analysis in the late-1970s. It is noteworthy that the U.S. Environmental Protection Agency (EPA) was established in 1970, Congress established more comprehensive air emissions regulation by amending the Clean Air Act in 1970 and 1977 (Pub. L. 91-604, 84 Stat. 1676 (1970); Pub. L. 95-95, 91 Stat. 685 (1977)), and Congress enacted the Department of Energy Organization Act, which replaced the Federal Power Commission with the Federal Energy Regulatory Commission, 42 U.S.C. §§ 7101 *et seq.*

<sup>65</sup> 42 U.S.C. § 7401 (2018).

<sup>66</sup> *Id.* § 7661e (“Nothing in this subchapter shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this chapter.”). The Act defines “permitting authority” as “the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.” *Id.* § 7661.

<sup>67</sup> *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 442 (1960) (“Legislation designed to free from pollution the very air that people breathe clearly falls within the

Report referenced in NGA section 1(a) recognized that States' ability to regulate the use of natural gas.<sup>68</sup> And, various States have exercised this ability. For example, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont participate in the Regional Greenhouse Gas Initiative (RGGI), which requires power plants with a capacity over 25 megawatts to hold allowances equal to their CO<sub>2</sub> emissions over a three-year control period.<sup>69</sup>

30. Some may make the argument that “considering” the environmental effects related to upstream production and downstream use is hardly “regulating” such activities. I disagree. For the Commission to consider such effects would be an attempt to exert influence over States' regulation of physical upstream production or downstream use of natural gas, which the Court in *Transco* suggested would be encroaching upon forbidden ground. If, for example, the Commission considered and denied a certificate based on the GHG emissions released from production activities, the Commission would be making a judgment that such production is too harmful for the environment and preempting a State's authority to decide whether and how to regulate upstream production of natural gas. Furthermore, for the Commission to consider and deny a project based on emissions from end users, the Commission would be making a judgment that natural gas should not be used for certain activities.<sup>70</sup> Such exertion of influence is impermissible: “when the Congress explicitly reserves jurisdiction over a matter to the states, as here, the

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exercise of even the more traditional concept of what is compendiously known as the police power.”).

<sup>68</sup> FTC Report at 716 (describing Louisiana) (“The department of conservation be, and it is hereby, given supervision over the production and use of natural gas in connection with the manufacture of carbon black in other manufacturing enterprises and for domestic consumption.”).

<sup>69</sup> REGIONAL GREENHOUSE GAS INITIATIVE, <https://www.rggi.org/program-overview-and-design/elements> (LAST ACCESSED NOV. 18, 2019).

<sup>70</sup> See also *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1320 (D.C. Cir. 2015) (“The Commission's power to preempt state and local regulation by approving the construction of natural gas facilities is limited by the Natural Gas Act's savings clause, which provides that the Natural Gas Act's terms must not be construed to ‘affect[] the rights of States’ under the Clean Air Act. 15 U.S.C. § 717b(d)(2).”); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (“But Congress expressly saved states’ [Clean Air Act] powers from preemption.”).

Commission has no business considering how to ‘induc[e] a change [of state] policy’ with respect to that matter.”<sup>71</sup>

31. Hence, there is no jurisdictional gap in regulating GHG emissions for the Commission to fill. The NGA reserves authority over the upstream production and downstream use of natural gas to the States, and States can practicably regulate GHGs emitted by those activities. And, even if there were a gap that federal regulation could fill, as discussed below, it is nonsensical for the Commission to attempt to fill a gap that Congress has clearly meant for the U.S. Environmental Protection Agency (EPA) to occupy.<sup>72</sup> Therefore, as GHG emissions from the upstream production and downstream use of natural gas are not properly of concern to the Commission, the Commission cannot deny a certificate application based on such effects.

**B. Denying a pipeline based on upstream or downstream environmental effects would undermine other acts of Congress**

32. Since enactment of the NGA and NEPA, Congress has enacted additional legislation promoting the development and use of natural gas and limiting the Commission’s authority over the natural gas commodity. Each of these legislation enactments indicates that the Commission’s authority over upstream production and downstream use of natural gas has been further limited by Congress. Arguments that the Commission can rely on the NGA’s public convenience and necessity standard and NEPA to deny a pipeline application so as to prevent the upstream production or downstream use of natural gas would undermine these acts of Congress.

**1. Natural Gas Policy Act of 1978**

33. Determining that federal regulation of natural gas limited interstate access to the commodity, resulting in shortages and high prices, Congress passed the Natural Gas Policy Act of 1978 (NGPA). The NGPA significantly deregulated the natural gas industry.<sup>73</sup> Importantly, NGPA section 601(c)(1) states, “[t]he Commission may not

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<sup>71</sup> *Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1248 (D.C. Cir. 1996); see *ANR Pipeline Co. v. FERC*, 876 F.2d 124, 132 (D.C. Cir. 1989) (“We think it would be a considerable stretch from there to say that, in certifying transportation that is necessary to carry out a sale, the Commission is required to reconsider the very aspects of the sale that have been assessed by an agency specifically vested by Congress with authority over the subject.”).

<sup>72</sup> See *infra* PP 53-57.

<sup>73</sup> Generally, the NGPA limited the Commission’s authority over gas that is not transported in interstate commerce, new sales of gas, sales of gas and transportation by

deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.”<sup>74</sup>

34. Besides using price deregulation to promote access to natural gas, Congress gave explicit powers to the President to ensure that natural gas reached consumers. NGPA section 302(c) explicitly provides, “[t]he President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a).”<sup>75</sup> Similarly, the NGPA gave authority to the Secretary of Energy to promote access to natural gas.<sup>76</sup>

35. There can be no doubt about the plain language of the NGPA: the Court observed that Congress passed the NGPA to “promote gas transportation by interstate and

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Hinshaw pipelines, and certain sales, transportation and allocation of gas during certain gas supply emergencies. *See, e.g.*, NGPA sections 601(a)(1)(A)-(D), 15 U.S.C. § 3431(a)(1)(A)-(D) (2018).

