



October 12, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *PennEast Pipeline Company, LLC*, Docket No. CP15-558-000
Response to Comments on the Draft Environmental Impact Statement

Dear Ms. Bose:

On July 22, 2016, the staff of the Federal Energy Regulatory Commission (Commission) issued the Draft Environmental Impact Statement (Draft EIS) for PennEast Pipeline Company, LLC's (PennEast) proposed project (Project). PennEast hereby submits in Appendix A its responses to certain of the comments regarding the Draft EIS that have been filed in the above-referenced docket. PennEast is submitting these responses to assist the Commission's review of all comments filed during the Draft EIS comment period for preparation of the Final Environmental Impact Statement.

PennEast addressed many environmental issues during the National Environmental Policy Act (NEPA)¹ review of the Project in its pre-filing docket, PF15-1-000, and in the certificate proceeding docket, CP15-558-000. Accordingly, in Appendix A, PennEast only addresses comments received on the Draft EIS for which PennEast has new or additional information to add to the record to assist the Commission in its NEPA review. PennEast will provide supplemental responses to additional comments on the Draft EIS, including submission of expert reports addressing comments on arsenic and rate-related issues, respectively.

Should you have any questions concerning this filing, please contact me at (610) 406-4322.

Sincerely,
/s/ Anthony C. Cox
Anthony C. Cox
PennEast Pipeline Company, LLC,
By its Project Manager
UGI Energy Services, LLC

cc: Medha Kochhar (FERC)
All Parties of Record

¹ 42 U.S.C. §§ 4321 *et seq.*

Appendix A

**Response to Comments on the Draft
Environmental Impact Statement for the
PennEast Pipeline Project**

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I. Public Convenience and Necessity: The Project is Required by the Public Convenience and Necessity and Constitutes a Public Use as Determined by Congress.

A. A Project that Meets the Public Convenience and Necessity Standard is a Public Use as Determined by Congress

Commenters argue that the PennEast Pipeline Company, LLC's (PennEast) Project (Project) is not a "public use" sufficient to support a grant of eminent domain authority and that the Federal Energy Regulatory Commission ("FERC" or "Commission") is required to undertake a separate analysis to establish that the Project constitutes a "public use" under the Fifth Amendment of the U.S. Constitution.¹ These comments misunderstand the nature of Congress's delegation to the Commission under the Natural Gas Act (NGA). As the Commission has noted, Congress granted the right of eminent domain to certificate holders under NGA Section 7, and "[t]he Commission itself does not grant the pipeline the right to take the property by eminent domain."² Rather, the Commission determines if the proposed pipeline facilities are in the public convenience and necessity under NGA Section 7(c). Once the Commission makes that determination, Congress authorized the applicant, under NGA Section 7(h), to acquire the necessary land or property to construct the approved facilities by the exercise of the right of eminent domain.³ It is well settled that Congress's grant of the right of eminent domain to natural gas companies in Section 7(h) of the NGA is a constitutionally appropriate delegation of the federal government's sovereign power to appropriate land for public use.⁴

B. The Project is Required by the Public Convenience and Necessity

Several commenters argue that the Project is not needed⁵ or there is insufficient information to make a finding under the public convenience and necessity standard.⁶ Contrary to these assertions, the record contains substantial information supporting a finding of need for the

¹ *E.g.*, Comment of HALT-PennEast re Conditional Approval, Accession No. 20160913-5124, Docket No. CP15-558-000, at 3 (Sept. 13, 2016) (hereinafter, "HALT-PennEast re Conditional Approval Comment"); Comment of Clean Air Council, Docket No. CP15-558-000, at 3-4 (Sept. 12, 2016) (hereinafter, "Clean Air Council Comment"); Comment of Joseph Straub, Accession No. 20160906-5066, Docket No. CP15-558-000, at 1 (Sept. 6, 2016); *see* Comment of Delaware Riverkeeper Network, Accession No. 20160912-5816, Docket No. CP15-558-000, at 12 (Sept. 12, 2016) (hereinafter, "Delaware Riverkeeper Network Comment").

² *E. Tenn. Nat. Gas Co.*, 102 FERC ¶ 61,225 at PP 66, 68 (2003) (rejecting a similar contention that the Commission "does not have authority to grant East Tennessee the right to exercise eminent domain" because property "cannot be subject to seizure by a for-profit private company for its own purposes").

³ *Id.* at P 68.

⁴ *E.g.*, *Thatcher v. Tenn. Gas Transmission Co.*, 180 F.2d 644, 648 (5th Cir. 1950) (rejecting an argument that the NGA "provides the taking of private property for a private use"); *see, e.g.*, *E. Tenn. Nat. Gas Co.*, 102 FERC ¶ 61,225 at PP 67-68 (2003). HALT-PennEast's arguments that the Project is not a "public use" raise issues related to the public convenience and necessity standard that have already been addressed in previous filings made by PennEast. *See, e.g.*, Motion for Leave to Answer and Answer of PennEast Pipeline Co., LLC, Docket No. CP15-558-000, at 2-4 (Nov. 13, 2015) (hereinafter, "November 13 Answer") (addressing affiliate agreements and market need for the Project).

⁵ *E.g.*, Delaware Riverkeeper Network Comment at 8-9.

⁶ HALT-PennEast re Conditional Approval Comment at 17 ("Because FERC admits it has not yet evaluated impacts and other local conditions affected by the project, that also means the Natural Gas Act prevents FERC from granting a license . . .").

Project as well as a sufficient discussion of impacts and benefits for the Commission to consider in its determination under the public convenience and necessity standard. These issues have been addressed at length in previous filings by PennEast.⁷ The New Jersey Division of Rate Counsel (NJ Rate Counsel) also filed a comment regarding the need for the Project and opposing PennEast's proposed return on equity, capital structure, and cost of debt.⁸ NJ Rate Counsel's arguments are based on incorrect assumptions and contrary to Commission precedent and will be addressed in a Concentric Energy Advisors report that PennEast will file under separate cover.

