

## Filing for Rehearing of FERC's May 3, 2019 Order

### June 3, 2019

Filing with FERC: Request for Rehearing and Rescission of the Commission's May 3, 2019 Order ("Order") granting a Certificate of Public Convenience and Necessity to Williams/ authorizing construction and operation of the proposed Northeast Supply Enhancement (NESE) Project by clients of Eastern Environmental Law Center (EELC) - NY/NJ Baykeeper, Food & Water Watch – New Jersey, Central Jersey Safe Energy Coalition, the Princeton Manor Homeowners Association and Surfrider Foundation

Reasons: The Order fails to establish need, the Commission acted in an arbitrary and capricious manner by not releasing the CEI to certain members of the public until after both the DEIS and FEIS were issued, and the Order rests on an FEIS that is wholly deficient.

## FERC's Responses to 6/3/19 Rehearing Request

### July 2, 2019

FERC issued a "tolling order" – FERC granted the rehearing for "further consideration" and noted that "Rehearing requests of the above-cited order filed in this proceeding will be addressed in a future order."

### April 16, 2020

FERC denied the request for rehearing and rescission and deemed the request for a stay to be moot. Some points made by FERC in this denial:

#### Issues Addressed in the Certificate Order

Community Groups allege that the Commission violated NEPA by failing to conduct a health impact assessment for the project's Compressor Station 206 and by failing to take a hard look at water quality concerns associated with contaminated sediments within Raritan Bay. The Commission fully addressed these issues in the Certificate Order. Accordingly, we deny rehearing for the reasons articulated by the Commission in the Certificate Order.

#### Precedent Agreements with Shippers Are Appropriate Indicators of Project Need

Community Groups argue that the Commission failed to substantiate the market need for the project as required by the NGA. The Community Groups argue that the shippers' need for the project is undercut by demand projections, including a report by 350.org, which purportedly shows that the justification for the project rests on flawed, unsupported evidence of demand for natural gas in the New York City market area.

A showing of market need is a precondition for the Commission to issue a certificate of public convenience and necessity. A certificate applicant can make a showing of market need for the facilities

As an initial matter, we note that it is Commission policy not to look behind precedent or service agreements to make judgments about the needs or business decisions of individual shippers.

National Grid forecasted a need for additional natural gas supplies increasing over the next ten years by more than ten percent (according to National Grid's May 14, 2019 Comments on the Draft Environmental Impact Statement at 1-2.)

The project is expected to serve users whose heating system will convert from fuel oil to natural gas, but it will also serve additional demand from residential and commercial end users.

## **C. Access to Information**

Commission is not required to act within a specified timeline on CEII requests under section 388.113(g)(5) of the Commission's regulations.

Consistent with Commission staff's long-standing practice, staff used an industry standard hydraulic pipeline simulation software package, in conjunction with the same Exhibit G flow diagrams and hydraulic models Community Groups have received, to evaluate whether the proposed project was properly designed to meet existing and proposed system delivery requirements. Mr. Kuprewicz claims that this information is incomplete, but Commission staff has thoroughly scrutinized all data provided by Transco and found it sufficient to perform the analysis.

## **D. The Commission Satisfied the National Environmental Policy Act**

### **1. No Action and Renewable Energy Alternatives**

The EIS explained that it excluded renewable energy and energy efficiency alternatives because renewable energy and energy efficiency measures do not transport natural gas.

### **2. Greenhouse Gas Emissions**

NEPA requires agencies to consider indirect effects or impacts that are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." With respect to causation, "NEPA requires a 'reasonably close causal relationship' between the environmental effect and the alleged cause" in order "to make an agency responsible for a particular effect under NEPA." As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]." Thus, "[s]ome effects that are 'caused by' a change in the physical environment in the sense of 'but for' causation, will nonetheless not fall within [NEPA] because the causal chain is too attenuated." 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."

... the total consumed volume is also unknown because the project's transportation capacity is designed for intermittent peak use

... the Commission was not required to address the effects of increased natural gas production because there is no evidence that the project will increase production. Moreover, there is no record evidence that would help the Commission determine the origin of the natural gas that will be transported on the project, let alone predict the number and location of any additional wells that would be drilled as a result.