<sup>74</sup> *Id.* § 3431(c)(1) (2018). In addition, section 121(a) provides, “the provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e), cease to apply effective January 1, 1985.” 15 U.S.C. § 3331(a), *repealed by* the Wellhead Decontrol Act of 1989, Pub. L. 101-60 § 2(b), 103 Stat. 157 (1989).

<sup>75</sup> *Id.* § 3362.

<sup>76</sup> *See id.* § 3391(a) (“[T]he Secretary of Energy shall prescribe and make effective a rule . . . which provides . . . no curtailment plan of an interstate pipeline may provide for curtailment of deliveries for any essential agricultural use . . . .”); *id.* § 3392(a) (“The Secretary of Energy shall prescribe and make effective a rule which provides that notwithstanding any other provisions of law (other than subsection (b)) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use. . . .”); *id.* § 3392(a) (“The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential industrial process and feedstock uses (other than those referred to in section 3391(f)(1)(B)).”); *id.* § 3393(a) (“The Secretary of Energy shall prescribe the rules under sections 3391 and 3392 of this title pursuant to his authority under the Department of Energy Organization Act to establish and review priorities for curtailments under the Natural Gas Act.”).

intrastate pipelines.”<sup>77</sup> Furthermore, the NGPA was “intended to provide investors with adequate incentive to develop new sources of supply.”<sup>78</sup>

## 2. Powerplant and Industrial Fuel Use Act of 1978

36. With respect to natural gas as a fuel source for electric generation, in 1987 Congress repealed sections of the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act),<sup>79</sup> which had restricted the use of natural gas in electric generation so as to conserve it for other uses. With the repeal of the Fuel Use Act, Congress made clear that natural gas could be used for electric generation and that the regulation of the use of natural gas by power plants unnecessary.<sup>80</sup>

## 3. Natural Gas Wellhead Decontrol Act of 1989

37. If there were any remaining doubt that the Commission has no authority to consider the upstream development of natural gas and its environmental effects, such

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<sup>77</sup> *Gen. Motors Corp. v. Tracy*, 519 U.S. at 283 (quoting 57 Fed. Reg. 13271 (Apr. 16, 1992)).

<sup>78</sup> *Pub. Serv. Comm’n of State of N.Y. v. Mid-Louisiana Gas Co.*, 463 U.S. 319, 334 (1983).

<sup>79</sup> 42 U.S.C. § 8342, *repealed by* Pub. L. 100-42, § 1(a), 101 Stat. 310 (1987).

<sup>80</sup> The Commission need not look any further than the text of the statutes to determine its authority. In the case of the repeal of the Fuel Use Act, the legislative history is informative as to Congress’s reasoning. *See* H.R. Rep. 100-78 \*2 (“By amending [Fuel Use Act], H.R. 1941 will remove artificial government restrictions on the use of oil and gas; allow energy consumers to make their own fuel choices in an increasingly deregulated energy marketplace; encourage multifuel competition among oil, gas, coal, and other fuels based on their price, availability, and environmental merits; preserve the ‘coal option’ for new baseload electric powerplants which are long-lived and use so much fuel; and provide potential new markets for financially distress oil and gas producers.”); *id.* \*6 (“Indeed, a major purpose of this bill is to allow individual choices and competition and fuels and technologies . . .”); *see also* President Ronald Reagan’s Remarks on Signing H.R. 1941 Into Law, 23 WEEKLY COMP. PRES. DOC. 568, (May 21, 1987) (“This legislation eliminates unnecessary restrictions on the use of natural gas. It promotes efficient production and development of our energy resources by returning fuel choices to the marketplace. I’ve long believed that our country’s natural gas resources should be free from regulatory burdens that are costly and counterproductive.”).

doubt was put to rest when Congress enacted the Wellhead Decontrol Act.<sup>81</sup> In this legislation, Congress specifically removed the Commission's authority over the upstream production of natural gas.<sup>82</sup>

38. But the Wellhead Decontrol Act was not merely about deregulating upstream natural gas production, Congress explained that the reason for deregulating natural gas at the wellhead was important to ensuring that end users had access to the commodity. The Senate Committee Report for the Decontrol Act stated "the purpose (of the legislation) is to promote competition for natural gas at the wellhead *to ensure consumers an adequate and reliable supply of natural gas at the lowest reasonable price.*"<sup>83</sup> Similarly, the House Committee Report to the Decontrol Act noted, "[a]ll sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the lowest-selling producer, and obtain shipment of its gas to them on even terms with other suppliers."<sup>84</sup> The House Committee Report also stated the Commission's "current competitive 'open access' pipeline system [should be] maintained."<sup>85</sup> With this statement, the House Committee Report was referencing Order No. 436 in which the Commission stated that open access transportation "is designed to remove any unnecessary regulatory obstacles and to facilitate transportation of gas to any end user that requests transportation service."<sup>86</sup>

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<sup>81</sup> Pub. L. 101-60, 103 Stat. 157 (1989).