II. Alternatives Analysis: The Alternatives Analysis in the Draft EIS is Sufficiently Detailed and Broad.

Many comments filed in response to the Draft Environmental Impact Statement for the PennEast Pipeline Project (Draft EIS) claim that it focused too exclusively on the preferred alternative and did not adequately consider or develop the "no action" alternative and various system and collocation alternatives. To the contrary, the Draft EIS adequately evaluates alternatives including system and no-action alternatives in compliance with the National Environmental Policy Act (NEPA). While NEPA requires that an agency "rigorously explore . . . all reasonable alternatives," an agency need only "briefly discuss" its reasons for eliminating other alternatives from consideration.⁹ To be a "reasonable alternative" under NEPA, the alternative must satisfy the underlying purpose of and need for the proposed action.¹⁰ Neither the various system alternatives nor the no action alternative is a reasonable alternative that would otherwise satisfy the Project's purpose and need.

A. The Draft EIS's Purpose and Need Statement does not Improperly Limit the Alternatives Analysis

Some commenters argue that the Draft EIS's statement of purpose and need impermissibly limited the range of reasonable alternatives because it was based on the goals of the Project proposal and that the Commission should further consider renewable energy or energy efficiency alternatives.¹¹ These assertions are incorrect; the Draft EIS's statement of

⁷ Application of PennEast for Certificates of Public Convenience and Necessity and Related Authorizations, Docket No. CP15-558-000, at 9 (Sept. 24, 2015) (PennEast Application) (discussing economic benefits to consumers from PennEast Project); November 13 Answer; Reply Comment of Concentric Energy Advisors to Comments Submitted by the N.J. Conservation Found. Regarding PennEast Pipeline Co., LLC, Docket No. CP15-558-000 (Apr. 14, 2016) (Concentric Reply); Concentric Energy Advisors, *Energy Market Savings Report and Analysis* (Mar. 2015), <http://penneastpipeline.com/ConcentricEconomicStudy>; Econsult Solutions & Drexel University, *Economic Impact Report and Analysis: PennEast Pipeline Project Economic Impact Analysis* (2015), <http://penneastpipeline.com/economic-impact-analysis/>; Eastern Interconnection Planning Collaborative, *Interregional Transmission Development and Analysis for Three Stakeholder Selected Scenarios and Gas-Electric System Interface Study* (July 2, 2015), <http://www.eipconline.com/phase-ii-documents.html>.

⁸ Comment of the N.J. Div. of Rate Counsel, Docket No. CP15-558-000, at 8-16 (Sept. 12, 2016).

⁹ 40 C.F.R. § 1502.14(a), (c) (2016).

¹⁰ See *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1072-73 (9th Cir. 2012).

¹¹ See, e.g., Comment of U.S. Env'tl. Prot. Agency Region III, Enclosure, Accession No. 20160913-5144, Docket No. CP15-558-000, at 1-3, 6 (Sept. 13, 2016) (hereinafter, "EPA Region III Comment, Encl."); Delaware Riverkeeper Network Comment at 49-50; Comment of Lower Saucon T'ship, Accession No. 20160912-5515, Docket No. CP15-558-000, at 19-21, 77-78 (Sept. 12, 2016) (hereinafter, "Lower Saucon Comment"); Comment of

purpose and need is appropriately informed by the goals of the proposal as confirmed in Commission precedent.¹² As the Commission has noted, “[c]ourts have upheld federal agencies’ use of applicants’ identified project purpose and need as the basis for evaluating alternatives.”¹³ Thus, Commission Staff reasonably determined that the Project’s purpose and need is to transport natural gas to meet the demand of Project shippers and that energy conservation or other energy alternatives do not meet this purpose and need.¹⁴ Implementing commenters’ suggestions to depart entirely from the purpose of the proposed Project would violate NEPA as courts have held that “[a]n agency cannot redefine the goals of the proposal that arouses the call for action; it must evaluate alternative ways of achieving *its* goals, shaped by the application at issue and by the function that the agency plays in the decisional process.”¹⁵

Commenters also argue that the Commission should adopt the analysis of various reports submitted by Project opponents regarding the Project’s need instead of the expert studies relied on in the Draft EIS.¹⁶ The reports these commenters rely on either do not consider that the Project’s need has been demonstrated through numerous precedent agreements¹⁷ or rely on misguided arguments attacking the legitimacy of agreements with affiliated shippers.¹⁸ The Commission need not adopt the conclusions of reports that ignore or are contrary to the Commission’s longstanding policies regarding the need for a natural gas pipeline project. Likewise, NEPA contains no obligation that the Commission adopt opinions from outside experts.¹⁹ The Commission, in meeting its statutory obligations imposed by the NGA and after reviewing the information and comments filed during the public comment period, may reach different conclusions than those advanced by commenters’ reports based on its own or another expert report or analysis.

Citizens for Pennsylvania’s Future and Sierra Club, Accession No. 20160912-5997, Docket No. CP15-558-000, at 8-9 (Sept. 12, 2016) (hereinafter, “Sierra Club and Penn Future Comment”).

¹² *Texas Eastern Transmission, LP*, 146 FERC ¶ 61,086 at P 91 (2014) (rejecting Delaware Riverkeeper Network’s argument that “project objectives were too narrowly defined, so as to preclude consideration of any alternatives to the TEAM 2014 Project”).

¹³ *Id.* (citing *City of Grapevine, Texas v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994)).

¹⁴ Draft EIS at 3-3; *see also* PennEast Application, Ex. F-1, Resource Report 10, at 10-4 to 10-6.

¹⁵ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991) (emphasis in original); *see also Louisiana Wildlife Fed’n, Inc. v. York*, 761 F.2d 1044, 1048 (5th Cir. 1985) (“Indeed, it would be bizarre if the [Commission] were to ignore the purpose for which the applicant seeks a [project] and to substitute a purpose [the Commission] deems more suitable.”).

¹⁶ *See* Lower Saucon Comment at 73 (noting the findings of Skipping Stone and Labyrinth Consulting regarding market need); *see also* Comment of HALT-PennEast re Public Participation in the DEIS, Accession No. 2016912-5623, Docket No. CP15-558-000, at 2 (Sept. 12, 2016) (hereinafter, “HALT-PennEast re Public Participation Comment”).

¹⁷ *See* Delaware Riverkeeper Network, Comment re Expert Report Regarding Need, Accession No. 20160212-5071, Docket No. CP15-558-000, at 1-3 (Feb. 11, 2016) (providing Labyrinth Consulting report).

¹⁸ *See* PennEast Pipeline Co., LLC, Reply of PennEast Pipeline Co., LLC, Docket No. CP15-558-000, at 2 (Apr. 14, 2016).