Finally, Community Groups argue that the Commission violated NEPA by failing to use the Social Cost of Carbon to put GHG emissions into context. As the Commission has previously explained, using this tool to monetize GHG emissions is not helpful given that there is no context for those monetized costs. Neither EPA nor the Council on Environmental Quality (CEQ) have stated that the Social Cost of Carbon should be used to assess the significance of GHG emissions.

Nor does CEQ require a monetary cost-benefit analysis when weighing alternatives under NEPA. Indeed, CEQ states that such an analysis should not be undertaken when there are important qualitative considerations, such as those involved in siting infrastructure. In addition, the Social Cost of Carbon tool has methodological limitations. For example, different discount rates introduce substantial variation in results and no basis exists to ascribe significance to a calculated monetized value. Further, the Social Cost of Carbon methodology is no longer representative of government policy.

## **E. Wetlands Impacts from Compressor Station 206**

The EIS fully analyzed impacts to wetlands and waterbodies associated with the construction and operation of Compressor Station 206 on a 52.1-acre parcel in Somerset County, New Jersey.

Using New Jersey's classification of wetlands, the EIS explained that no exceptional value or high-quality wetlands would be affected by Compressor Station 206.

## **F. Safety Impacts**

Transco is required to comply with PHMSA regulations to prevent corrosion and ensure the safety of the pipeline should any corrosion occur. As explained in the Certificate Order, PHMSA is responsible for ensuring the safe operation of interstate natural gas pipelines through its regulations under Part 192 of the 49 Code of Federal Regulations.

In addition, Commission staff confirmed that the increase in gas velocity from the project's compression would not be expected to increase corrosion.

### **GLICK, Commissioner, *dissenting in part*:**

I dissent in part from today's order on rehearing because I believe that the Commission's action 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.

The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to misleadingly state that the Project's environmental impacts "will be reduced to less-than-significant levels," and, as a result, conclude that the Project is 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.

## **The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking**

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 consumption of fossil fuels, including natural gas.

As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the facilities' impact on climate change.

Based on this alleged inability to assess significance, the Commission concludes that the Project's impacts will generally be reduced to "less-than-significant" levels. Think about that. The Commission is simultaneously stating that it cannot assess the significance of the Project's impact on climate change, while concluding that all environmental impacts are acceptable to the public interest.

## **II. The Commission's NEPA Analysis of the Project's Contribution to Climate Change Is Deficient**

When conducting a NEPA review, an agency must consider both the direct and the indirect effects of the project under consideration. While the Commission quantifies the GHG emissions related to Project's construction and operation, it fails to consider the indirect GHG emissions resulting from the incremental natural gas capacity facilitated by the Project.

Although quantifying the Project's GHG emissions is a necessary step toward meeting the Commission's NEPA obligations, simply reporting the volume of emissions is insufficient. ... Identifying and evaluating the consequences that a 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. ... An environmental review document must "contain a detailed discussion of possible

mitigation measures” to address adverse environmental impacts. “Without 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.

## **Next Step: Filing in Court for Review of FERC’s Denial of Rehearing Request**

### **June 15, 2020**

EELC, on behalf of their clients, filed a Petition for Review in U.S. Court of Appeals for the D.C. Circuit for (1) the 5/3/19 Certificate Order, (2) FERC’s 7/2/19 tolling order, and (3) FERC’ 4/16/20 denial of the request for rehearing & rescission.

### **July 16, 2020**

EELC clients filed in D.C. Circuit (1) statement of issues to be raised, and (2) unopposed motion to hold the Petition for Review in Abeyance.

### **July 21, 2020**

D.C. Circuit Court granted the request to hold the Petition for Review in Abeyance.

## **Filings after FERC granted Williams/Transco two additional years to complete NESE**

**(May 20, 2021) – FERC Order granting Williams/Transco a two-year extension of time to get all needed permits, complete construction, and have NESE ready for operation.**

### **June 17, 2021**

EELC clients filed a Request for Rehearing and Rescission of the May 20, 2021 Order granting the two-year time extension.

### **June 21, 2021**

South Brunswick also filed a Request for Rehearing and Rescission of the May 20, 2021 Order granting the two-year time extension.

### **July 22, 2021**

FERC did not reply to the two requests above within 30 days, so the requests were denied by operation of law.