<sup>82</sup> The Wellhead Decontrol Act amended NGPA section 601(a)(1)(A) to read, "[f]or purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas." 15 U.S.C. § 3431(a)(1)(A), *amended by*, Pub. L. 101-60 § 3(a)(7)(A), 103 Stat. 157 (1989). *United Distrib. Cos. v. FERC*, 88 F.3d 1105, 1166 (D.C. Cir. 1996) ("That enactment contemplates a considerably changed natural gas world in which regulation plays a much reduced role and the free market operates at the wellhead.").

<sup>83</sup> S. Rep. No. 101-39 at 1 (emphasis added).

<sup>84</sup> H.R. Rep. No. 101-29 at 6.

<sup>85</sup> *Id.* at 7.

<sup>86</sup> *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 Fed. Reg. 42,408, 42,478 (Oct. 18, 1985) (Order No. 436).

#### 4. Energy Policy Act of 1992

39. In the Energy Policy Act of 1992 (EPAAct 1992), Congress also expressed a preference for providing the public access to natural gas. EPAAct section 202 states, “[i]t is the sense of the Congress that natural gas consumers and producers, and the national economy, are best served by a competitive natural gas wellhead market.”<sup>87</sup>

40. The NGA, NGPA, the repeal of the Fuel Use Act, the Wellhead Decontrol Act, and EPAAct 1992 each reflect Congressional mandates to promote the production, transportation, and use of natural gas. None of these acts, and no other law, including NEPA, modifies the presumption in the NGA to facilitate access to natural gas. And, it is not for the Commission to substitute its judgment for that of Congress in determining energy policy.

#### C. “Public convenience and necessity” does not support consideration of environment effects related to upstream production or downstream use of natural gas.

41. In addition to considering the text of the NGA as a whole and subsequent-related acts, we must interpret the phrase “public convenience and necessity” as used when enacted. As discussed below, “public convenience and necessity” has always been understood to mean “need” for the service. To the extent the environment is considered, such consideration is limited to the effects stemming from the construction and operation of the proposed facilities and is not as broad as some would believe.<sup>88</sup>

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<sup>87</sup> Pub. L. No. 102-486, 106 Stat. 2776 (1992).

<sup>88</sup> Some will cite the reference to environment in footnote 6 in *NAACP v. FPC* to argue that the Commission can consider the environmental effects upstream production and downstream use of natural gas. *NAACP v. FERC*, 425 U.S. 662, 670 n.6. The Court’s statement does not support that argument. The Court states that the environment could be a subsidiary purpose of the NGA and FPA by referencing FPA section 10, which states the Commission shall consider whether a hydroelectric project is best adapted to a comprehensive waterway by considering, among other things, the proposed *hydroelectric project’s effect* on the adequate protection, mitigation, and enhancement of fish and wildlife. Nothing in the Court’s statement or the citation would support the consideration of upstream and downstream impacts. *See supra* note 64 (explaining the Federal Power Commission previously considered environmental impacts of downstream end use when weighing the beneficial use of natural gas between competing uses).

42. When Congress enacted the NGA, the phrase “public convenience and necessity” was a term of art used in state and federal public utility regulation.<sup>89</sup> In 1939, one year after the NGA’s enactment, the Commission’s predecessor agency the Federal Power Commission, defined public convenience and necessity as “a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both, without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated.”<sup>90</sup> To make such showing, the Commission required certificate applicants to demonstrate that the public needed its proposed project, the applicant could perform the proposed service, and the service would be provided at reasonable rates.<sup>91</sup>

43. To the extent that public convenience and necessity included factors other than need, they were limited and directly related to the proposed facilities, not upstream or downstream effects related to the natural gas commodity. Such considerations included the effects on pipeline competition, duplication of facilities, and social costs, such as misuse of eminent domain and environmental impacts resulting from the creation of the right-of-way or service.<sup>92</sup> For example, the Commonwealth of Massachusetts considered environmental impacts resulting from the creation of the right-of-way and service in denying an application to build a railroad along a beach. The Commonwealth found that “the demand for train service was held to be outweighed by the fact the beach traversed ‘will cease to be attractive when it is defaced and made dangerous by a steam railroad.’”<sup>93</sup>

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<sup>89</sup> William K. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*, 79 COLUM. L. REV. 426, 427-28 (1979) (Jones).

<sup>90</sup> *Kan. Pipe Line & Gas Co.*, 2 FPC 29, 56 (1939).

<sup>91</sup> See Order No. 436, at 42,474 (listing the requirements outlined in *Kan. Pipe Line & Gas Co.*: “(1) they possess a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them; (2) there exist in the territory proposed to be served customers who can reasonably be expected to use such natural-gas service; (3) the facilities for which they seek a certificate are adequate; (4) the costs of construction of the facilities which they propose are both adequate and reasonable; (5) the anticipated fixed charges or the amount of such fixed charges are reasonable; and (6) the rates proposed to be charged are reasonable.”)

<sup>92</sup> Jones at 428.

<sup>93</sup> *Id.* at 436.