¹⁹ *E.g., Don’t Ruin Our Park v. Stone*, 802 F. Supp. 1239, 1250 n.18 (M.D. Pa. 1992) (“agencies are not required to adopt the opinions of outside experts”).

B. The Draft EIS Contains an Adequate Analysis for the No Action Alternative

Several commenters incorrectly argue that the analysis of the no action alternative is deficient.²⁰ The Draft EIS reasonably concludes that the no action alternative will not meet the need for the Project's capacity. Given the lack of existing pipelines at the Project's various receipt and delivery points, the insufficient existing capacity on other interstate pipelines that might meet existing shipper demand (as reflected in the precedent agreements with PennEast's twelve shippers, most of which are local natural gas distribution companies and regional electricity generators), and reports discussed and submitted by PennEast, PennEast's Project creates the additional pipeline capacity necessary to meet this demand.²¹

Some commenters argue that the Draft EIS's "no action" alternative analysis relies on circular logic that assumes the action being proposed would occur anyway in the form of another project, rendering the no action alternative a nullity.²² The no action alternative analysis in the Draft EIS appropriately assumes that the PennEast Project would not be built. The record before the Commission, however, includes information about existing system constraints and the likelihood that the lack of gas supply routes will continue to create dramatic seasonal pricing fluctuations in Pennsylvania and New Jersey.²³ The Draft EIS reasonably concludes that in such a scenario, other gas transmission projects would likely be developed to transport the gas that PennEast's shippers seek.²⁴ Commenters claim that this is improper and suggest that the Commission must investigate what alternative energy sources would be developed or what a preserved status quo would look like,²⁵ apparently assuming no transmission project whatsoever would be built if the PennEast Project were not. But NEPA does not require the Commission to embed within the no action alternative any such speculative future scenarios that it does not find reasonably likely to occur. Moreover, this argument misconstrues the Commission's statutory obligations under the NGA, pursuant to which the Commission must determine whether the proposed Project (which is designed to deliver certain quantities of natural gas to end users in Pennsylvania and New Jersey) is required in the public convenience and necessity, *not* whether the overall energy needs of the region could be met by alternative energy sources if the proposed Project were not built.²⁶

The Draft EIS reasonably concludes that natural gas from the Marcellus Shale region will make it to markets in Pennsylvania and New Jersey regardless of whether PennEast's specific project is built, given the demand for the gas. This conclusion does not assume that the Commission undertakes the same action being proposed. Indeed, if no PennEast Project (or even

²⁰ See, e.g., Sierra Club and Penn Future Comment at 8-9; Clean Air Council Comment at 8; Comment of HALT-PennEast re No-Action and Alternatives Analysis, Accession No. 20160912-5619, Docket No. CP15-558-000, at 1-3 (Sept. 12, 2016) (hereinafter, "HALT-PennEast re Alternatives Analysis Comment").

²¹ Draft EIS at 1-3, 1-17.

²² See, e.g., Sierra Club and Penn Future Comment at 11.

²³ See PennEast Application, Ex. F-1, Resource Report 10, at 10-4.

²⁴ Draft EIS at 3-3.

²⁵ See Sierra Club and Penn Future Comment at 9; Lower Saucon Comment at 72; Clean Air Council Comment at 8.

²⁶ E.g., *Gulf South Pipeline Co., LP et al.*, 146 FERC ¶ 61,149 at P 24 (2014) ("When reviewing an application under NGA section 7, the Commission does not conduct an analysis to determine whether the applicant's proposal is the best option for serving the identified demand. Rather, the Commission analyzes an applicant's specific proposal to determine if it is in the public convenience and necessity.") (issuing certificate and rejecting an argument that information regarding potential third-party projects was required to assess the need for the project).

any interstate transmission project) were built to serve this existing demand, it is reasonable to assume that other projects would take its place or that gas producers would simply build longer gathering lines to connect wells to interstate pipelines, which is precisely the outcome the Commission suggested would occur in its review of the MARC I pipeline.²⁷

C. The Draft EIS Appropriately Analyzes Various System and Route Alternatives

Some commenters suggest that various system alternatives were dismissed from consideration too early and without an adequate basis and then request that Commission Staff consider additional collocation opportunities and conduct a deeper analysis of system and route alternatives.²⁸ However, the Draft EIS adequately addresses these issues. NEPA requires that an agency consider alternatives to its proposed action, but only “reasonable” alternatives consistent with the project’s purpose²⁹ that are also technically and economically practicable and feasible.³⁰ Here, the Draft EIS includes a 27-page analysis of the no action alternative, four (4) system alternatives, four (4) main route alternatives, many dozens of route variations, an alternative compressor station location, and a compressor station system alternative.³¹

1. The analysis of various system alternatives satisfies NEPA’s requirements.

The Draft EIS discusses numerous system and design alternatives and provides ample justification for why each was not advanced for more detailed analysis. Commenters requested additional analysis and justification for these alternatives,³² but in each case, the level of detail provided is commensurate with what NEPA requires.

Commenters recommend that the Transco Leidy Line system alternative be further evaluated.³³ The Draft EIS discusses this system alternative and did not evaluate it further because, in addition to the need to construct additional delivery laterals to meet the purpose and need, that pipeline is already capacity constrained and collocation would not be feasible in certain areas given commercial, industrial, and residential development along the existing right-of-way.³⁴ The analysis of a similar system alternative in the Commission’s draft EIS for Transcontinental Gas Pipeline Company’s (Transco’s) proposed Atlantic Sunrise pipeline project reached the same conclusion regarding how adjacent development has rendered collocation infeasible in certain areas.³⁵ Indeed, in both studies, Commission Staff stated that they were unable to identify alternative alignments to avoid these developed areas that would not

²⁷ *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121 at P 91 (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 (2d Cir. June 12, 2012) (unpublished opinion).

²⁸ *See, e.g.*, EPA Region III Comment, Encl. at 2-3; Delaware Riverkeeper Network Comment at 49-50.

²⁹ *See* 40 C.F.R. § 1502.14.

³⁰ *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263, 34,267 (July 28, 1983) (stating that “reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint”).

³¹ Draft EIS at 3-1 to 3-27.

³² *See, e.g.*, EPA Region III Comment, Encl. at 2-4; Delaware Riverkeeper Network Comment at 49-50.

³³ *See, e.g.*, EPA Region III Comment, Encl. at 2; Delaware Riverkeeper Network Comment at 49.

³⁴ Draft EIS at 3-4 to 3-6.

³⁵ Draft EIS for Transcontinental Gas Pipe Line Co., LLC’s Atlantic Sunrise Project, Docket No. CP15-138-000, at 3-5 to 3-6 (May 5, 2016).

significantly increase the length of the pipeline and the overall construction footprint.³⁶ These collocation constraints represent a reasonable basis for the decision to not undertake further analysis of the alternative.

Commenters also claim that Columbia Gas Transmission, LLC (Columbia Gas) and Texas Eastern Transmission, LP (Texas Eastern) system alternatives should be explored further with revised receipt and delivery points.³⁷ As the PennEast Draft EIS notes, the Project's purpose and need is to deliver gas from northern Pennsylvania to meet demands in Pennsylvania and New Jersey. Neither the Columbia Gas nor the Texas Eastern system has receipt points in the northern Pennsylvania area and both systems would have to construct new facilities similar to the Project's facilities in order to reach that region.³⁸ The Draft EIS provides a reasoned basis for not advancing these system alternatives.

Some commenters also claim that the Draft EIS is deficient for not analyzing a liquefied natural gas (LNG) import system alternative and a dual-fuel alternative.³⁹ PennEast described the LNG system alternative in its Resource Report 10, and the record before the Commission includes documents and information explaining why these two (2) alternatives are unreasonable given cost, logistics, reliability concerns, and their failure to meet shipper needs, and therefore could be eliminated from detailed consideration in the NEPA document.⁴⁰

Similarly, some commenters suggest that the alternatives analysis is deficient because the Draft EIS improperly dismisses a compressor station design alternative that would replace natural gas-fired compressor units with electric motor-driven compressors.⁴¹ The Commission Staff reviewed studies comparing emission rates between the two (2) alternatives and reasonably concluded that natural gas-fired units would result in fewer overall emissions and would avoid construction impacts associated with electric transmission service upgrades.⁴² The Draft EIS's conclusions are consistent with the Commission's previous determinations that electric-driven compressor units are not environmentally preferable alternatives to gas-driven compressor stations.⁴³

³⁶ *Id.*; Draft EIS at 3-6.

³⁷ *See, e.g.*, EPA Region III Comment, Encl. at 2-3; Comment of Stony Brook Millstone Watershed Ass'n on Incomplete Draft Environmental Impact Statement, Accession No. 20160912-5990, Docket No. CP15-558-000, at 8 (Sept. 12, 2016) (hereinafter, "Stony Brook Millstone Watershed Ass'n Comment").

³⁸ Draft EIS at 3-6.

³⁹ *See, e.g.*, HALT-PennEast re Alternatives Analysis Comment at 3; Comment of N.J. Conservation Found. and Stony Brook-Millstone Watershed Ass'n Comment and Data Submission, Accession No. 20160912-6009, Docket No. CP15-558-000, at 7 (Sept. 12, 2016) (hereinafter, "NJCF and SBMWA Comment"); Comment of Alexandria Citizens Against the Pipeline et al., Accession No. 20160912-5856, Docket No. CP15-558-000, at 19-20 (Sept. 12, 2016) (transmitting report by Pax Silvis, LLC).

⁴⁰ *See, e.g.*, PennEast Pipeline Co., LLC, Reply of PennEast Pipeline Co., LLC, Docket No. CP15-558-000, at 2-3 (Apr. 14, 2016) (filing Concentric Reply).

⁴¹ *See, e.g.*, Comment of Appalachian Mountain Club, Accession No. 20160908-5023, Docket No. CP15-558-000, at 4-5 (Sept. 8, 2016).

⁴² Draft EIS at 3-27, 4-217.

⁴³ *Dominion Transmission, Inc.*, 156 FERC ¶ 61,140 at P 107 (2016) (recognizing and following the Commission's past decision that "due to the environmental impacts associated with construction and operation of the necessary electric transmission infrastructure (transmission line, substation, etc.), electric-driven compression would not provide a significant environmental advantage to natural gas-driven compression. In addition, emissions from the power plant providing electricity would contribute to air quality impacts."); *Tennessee Gas Pipeline Co., L.L.C.*, 144

Commenters nevertheless challenge this conclusion, asserting that the Draft EIS relied on outdated and unexplained scientific analysis, and that it ignored concerns with local air quality.⁴⁴ To the contrary, the Draft EIS evaluates local air emissions from the proposed compressor station including emissions from equipment leaks and vents and explains its approach to comparing electric and natural gas emissions.⁴⁵ The Draft EIS provides a reasoned basis for eliminating the electric compressor alternative, and the Commission is entitled to deference for its choice among reasonable methodologies.⁴⁶ The Draft EIS discusses overall air emissions and local construction impacts as the basis for eliminating this alternative, and this decision is not deficient simply because local air quality was not the specific reason for eliminating this alternative.⁴⁷

2. The analysis of various route and variation alternatives satisfies NEPA's requirements.

Some commenters question why some routing alternatives were not retained for further analysis since they would cause fewer impacts in some resource areas.⁴⁸ In each instance, the Draft EIS explains why the route adjustments were not preferable and why they were eliminated from further analysis. For example, EPA Region III suggests that the Leidy Line Route alternative be retained for in-depth analysis because it would increase PennEast's collocation with the Leidy Line from 18.6 miles up to 94.8 miles and would avoid impacts to the Sourland Mountain region.⁴⁹ However, the Draft EIS contains numerous reasons why the Leidy Line Route is not feasible and not environmentally preferred, including an additional 54 miles of necessary extensions and laterals, impacts to over 100 additional acres of wetlands, close proximity to over 300 additional residences, and numerous technical constraints that render true collocation impossible for much of the route.⁵⁰

Some commenters similarly claim that the Draft EIS is deficient for not analyzing an alternative that omits the Hellertown Lateral, a 2.1-mile lateral that connects the PennEast Project with Columbia Gas and UGI-LEH interconnections.⁵¹ The commenters claim the lateral serves no useful purpose beyond one shipper's competitive interest.⁵² The lateral and interconnects, however, are specified delivery points for several Project shippers, and omitting the lateral would defeat the Project's purpose with respect to those shippers and that delivery location.