44. The Commission's current guidance for determining whether a proposed project is in the public convenience and necessity is consistent with the historic use of the term. As outlined in its 1999 Certificate Policy Statement, the Commission implements an economic balancing test that is focused on whether there is a need for the facilities and adverse economic effects stemming from the construction and operation of the proposed facilities themselves. The Commission designed its balancing test "to foster competitive markets, protect captive customers, and avoid unnecessary environmental and community impacts while serving increasing demands for natural gas."<sup>94</sup> The Commission also stated that its balancing test "provide[s] appropriate incentives for the optimal level of construction and efficient customer choices."<sup>95</sup> To accomplish these objectives, the Commission determines whether a project is in the public convenience and necessity by balancing the public benefits of the project against the adverse economic impacts on the applicant's existing shippers, competitor pipelines and their captive customers, and landowners.<sup>96</sup>

45. Although the Certificate Policy Statement also recognizes the need to consider certain environmental issues related to a project, it makes clear that the environmental impacts to be considered are related to the construction and operation of the pipeline itself and the creation of the right-of-way.<sup>97</sup> As noted above, it is the Commission's objective to avoid *unnecessary* environmental impacts, meaning to route the pipeline to avoid environmental effects where possible and feasible, not to prevent or mitigate environmental effects from the upstream production or downstream use of natural gas. This is confirmed when one considers that if the project had unnecessary adverse environmental effects, the Commission would require the pipeline to reroute the pipeline: "If the environmental analysis following a preliminary determination indicates a preferred route other than the one proposed by the applicant, the earlier balancing of the public benefits of the project against its adverse effects would be reopened to take into

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<sup>94</sup> Certificate Policy Statement, 88 FERC ¶ at 61,743.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See also *Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, 941 F.3d 1288, 1299 (11th Cir. 2019) ("Regulations cannot contradict their animating statutes or manufacture additional agency power.") (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125-26 (2000)).

account the adverse effects on landowners who would be affected by the changed route.”<sup>98</sup>

46. Further, the Certificate Policy Statement states, “[i]deally, an applicant will structure its proposed project to avoid adverse economic, competitive, environmental, or other effects on the relevant interests from the construction of the new project.”<sup>99</sup> And that is what occurred in this case. Instead of constructing a greenfield pipeline, Adelphia proposes to acquire and convert an existing pipeline and only construct two small laterals. Further, Adelphia removed a temporary workspace, and made changes to an access road and a meter station at the request of the Pennsylvania Department of Environmental Protection.<sup>100</sup>

47. In sum, the meaning of “public convenience and necessity” does not support weighing the public need for the project against effects related to the upstream production or downstream use of natural gas.

**D. NEPA does not authorize the Commission to deny a certificate application based on emissions from the upstream production or downstream use of transported natural gas**

48. The text of the NGA, and the related subsequent acts by Congress, cannot be revised by NEPA or CEQ regulations to authorize the Commission to deny a certificate application based on effects from the upstream production and downstream use of natural gas.

49. The courts have made clear that NEPA does not expand a federal agency’s substantive or jurisdictional powers.<sup>101</sup> Nor does NEPA repeal by implication any other

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<sup>98</sup> Certificate Policy Statement, 88 FERC ¶ at 61,749.

<sup>99</sup> *Id.* at 61,747.

<sup>100</sup> Adelphia November 19, 2018 Supplemental Filing at 1.

<sup>101</sup> *Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987) (“NEPA, as a procedural device, does not work a broadening of the agency’s substantive powers. Whatever action the agency chooses to take must, of course, be within its province in the first instance.”) (citations omitted); *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 188 (3d Cir. 1986) (“The National Environmental Policy Act does not expand the jurisdiction of an agency beyond that set forth in its organic statute.”); *Gage v. U.S. Atomic Energy Comm’n*, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1973) (“NEPA does not mandate action which goes beyond the agency’s organic jurisdiction.”); *see also Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Okla.*, 426 U.S. 776, 788 (1976) (“where a clear

statute.<sup>102</sup> Rather, NEPA is a merely procedural statute that requires federal agencies to take a “hard look” at the environmental effects of a proposed action before acting on it.<sup>103</sup> NEPA also does not require a particular result. In fact, the Supreme Court has stated, even if a NEPA analysis identifies an environmental harm, the agency can still approve the project.<sup>104</sup>

50. Further, CEQ’s regulations on indirect effects cannot make the GHG emissions from upstream production or downstream use part of the Commission’s public convenience and necessity determination under the NGA. As stated above, an agency’s obligation under NEPA to consider indirect environmental effects is not limitless. Indirect effects must have “a reasonably close causal relationship” with the alleged cause, and that relationship is dependent on the “underlying policies or legislative intent.”<sup>105</sup> NEPA requires such reasonably close causal relationship because “inherent in NEPA and its implementing regulations is a ‘rule of reason,’”<sup>106</sup> which “recognizes that it is pointless to require agencies to consider information they have no power to act on, or effects they have no power to prevent.”<sup>107</sup> Thus, “where an agency has no ability to

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and unavoidable conflict in statutory authority exists, NEPA must give way”).

<sup>102</sup> *U.S. v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 694 (1973).

<sup>103</sup> *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 558 (1978) (“NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural.”).

<sup>104</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“Although these procedures are almost certain to affect the agency’s substantive decision, it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”).

<sup>105</sup> *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 n.7 (1983).

<sup>106</sup> *Pub. Citizen*, 541 U.S. at 767;

<sup>107</sup> *Ctr. for Biological Diversity*, 941 F.3d at 1297; *see also Town of Barnstable v. FAA*, 740 F.3d 681, 691 (D.C. Cir. 2014) (“NEPA’s ‘rule of reason’ does not require the FAA to prepare EIS when it would ‘serve no purpose.’”).

prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>108</sup>

51. The Commission has no power to deny a certificate for effects related to the upstream production or downstream use of natural gas. As explained above, the Commission’s consideration of adverse environmental effects is limited to those effects stemming from the construction and operation of the pipeline facility and the related right-of-way. For the Commission to deny a pipeline based on GHGs emitted from the upstream production or downstream use of natural gas would be contrary to the text of the NGA and subsequent acts by Congress. The NGA reserves such considerations for the States, and the Commission must respect the jurisdictional boundaries set by Congress. Suggesting that the Commission can consider such effects not only defies Congress, but risks duplicative regulation.