FERC ¶ 61,219 at P 55 (2013) (“[W]e conclude that installing electric-driven compressor units at either station is not an environmentally preferable alternative to the proposed action.”).

⁴⁴ See, e.g., Appalachian Mountain Club Comment at 4-5.

⁴⁵ Draft EIS at 4-216 to 4-217.

⁴⁶ See *Citizens Against Burlington*, 938 F.2d at 200-01 (applying the rule of reason to an agency's approach, including its choice of scientific method).

⁴⁷ See *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219 at P 55 (2013) (discussing the additional land use impacts from use of an electric compressor station alternative and concluding that even though long-term impacts on local air quality would be reduced by using electric units at two compressor stations, there was no clear environmental benefit to electric compression given that emissions from the proposed compressor station modifications are below allowable thresholds).

⁴⁸ See, e.g., EPA Region III Comment, Encl. at 1-3; Lower Saucon Comment at 78.

⁴⁹ See EPA Region III Comment, Encl. at 3.

⁵⁰ Draft EIS at 3-11 to 3-14.

⁵¹ See, e.g., Lower Saucon Comment at 17-18, 77.

⁵² *Id.* at 18.

Regarding other route alternatives, the Commission need not analyze every permutation and variation to meet its NEPA obligations.⁵³ Rather, the Commission must “set forth . . . those alternatives necessary to permit a reasoned choice.”⁵⁴ Here, the Draft EIS considers a host of different alternatives. Where alternatives were eliminated from further analysis, Commission Staff provides the requisite explanation for each eliminated alternative, including making a reasoned decision regarding certain reduced impacts, and additional information filed in the proceeding supports the proposed route in each of these situations. Some commenters deride the Draft EIS’s summaries of impacted environmental resources when explaining why the alternatives were eliminated. Commenters instead suggest that the Draft EIS should be more detailed and discuss the function, value, and quality of the resources and the impacts of those resources.⁵⁵ However, the Council on Environmental Quality’s (CEQ) regulations only require the agency to “*briefly* discuss the reason for their having been eliminated,”⁵⁶ and courts have found that agencies are not obligated to perform in-depth analysis of rejected alternatives.⁵⁷ The Draft EIS’s use of quantitative comparisons for alternative route impacts is both appropriate and consistent with federal agencies’ longstanding and reasonable reliance on such comparisons when evaluating the impacts of alternatives to proposed actions.

3. The Draft EIS adequately considers alternatives for the Appalachian National Scenic Trail (Appalachian Trail) crossing.

Several commenters assert that insufficient attention has been given to evaluating route alternatives where the Project crosses the Appalachian Trail.⁵⁸ Commenters argue that several alternatives were prematurely dismissed from further evaluation without sufficient environmental analysis or justification.⁵⁹ However, both the range of alternatives and the level of analysis provided in the Draft EIS satisfy NEPA.

The Project includes a UGI interconnection necessary to serve the Blue Mountain Ski Resort in the immediate vicinity of the Appalachian Trail crossing. The Draft EIS considers 12 different routing alternatives for the Appalachian Trail crossing, including six (6) different specific crossing locations. Five (5) of these crossing alternatives would not serve the Project’s purpose and need because they would not provide for an interconnection proximate to the proposed Combined Heat and Power (CHP) Plant at the UGI interconnection, which will have fewer impacts. As a result, these other crossings are not “reasonable” alternatives consistent with the Project’s purpose.⁶⁰ The Draft EIS briefly discusses the additional lateral that would be

⁵³ See *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174, 1180-81 (9th Cir. 1990).

⁵⁴ *Navajo Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d 866, 874 (D. Ariz. 2006), *aff’d in part, rev’d in part and remanded on other grounds*, 479 F.3d 1024 (9th Cir. 2007).

⁵⁵ See, e.g., EPA Region III Comment, Encl. at 2; Stony Brook Millstone Watershed Ass’n Comment at 32.

⁵⁶ 40 C.F.R. § 1502.14 (emphasis added).

⁵⁷ See, e.g., *Citizens for Smart Growth v. Sec’y of Dep’t of Transp.*, 669 F.3d 1203, 1213 (11th Cir. 2012).

⁵⁸ See, e.g., Comment of the Nat’l Park Serv., Accession No. 20160913-5110, Docket No. CP15-558-000, at 1-4 (Sept. 13, 2016) (hereinafter, “Nat’l Park Serv. Comment”); Comment of Appalachian Trail Conservancy, Accession No. 20160912-5664, Docket No. CP15-558-000, at 1-2 (Sept. 12, 2016) (hereinafter, “Appalachian Trail Conservancy Comment”); Appalachian Mountain Club Comment at 1-2; Comment of Nat’l Parks Conservation Ass’n, Accession No. 20160913-5133, Docket No. CP15-558-000, at 2 (Sept. 13, 2016) (hereinafter, “Nat’l Parks Conservation Ass’n Comment”).

⁵⁹ See, e.g., Appalachian Mountain Club Comment at 2; Appalachian Trail Conservancy Comment at 2.

⁶⁰ See 40 C.F.R. § 1502.14.

required to tie into the Blue Mountain interconnect and the attendant operational and constructability concerns.⁶¹ Therefore, the Commission's obligation to "briefly discuss the reasons for their having been eliminated"⁶² is satisfied, as NEPA does not require an agency to prepare detailed analysis and comprehensive crossing plans for crossing locations that it has already determined to be unreasonable.

Commenters also challenge the sufficiency of the Draft EIS because it does not consider every route adjustment for the Appalachian Trail crossing submitted by various stakeholders.⁶³ When a very large number of alternatives are potentially available, the agency need only consider a reasonable number that covers the spectrum of alternatives.⁶⁴ The Commission's consideration here of six (6) crossings and 12 total route variations represents a reasonable range of alternatives for analysis.⁶⁵

III. Scope of Federal Action: The Scope of the Federal Action Analyzed in the Draft EIS Complies with NEPA.

A. The Draft EIS Does Not Improperly Segment Other Natural Gas Projects from the PennEast Project Analysis

Commenters argue that the Draft EIS unlawfully segments the PennEast Project review because it does not include an environmental analysis of certain other natural gas projects, which they claim are sufficiently related or "connected" to the PennEast Project that they should be considered together in the same environmental document.⁶⁶ These comments are incorrect. "Connected actions" are those that (i) "automatically trigger other actions," (ii) "cannot . . . proceed unless other actions are undertaken previously or simultaneously," or (iii) "are interdependent parts of a larger action and depend on the larger action for their justification."⁶⁷ None of the projects identified by commenters satisfy applicable legal standards to be "connected" here, including Algonquin Gas Transmission, LLC's Algonquin Incremental Market Project (AIM Project); Transco's Garden State Expansion; New Jersey Natural Gas's Southern Reliability Link; Texas Eastern's Marcellus to Market (M2M) and Greater Philadelphia Expansion projects; and an unspecified "Gilbert I" upgrade.

Several commenters argue that because the PennEast Project will connect to other pipelines via various interconnections, the PennEast pipeline and these other pipelines are

⁶¹ Draft EIS at 3-21.

⁶² 40 C.F.R. § 1502.14 (emphasis added).

⁶³ See, e.g., Appalachian Mountain Club Comment at 2; Appalachian Trail Conservancy Comment at 1.

⁶⁴ CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, Question 1b (1981).

⁶⁵ In addition, because the analysis for the Appalachian Trail crossing was adequate under NEPA, Commission Staff need not prepare a supplemental Draft EIS to respond to the National Park Service's request for additional analysis of Appalachian Trail impacts and alternatives. See Nat'l Park Serv. Comment at 2. See *infra* Section VI.C for further discussion about why a supplemental Draft EIS is not required.

⁶⁶ A few commenters also claim that these other projects are "cumulative actions" or "similar actions," mirroring similar claims made in response to PennEast's Application. PennEast previously addressed the "cumulative actions" and "similar actions" arguments on pages 20-21 of its November 13 Answer.

⁶⁷ 40 C.F.R. § 1508.25(a)(1) (2016).

actually one single system that the Commission must consider as a whole.⁶⁸ However, NEPA does not require this. The interstate pipeline grid is a highly integrated transportation network and the resulting connectivity is inherent to that system's design, but this does not equate to interdependence.⁶⁹ Moreover, simply identifying a potential pathway through a web of interconnecting infrastructure is not enough to show connectedness under NEPA. Otherwise, the entire interstate network of natural gas infrastructure could be considered one project, which would be "obviously indefensible."⁷⁰

The test that most courts have applied to determine whether separate actions subject to federal permitting are "connected" for NEPA purposes is whether a project has independent utility—that is, whether a project will be undertaken regardless of whether any other subsequent or contemporaneous project is undertaken, or whether one project necessarily causes a separate project to occur.⁷¹ As discussed specifically in the following sections, the PennEast Project has an independent utility from other natural gas projects and it will proceed irrespective of whether other projects occur. The Project neither depends on any other actions for its justification, nor does it automatically cause other actions to occur. Therefore, the Commission Staff properly limited the Draft EIS scope to the PennEast Project analysis.⁷²

1. Algonquin Gas Transmission, LLC's AIM Project⁷³

Numerous commenters claim that the Draft EIS improperly segments its review of the PennEast Project from the AIM Project.⁷⁴ The PennEast Project and the AIM Project each have utility that is independent of the other. Neither project depends on the other for its justification, and neither automatically causes the other to occur.⁷⁵ The projects will not be in the same

⁶⁸ See, e.g., Delaware Riverkeeper Network Comment at 50-52; Comment of Michael G. Pressel, Accession No. 20160913-5001, Docket No. CP15-558-000, at 1 (Sept. 13, 2016); Comment of Andrea Wallace, Accession No. 20160912-5754, Docket No. CP15-558-000, at 9 (Sept. 12, 2016).

⁶⁹ *Transcontinental Gas Pipe Line Co., LLC*, 155 FERC ¶ 61,016 at P 68 (2016).

⁷⁰ See *Vill. of Los Ranchos de Albuquerque v. Barnhart*, 906 F.2d 1477, 1483-84 (10th Cir. 1990).

⁷¹ See *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006) (noting that when a project might reasonably have been completed without the existence of the other project, the two projects have independent utility and are not "connected" under NEPA); *Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 836 F.2d 760, 763 (2d Cir. 1988) (holding that two actions are not "connected" under NEPA when the first will proceed even in the absence of the second).

⁷² As discussed herein, the impacts of past, present, and reasonably foreseeable projects are considered in the cumulative effects analysis to the extent appropriate.

⁷³ The AIM Project involves pipeline looping, compression upgrades, and new lateral pipelines in New York, Connecticut, Massachusetts, and Rhode Island. Although Algonquin's larger existing system interconnects with other pipeline systems in Lambertville, New Jersey, the AIM Project deals with expansions between an interconnection on its existing system in Ramapo, New York, and markets in Connecticut, Rhode Island, and Massachusetts. The Commission issued a certificate for the AIM Project in March 2015 and it is expected to enter service in November 2016.

⁷⁴ Many of these comments were based off of a common template. See, e.g., Comment of Lloyd T.B. Evans, Accession No. 20160909-5084, Docket No. CP15-558-000, at 1 (Sept. 9, 2016) (hereinafter, "Lloyd T.B. Evans Comment"); Comment of Thomas W. Kenny, Accession No. 20160912-0016, Docket No. CP15-558-000, at 1 (Sept. 12, 2016) (hereinafter, "Thomas W. Kenny Comment").