### **III. The NGA does not contemplate the Commission establishing mitigation for GHG emissions from pipelines**

52. My colleague also suggests that the Commission should require the mitigation of GHG emissions from the certificated pipeline facilities and the upstream production and downstream use of natural gas transported by those facilities. I understand his suggestions as proposing a carbon emissions fee, offsets or tax (similar to the Corps’ compensatory wetland mitigation program), technology requirements (such as scrubbers or electric-powered compressor units),<sup>109</sup> or emission caps. Some argue that the Commission can require such mitigation under NGA section 7(e), which provides “[t]he

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<sup>108</sup> *Pub. Citizen*, 541 U.S. at 770; *see also Town of Barnstable*, 740 F.3d at 691 (“Because the FAA ‘simply lacks the power to act on whatever information might be contained in the [environmental impact (‘EIS’)],’ NEPA does not apply to its no hazard determinations.”) (internal citation omitted); *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 196-97 (4th Cir. 2009) (finding that the U.S. Army Corps of Engineers (Corps) was not required to consider the valley fill projects because “[West Virginia Department of Environmental Protection], and not the Corps, [had] ‘control and responsibility’ over all aspects of the valley fill projects beyond the filling of jurisdictional waters.”).

<sup>109</sup> It is also important to consider the impact on reliability that would result from requiring electric-compressor units on a gas pipeline. In the event of a power outage, a pipeline with electric-compressor units may be unable to compress and transport gas to end-users, including power plants and residences for heating and cooking.

Commission shall have the power to attach to the issuance of the certificate . . . such reasonable terms and conditions as the public convenience and necessity may require.”<sup>110</sup>

53. I disagree. The Commission cannot interpret NGA section 7(e) to allow the Commission to unilaterally establish measures to mitigate GHG emissions because Congress, through the Clean Air Act, assigned the EPA and the States exclusive authority to establish such measures. Congress designated the EPA as the expert agency “best suited to serve as primary regulator of greenhouse gas emissions,”<sup>111</sup> not the Commission.

54. The Clean Air Act establishes an all-encompassing regulatory program, supervised by the EPA to deal comprehensively with interstate air pollution.<sup>112</sup> Congress entrusted the Administrator of the EPA with significant discretion to determine appropriate emissions measures. Congress delegated the Administrator the authority to determine whether pipelines and other stationary sources endanger public health and welfare; section 111 of the Clean Air Act directs the Administrator of the EPA “to publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in *his judgment* it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare”<sup>113</sup> and to establish standards of performance for the identified stationary sources.<sup>114</sup> The Clean Air Act requires the Administrator to conduct complex balancing when determining a standard of performance, taking into consideration what is technologically achievable and the cost to achieve that standard.<sup>115</sup>

55. In addition, the Clean Air Act allows the Administrator to “distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.”<sup>116</sup> The Act also permits the Administrator, with the consent of the Governor of the State in which the source is to be located, to waive its requirements “to

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<sup>110</sup> 15 U.S.C. § 717f(e) (2018).

<sup>111</sup> *American Elec. Power Co., Inc. v. Conn.*, 564 U.S. 410, 428 (2011).

<sup>112</sup> *See id.* at 419.

<sup>113</sup> 42 U.S.C. § 7411(b)(1)(A) (2018).

<sup>114</sup> *Id.* § 7411(b)(1)(B).

<sup>115</sup> *Id.* § 7411(a)(1).

<sup>116</sup> *Id.* § 7411(a)(2).

encourage the use of an innovative technological system or systems of continuous emission reduction.”<sup>117</sup>

56. Congress also intended that states would have a role in establishing measures to mitigate emissions from stationary sources. Section 111(f) notes that “[b]efore promulgating any regulations . . . or listing any category of major stationary sources . . . the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.”<sup>118</sup>

57. Thus, the text of the Clean Air Act demonstrates it is improbable that NGA section 7(e) allows the Commission to establish GHG emission standards on mitigation measures out of whole cloth. To argue otherwise would defeat the significant discretion and complex balancing that the Clean Air Act entrusts in the EPA Administrator, and would eliminate the role of the States.

58. Furthermore, to argue that the Commission may use its NGA conditioning authority to establish GHG emission mitigation—a field in which the Commission has no expertise—and address climate change—an issue that has been subject to profound debate across our nation for decades—is an extraordinary leap. The Supreme Court’s “major rules” canon advises that agency rules on issues that have vast economic and political significance must be treated “with a measure of skepticism” and require Congress to provide clear authorization.<sup>119</sup> The Court has articulated this canon because Congress does not “hide elephants in mouseholes”<sup>120</sup> and “Congress is more likely to have focused upon, and answered, major questions, while leaving interstitial matters to answer themselves in the course of the statute’s daily administration.”<sup>121</sup>

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<sup>117</sup> *Id.* § 7411(j)(1)(A).

<sup>118</sup> *Id.* § 7411(f)(3).

<sup>119</sup> *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014); *Brown & Williamson*, 529 U.S. at 160 (“Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.”); *see also Gonzales v. Oregon*, 546 U.S. 243, 267-68 (2006) (finding regulation regarding issue of profound debate suspect).

<sup>120</sup> *Whitman v. American Trucking Ass.*, 531 U.S. 457, 468 (2001).