⁷⁵ The Commission issued the AIM Project certificate in March 2015, nearly seven (7) full months before the PennEast Application filing. *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (2016). The AIM Project has moved forward without regard to PennEast and with numerous shippers contracting for capacity on the PennEast Project. PennEast would similarly have proceeded with its Project even if the AIM Project were never constructed.

geographic area, they are designed to serve different markets, and they share no functional or financial relationship. Commenters claim that the PennEast and Algonquin pipelines are really a single pipeline, but this ignores the fact that the pipelines will not operate together: the PennEast Project would deliver gas primarily to natural gas distribution companies and regional electricity generators in Pennsylvania and New Jersey, whereas the AIM Project is designed to serve markets in Connecticut, Rhode Island, and Massachusetts.⁷⁶ Nor are these projects “connected” merely because they share common owners.⁷⁷ As the Commission has determined, projects are not connected actions simply due to common ownership.⁷⁸

2. Transco’s Garden State Expansion and New Jersey Natural Gas’s Southern Reliability Link Projects

Some commenters incorrectly claim that Transco’s Garden State Expansion and New Jersey Natural Gas’s Southern Reliability Link Projects are connected actions that the Commission must consider in its PennEast Project analysis. These commenters claim that these projects are a single interdependent pipeline system, with the Garden State Expansion and Southern Reliability Link segments designed to transport identical 180,000 dekatherms (Dth) per day volumes, and with New Jersey Natural Gas having signed precedent agreements with PennEast and Transco for these same 180,000 Dth per day volumes.⁷⁹ PennEast explained in its November 13 Answer why these projects are not “connected actions” with the PennEast Project.⁸⁰ The Commission recently confirmed this conclusion in its April 2016 certificate order for the Transco Garden State Expansion Project.⁸¹ There, the Commission acknowledged the identical 180,000 Dth per day volumes but explained that the PennEast and Garden State Expansion Projects each have independent utility because neither is financially or operationally dependent on the other. If the Garden State Expansion Project did not proceed, the PennEast Project would still be supported by the need to deliver natural gas for its other shippers, including six (6) anchor shippers. Similarly, if the PennEast Project did not proceed, the Garden State Expansion Project would still be supported by New Jersey Natural Gas and its demand for 180,000 Dth per day.

As the Commission noted, Transco’s precedent agreement with New Jersey Natural Gas makes no reference to the PennEast Project, but rather places on New Jersey Natural Gas the responsibility to contract directly with natural gas suppliers to obtain the gas that will be transported on the Garden State Expansion Project.⁸² With access to numerous other sources of

⁷⁶ One commenter makes a similar claim regarding Dominion Cove Point LNG, LP’s LNG export facility. *See* Delaware Riverkeeper Network Comment at 16, 52. The Commission properly concluded in the Draft EIS that the Project will not be constructed to support natural gas export. Draft EIS at 1-17. PennEast and Cove Point have independent utility: neither depends on the other for its justification or automatically causes the other to occur.

⁷⁷ The only commonality among owners is that Spectra Energy Corporation indirectly owns Algonquin and Spectra Energy Corporation’s master limited partnership, Spectra Energy Partners, owns 10% of PennEast.

⁷⁸ *Texas Eastern Transmission, LP*, 146 FERC ¶ 61,086 at P 68 (2014) (“The fact that the projects are proposed by the same pipeline company in the same general geographic region is not sufficient to make them ‘connected’ actions.”); *Transcontinental Gas Pipe Line Co., LLC*, 149 FERC ¶ 61,258 at P 65 (2014) (same).

⁷⁹ *See, e.g.*, Comment of Michael G. Pressel at 1; Comment of Margaret Harmsen, Accession No. 20160907-5038, Docket No. CP15-558-000, at 4-5 (Sept. 7, 2016).

⁸⁰ November 13 Answer at 17-18.

⁸¹ *Transcontinental Gas Pipe Line Co., LLC*, 155 FERC ¶ 61,016 at PP 66-76 (2016).

⁸² *Id.* at P 67.

gas supplies, New Jersey Natural Gas is not dependent on the PennEast Project for its 180,000 Dth per day requirement. Furthermore, claims that the projects are interdependent are belied by the fact that the Garden State Expansion Project is expected to begin the first phase of delivering gas to New Jersey Natural Gas in late 2016, over a year before service is scheduled to commence on the PennEast Project.

Furthermore, the Southern Reliability Link Project is an intrastate project under the jurisdiction of the New Jersey Board of Public Utilities. The Commission has already concluded there is insufficient federal control over the non-jurisdictional Southern Reliability Link Project to require a review of that project in the Commission's environmental analysis of a FERC-jurisdictional pipeline. When there is no major federal action associated with a project, the Commission *cannot* "improperly segment" that project from its review of a jurisdictional project.⁸³

3. Texas Eastern's Marcellus to Market (M2M) and Greater Philadelphia Expansion Projects

Other commenters argue that the Texas Eastern M2M Project and the Greater Philadelphia Expansion Project are connected actions with PennEast,⁸⁴ but these projects cannot constitute connected actions because they do not qualify as "proposals" under NEPA. PennEast explained in its November 13 Answer why certain other potential projects were not yet "proposals" and therefore could not be connected actions.⁸⁵ NEPA does not require the Commission to consider these types of speculative future activities in the same NEPA document as the PennEast Project.⁸⁶ Even if these two (2) projects develop at some future date to the point of being "proposals" for NEPA purposes, they are not connected actions that must be considered in the same NEPA document as the PennEast Project because the projects have independent utility from one another and will proceed irrespective of whether the other projects occur.

4. Gilbert I Upgrade

Numerous commenters claim that PennEast will interconnect with the "Gilbert I upgrade," which the Commission must consider as a connected action in its PennEast Project

⁸³ Some commenters similarly press for the Commission to include future natural gas drilling in the Marcellus Region as a "connected action," but the Commission lacks jurisdiction over such development and there is no major federal action being taken; therefore, there is no "connected action" to be improperly segmented.

⁸⁴ See, e.g., Delaware Riverkeeper Network Comment at 52.

⁸⁵ November 13 Answer at 18-20. Texas Eastern's M2M and Greater Philadelphia Expansion Projects are both still in the planning and development process, and therefore they cannot be connected actions for the same reasons described in the November 13 Answer. Although Texas Eastern is apparently contemplating these potential future projects, it has not yet filed certificate applications with the Commission. *Id.*

⁸⁶ E.g., *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 at P 46 n.54 (2013) ("Speculation about a future proposal cannot be considered a connected action . . ."); see also *City of Mukilteo v. U.S. Dep't of Transp.*, 815 F.3d 632, 637 (9th Cir. 2016) (upholding the Federal Aviation Administration's determination that there are no connected actions for a project when petitioners "failed to provide anything more than mere speculation" to challenge this conclusion); *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1253 (10th Cir. 2011) ("NEPA did not require the agency to analyze the impacts of future actions that were 'speculative' or not 'imminent' connected actions") (citing *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228-31 (10th Cir. 2008)).

analysis.⁸⁷ Most of these references occur in form letters without any explanation of what the “Gilbert I upgrade” is or how the PennEast Project would interconnect with it. PennEast assumes that these comments refer to Elizabethtown Gas Company’s Gilbert Lateral upgrade, which will replace certain existing 10-inch pipe with 12-inch pipe. This upgrade will proceed independently from the Project and PennEast does not rely on this pipe replacement to justify its Project. Furthermore, PennEast is not aware of any federal action triggering NEPA relating to the upgrade that might qualify as a connected action. Therefore, the Commission is not required to consider this upgrade as a connected action with the PennEast Project.