<sup>121</sup> *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 12, 159 (quoting Justice Breyer, *Judicial Review of Questions of Law and Policy*, 38 ADMIN. L. REV. 363, 370 (1986)); *see also* Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons:*

59. Courts would undoubtedly treat with skepticism any attempt by the Commission to mitigate GHG emissions. Congress has introduced climate change bills since at least 1977,<sup>122</sup> over four decades ago. Over the last 15 years, Congress has introduced and failed to pass 70 legislative bills to reduce GHG emissions—29 of those were carbon emission fees or taxes.<sup>123</sup> For the Commission to suddenly declare such climate mitigation power resides in the long-extant NGA and that Congress's efforts were superfluous strains credibility. Requiring pipelines to pay a carbon emissions fee or tax, or to invest in GHG mitigation would be a major rule, and Congress has made no indication that the Commission has such authority.

60. Some may make the argument that the Commission can require mitigation without establishing a standard. I disagree. Establishing mitigation measures requires determining how much mitigation is required – i.e., setting a limit, or establishing a standard, that quantifies the amount of GHG emissions that will adversely affect the human environment. Some may also argue that the Commission has unilaterally established mitigation in other contexts, including wetlands, soil conservation, and noise. These examples, however, are distinguishable. Congress did not exclusively assign the authority to establish avoidance or restoration measures for mitigating effects on wetlands or soil to a specific agency. The Corps and the EPA developed a wetlands mitigation bank program pursuant to section 404 of the Clean Water Act.<sup>124</sup> Congress endorsed such mitigation.<sup>125</sup> As for noise, the Clean Air Act assigns the EPA

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*PART I*, 65 STAN. L. REV. 901, 1004 (2013) (“Major policy questions, major economic questions, major political questions, preemption questions are all the same. Drafters don’t intend to leave them unresolved.”)

<sup>122</sup> National Climate Program Act, S. 1980, 95th Cong. (1977).

<sup>123</sup> CONGRESSIONAL RESEARCH SERVICE, MARKET-BASED GREENHOUSE GAS EMISSION REDUCTION LEGISLATION: 108TH THROUGH 116TH CONGRESSES at 3 (Oct. 23, 2019), <https://fas.org/sgp/crs/misc/R45472.pdf><https://fas.org/sgp/crs/misc/R45472.pdf>. Likewise, the CEQ issued guidance on the consideration of GHG emissions in 2010, 2014, 2016, and 2019. None of those documents require, let alone recommend, that an agency establish a carbon emissions fee or tax.

<sup>124</sup> 33 U.S.C. § 1344 (2018).

<sup>125</sup> See Water Resources Development Act, Pub. L. 110-114, § 2036(c), 121 Stat. 1041, 1094 (2007); National Defense Authorization Act, Pub. L. 108-136, § 314, 117 Stat. 1392, 1430 (2004); Transportation Equity Act for the 21st Century, Pub. L. 105-178, § 103 (b)(6)(M), 112 Stat. 107, 133 (1998); Water Resources Development Act of 1990, Pub. L. 101-640, § (a)(18)(C), 104 Stat. 4604, 4609 (1990).

Administrator authority over determining the level of noise that amounts to a public nuisance and requires federal agencies to consult with the EPA when its actions exceed the public nuisance standard.<sup>126</sup> The Commission complies with the Clean Air Act by requiring project noise levels in certain areas to not exceed 55 dBA Ldn, as required by EPA's guidelines.<sup>127</sup>

61. Accordingly, there is no support that the Commission can use its NGA section 7(e) authority to establish measures to mitigate GHG emissions from proposed pipeline facilities or from the upstream production or downstream use of natural gas.<sup>128</sup>

**IV. The Commission has no reliable objective standard for determining whether GHG emissions significantly affect the environment**

62. My colleague argues that the Commission violates the NGA and NEPA by not determining the significance of GHG emissions that are effects of a project.<sup>129</sup> He challenges the Commission's explanation that it cannot determine significance because there is no standard for determining the significance of GHG emissions.<sup>130</sup> He argues that the Commission can adopt the Social Cost of Carbon<sup>131</sup> to determine whether GHG emissions are significant or rely on its own expertise as it does for other environmental

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<sup>126</sup> 42 U.S.C. § 7641(c) (“In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.”).

<sup>127</sup> See *Williams Gas Pipelines Cent., Inc.*, 93 FERC ¶ 61,159, at 61,531-52 (2000).

<sup>128</sup> In addition, requiring a pipeline to mitigate emissions from the upstream production or downstream use of natural gas would not be “a reasonable term or condition as the public convenience and necessity may require.” 15 U.S.C. § 717f(e) (2018). It would be unreasonable to require a pipeline to mitigate an effect it has no control over. Further, as discussed above, emissions from the upstream production and downstream use of natural gas are not relevant to the NGA's public convenience and necessity determination.

<sup>129</sup> Dissent PP 2, 8.

<sup>130</sup> *Id.* P 9.

<sup>131</sup> *Id.*



resources, such as vegetation, wildlife, or open land.<sup>132</sup> He suggests that the Commission does not make a finding of significance in order to deceptively find that a project is in the public convenience and necessity.<sup>133</sup>

63. I disagree. The Social Cost of Carbon is not a suitable method for determining whether GHG emissions that are caused by a proposed project will have a significant effect on climate change and the Commission has no authority or objective basis using its own expertise to make such determination.

A. **Social Cost of Carbon is not a suitable method to determine significance**

64. The Commission has found, and I agree, that the Social Cost of Carbon is not a suitable method for the Commission to determine significance of GHG emissions.<sup>134</sup> Because the courts have repeatedly upheld the Commission's reasoning,<sup>135</sup> I will not restate the Commission's reasoning here.

65. However, I will address the suggestion that the Social Cost of Carbon can translate a project's impact on climate change into "concrete and comprehensible terms" that will

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<sup>132</sup> *Id.* P 10.

<sup>133</sup> *Id.* P 2. The dissent uses the phrase "public interest"; however, as noted earlier, the Commission issues certificates when required by the public convenience and necessity. NGA section 7(e) does not include the phrase "public interest." To the extent that the courts and the Commission have equated the "public convenience and necessity" with "public interest," the "public convenience and necessity" is not as broad as some would argue. *See supra* P 15.

<sup>134</sup> *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 48 (2018).

<sup>135</sup> *Appalachian Voices*, 2019 WL 847199, \*2; *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016); *Sierra Club v. FERC*, 672 F. App'x 38, (D.C. Cir. 2016); *see also Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt.*, 377 F. Supp. 3d 1223, 1239-41 (D. Colo. 2019) (upholding the agency's decision to not use the Social Cost of Carbon); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77-79 (D.D.C. 2019) (upholding the agency's decision to not use the Social Cost of Carbon); *High Country Conservation Advocates v. U.S. Forest Serv.*, 333 F. Supp. 3d 1107, 1132 (D. Colo. 2018) ("[T]he *High Country* decision did not mandate that the Agencies apply the social cost of carbon protocol in their decisions; the court merely found arbitrary the Agencies' failure to do so without explanation.").

help inform agency decision-makers and the public at large.<sup>136</sup> The Social Cost of Carbon, described as an estimate of “the monetized damages associated with an incremental increase in carbon emissions in a given year,”<sup>137</sup> may appear straightforward. On closer inspection, however, the Social Cost of Carbon and its calculated outputs are not so simple to interpret or evaluate.<sup>138</sup> When the Social Cost of Carbon estimates that one metric ton of CO<sub>2</sub> costs \$12 (the 2020 cost for a discount rate of 5 percent),<sup>139</sup> agency decision-makers and the public have no objective basis or benchmark to determine whether that cost is significant. Bare numbers standing alone simply *cannot* ascribe significance.

**B. The Commission has no authority or objective basis to establish its own framework**

66. Some argue that the lack of externally established targets does not relieve the Commission from establishing a framework or targets on its own. Some have suggested that the Commission can make up its own framework, citing the Commission’s framework for determining return on equity (ROE) as an example. However, they overlook the fact that Congress designated the EPA, not the Commission, with exclusive authority to determine the amount of emissions that are harmful to the environment. In

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<sup>136</sup> Dissent P 9.

<sup>137</sup> Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Support Document – Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866* at 1 (Aug. 2016), [https://www.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf) (2016 Technical Support Document).

<sup>138</sup> In fact, the website for the Climate Framework for Uncertainty Negotiation and Distribution (FUND) – one of the three integrated assessment models that the Social Cost of Carbon uses – states “[m]odels are often quite useless in unexperienced hands, and sometimes misleading. No one is smart enough to master in a short period what took someone else years to develop. Not-understood models are irrelevant, half-understood models are treacherous, and mis-understood models dangerous.” FUND-Climate Framework for Uncertainty, Negotiation and Distribution, <http://www.fund-model.org/> (LAST VISITED NOV. 18, 2019).

<sup>139</sup> See 2016 Technical Support Document at 4. The Social Cost of Carbon produces wide-ranging dollar values based upon a chosen discount rate, and the assumptions made. The Interagency Working Group on Social Cost of Greenhouse Gases estimated in 2016 that the Social Cost of one ton of carbon dioxide for the year 2020 ranged from \$12 to \$123. *Id.*

addition, there are no available resources or agency expertise upon which the Commission could reasonably base a framework or target.

67. As I explain above, Congress enacted the Clean Air Act to establish an all-encompassing regulatory program, supervised by the EPA to deal comprehensively with interstate air pollution. Section 111 of the Clean Air Act directs the Administrator of the EPA to identify stationary sources that “in his judgment cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare”<sup>140</sup> and to establish standards of performance for the identified stationary sources.<sup>141</sup> Thus, the EPA has exclusive authority for determining whether emissions from pipeline facilities will have a significant effect on the environment.

68. Further, the Commission is not positioned to unilaterally establish a standard for determining whether GHG emissions will significantly affect the environment when there is neither federal guidance nor an accepted scientific consensus on these matters.<sup>142</sup> This inability to find an acceptable methodology is not for a lack of trying. The Commission reviews the climate science, state and national targets, and climate models that could inform its decision-making.<sup>143</sup>

69. Moreover, assessing the significance of project effects on climate change is unlike the Commission’s determination of ROE. Establishing ROE has been one of the core

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<sup>140</sup> 42 U.S.C. § 7411(b)(1)(A) (2018).

<sup>141</sup> *Id.* § 7411(b)(1)(B).

<sup>142</sup> The Council on Environmental Quality’s 2019 Draft Greenhouse Gas Guidance states, “[a]gencies need not undertake new research or analysis of potential climate effects and may rely on available information and relevant scientific literature.” CEQ, *Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions*, 84 Fed. Reg. 30,097, 30,098 (June 26, 2019); *see also* CEQ FINAL GUIDANCE FOR FEDERAL DEPARTMENTS AND AGENCIES ON CONSIDERATION OF GREENHOUSE GAS EMISSIONS AND THE EFFECTS OF CLIMATE CHANGE IN NATIONAL ENVIRONMENTAL POLICY ACT REVIEWS at 22 (Aug. 1, 2016) (“agencies need not undertake new research or analysis of potential climate change impacts in the proposed action area, but may instead summarize and incorporate by reference the relevant scientific literature”), [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa\\_final\\_ghg\\_guidance.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf).

<sup>143</sup> *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 36; *see also WildEarth Guardians*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded by the Appellants, the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”).

functions of the Commission since its inception under the FPA as the Federal Power Commission.<sup>144</sup> And, setting ROE has been an activity of state public utility commissions, even before the creation of the Federal Power Commission.<sup>145</sup> The Commission's methodology is also founded in established economic theory.<sup>146</sup> In contrast, assessing the significance of GHG emissions is not one of the Commission's core missions and there is no suitable methodology for making such determination.

70. It has been argued that the Commission can establish its own methodology for determining significance, pointing out that the Commission has determined the significance of effects on vegetation, wildlife, and open land using its own expertise and without generally accepted significance criteria or a standard methodology.

71. I disagree. As an initial matter, it is important to note that when the Commission states it has no suitable methodology for determining the significance of GHG emissions, the Commission means that it has no objective basis for making such finding. The Commission's findings regarding significance for vegetation, wildlife, and open land have an objective basis. For example for wildlife, the Commission determined the existing wildlife in the project area by consulting with the U.S. Fish and Wildlife Service, Delaware Department of Natural Resources and Environmental Control, Pennsylvania Department of Conservation and Natural Resources, Pennsylvania Fish and Boat Commission and Pennsylvania Game Commission, and by using the agencies' databases.<sup>147</sup> The Commission determined the project's effect on vegetation by using the applicant's materials to quantify the amount of acres that will be temporarily impacted by construction and permanently impacted by operation, and by considering the mitigation and restoration activities that Adelphia committed to and are set forth in the Commission's *Upland and Erosion Control, Revegetation, and Maintenance Plan* and

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<sup>144</sup> *Hope*, 320 U.S. 591 (1944); *FPC v. Nat. Gas Pipeline Co. of America*, 315 U.S. 575 (1942).

<sup>145</sup> See, e.g., *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 41 (1909) (finding New York State must provide "a fair return upon the reasonable value of the property at the time it is being used for the public.").

<sup>146</sup> *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, 166 FERC ¶ 61,207 (2019) (describing the Commission's use of the Discounted Cash Flow model that was originally developed in the 1950s as a method for investors to estimate the value of securities).

<sup>147</sup> EA at 75.

*Wetland and Waterbody Construction and Mitigation Procedures*.<sup>148</sup> Based on this information, the Commission made a reasoned finding that the project impacts on wildlife will not be significant. The Commission conducted a similar evaluation of vegetation and open land.

72. In contrast, the Commission has no reasoned basis to determine whether a project has a significant effect on climate change. To assess a project's effect on climate change, the Commission can only quantify the amount of project emissions. That calculated number cannot inform the Commission on climate change effects caused by the project, e.g., increase of sea level rise, effect on weather patterns, or effect on ocean acidification. Nor are there acceptable scientific models that the Commission may use to attribute every ton of GHG emissions to a physical climate change effect.

73. Without adequate support or a reasoned target, the Commission cannot ascribe significance to particular amounts of GHG emissions. To do so would not only exceed our agency's authority, but would risk reversal upon judicial review. Courts require agencies to "consider[] the relevant factors and articulate[] a rational connection between the facts found and the choice made."<sup>149</sup> Simply put, stating that an amount of GHG emissions appears significant without any objective support fails to meet the agency's obligations under the Administrative Procedure Act (APA).

## V. Conclusion

74. This concurrence is intended to assist the Commission, courts, and other parties in their consideration of the Commission's obligations under the NGA and NEPA. The Commission cannot act *ultra vires* and claim more authority than the NGA provides it, regardless of the importance of the issue sought to be addressed.<sup>150</sup> The NGA provides

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<sup>148</sup> *Id.* at 75-76.

<sup>149</sup> *City of Tacoma v. FERC*, 460 F.3d 53, 76 (D.C. Cir. 2006) (quoting *Ariz. Cattle Growers' Ass'n v. FWS*, 273 F.3d 1229, 1235-36 (9th Cir. 2001)); see also *American Rivers v. FERC*, 895 F.3d 32, 51 (D.C. Cir. 2018) (" . . . the Commission's NEPA analysis was woefully light on reliable data and reasoned analysis and heavy on unsubstantiated inferences and *non sequiturs*") (italics in original); *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agr.*, 681 F.2d 1172, 1179 (9th Cir. 1982) ("The EA provides no foundation for the inference that a valid comparison may be drawn between the sheep's reaction to hikers and their reaction to large, noisy ten-wheel ore trucks.").

<sup>150</sup> *Office of Consumers' Counsel*, 655 F.2d at 1152 ("[A]ppropriate respect for legislative authority requires regulatory agencies to refrain from the temptation to stretch their jurisdiction to decide questions of competing public priorities whose resolution properly lies with Congress.").

the Commission no authority to deny a certificate application based on the environmental effects from the upstream production or downstream use of natural gas. Congress enacted the NGA, and subsequent legislation, to ensure the Commission provided public access to natural gas. Further, Congress designed the NGA to preserve States' authority to regulate the physical effects from the upstream production and downstream use of natural gas, and did not leave that field unregulated. Congress simply did not authorize the Commission to judge whether the upstream production or downstream use of gas will be too environmentally harmful.

75. Nor does the Commission have the ability to establish measures to mitigate GHG emissions. Pursuant to the Clean Air Act, Congress exclusively assigned authority to regulate emissions to the EPA and the States. Finally, the Commission has no objective basis for determining whether GHG emissions are significant that would satisfy the Commission's APA obligations and survive judicial review.

76. I recognize that some believe the Commission should do more to address climate change. The Commission, an energy agency with a limited statutory authority, is not the appropriate authority to establish a new regulatory regime.

For these reasons, I respectfully concur.

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Bernard L. McNamee  
Commissioner

Document Content(s)

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