B. The Commission Is Not Required to Prepare a Programmatic EIS

Several commenters argue that the Commission should prepare a programmatic EIS in order to “address[] recent, present, and reasonably foreseeable gas infrastructure projects related to the Marcellus and Utica shale formations and the coordination between the natural gas and electricity markets”⁸⁸ and to “consider the impacts of gas pipeline development on the Appalachian [Trail] and to determine less impactful or more efficient alternatives.”⁸⁹ As explained in PennEast’s November 13 Answer, a programmatic EIS is neither required nor appropriate to analyze natural gas pipeline projects proposed under the NGA.⁹⁰ As the Commission has determined, a programmatic EIS is not required because “[t]here is no Commission plan, policy, or program for the development of natural gas infrastructure.”⁹¹

The same reasoning applies to comments requesting a programmatic EIS to consider the cumulative impacts of natural gas pipelines on the Appalachian Trail.⁹² Because the Commission is not engaged in regional planning with regard to pipeline crossings of the Appalachian Trail or for development of infrastructure transporting gas from the Marcellus Shale, a programmatic EIS is unnecessary and would offer little insight relevant to the Commission’s analysis of individual projects proposed under the NGA.

IV. Impacts Analysis: The Draft EIS Appropriately Analyzes Indirect and Cumulative Impacts.

A. Development Across the Wider Marcellus Shale Region and Ultimate Use of Produced Gas from the Region are not Indirect Effects of the PennEast Project

Commenters claim that the Draft EIS is deficient because it did not consider, as indirect effects, impacts related to upstream production and downstream consumption of natural gas including impacts related to greenhouse gas (GHG) emissions.⁹³ The Draft EIS properly

⁸⁷ As noted in the context of the AIM Project, many of these comments were based off of a common template. *See, e.g.*, Lloyd T.B. Evans Comment at 1; Thomas W. Kenny Comment at 1.

⁸⁸ *See, e.g.*, Lower Saucon Comment at 50-51.

⁸⁹ *See* Nat’l Parks Conservation Ass’n Comment at 3.

⁹⁰ November 13 Answer at 8-12.

⁹¹ *See, e.g., Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,064 at P 58 (2015) (“[A] programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.”).

⁹² Nat’l Parks Conservation Ass’n Comment at 3.

⁹³ *See, e.g.*, Appalachian Mountain Club Comment at 6; Sierra Club and Penn Future Comment at 4.

excludes these impacts from its analysis.⁹⁴ As discussed in the November 13 Answer, Marcellus Shale development is not an indirect effect of the PennEast Project because it is neither caused by the Project nor reasonably foreseeable as NEPA requires.⁹⁵ This conclusion is consistent with both Commission precedent and court decisions.⁹⁶ The downstream use of natural gas is also not caused by the Project because, even if the Project does not move forward, the gas that would be transported on the PennEast pipeline would nevertheless reach the same end use markets through alternate pipelines or other modes of transportation.⁹⁷ Indeed, the Draft EIS concludes that, without the PennEast Project, other pipelines would likely be built to deliver the gas sought by PennEast’s current shippers.⁹⁸ The Commission is therefore not required to analyze the impacts from upstream production or downstream consumption of natural gas as indirect effects of the Project.⁹⁹

B. The Draft EIS Contains an Appropriate Cumulative Impacts Analysis

NEPA requires an agency to also analyze cumulative impacts. A cumulative impact is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”¹⁰⁰ When evaluating cumulative impacts, an agency should consider: (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 reasonably foreseeable—that have had or are expected to have

⁹⁴ Draft EIS at 1-18. Despite the lack of a causal relationship, the Draft EIS contains a statement suggesting that “GHG impacts from end use of the gas transported by the Project are reasonably foreseeable.” Draft EIS at 4-285. This statement is incorrect, as discussed in Attachment 2 to PennEast’s Comments on the Draft EIS. PennEast Comments on Draft EIS, Accession No. 20160912-5996, Docket No. CP15-558-000, at Attachment 2 (Sept. 12, 2016). The statement is also contrary to the Commission’s repeated conclusions that there is no “standard methodology to determine how a project’s incremental contribution to [GHG] emissions would result in physical effects on the environment, either locally or globally.” *See, e.g., Columbia Gas*, 153 FERC ¶ 61,064 at P 69; *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,253 at P 45 (2015). PennEast respectfully requests that the Commission correct this misstatement in the final EIS and clarify that “GHG impacts” from end use of the gas transported by the Project are not reasonably foreseeable.

⁹⁵ November 13 Answer at 21-23.

⁹⁶ *Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,046 at P 139 (2016); *Cent. N.Y. Oil and Gas Co., LLC*, 137 FERC ¶ 61,121 at P 91 (2011) (noting that in the Marcellus region, if an interstate pipeline were not FERC-authorized, “producers or developers of unregulated ‘midstream’ gathering assets will simply build longer gathering lines to connect wells in the three-county area to interstate pipelines, with no Commission regulation or NEPA oversight”); *Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 F. App’x 472, 474 (2d Cir. 2012).

⁹⁷ *See Constitution*, 154 FERC ¶ 61,046 at P 147. *See infra* Section IV.C for further discussion of this point.

⁹⁸ Draft EIS at 3-3.

⁹⁹ In the cumulative impacts analysis, the Draft EIS makes the inconsistent statement that construction of the PennEast Project “would potentially increase demand for natural gas, which could increase Marcellus Shale natural gas extraction.” *Id.* at 4-274. This conclusion is not supported by any data in the record or analysis in the Draft EIS; rather, the Draft EIS explicitly states elsewhere that such development is not an effect of the Project, and any impacts from any additional development are not reasonably foreseeable. *Id.* at 1-18. PennEast respectfully requests that when the Commission prepares the final EIS, the Commission correct this misstatement and confirm, as it has in analogous certificate proceedings, that there is not likely to be an increased demand proximately caused by the Project.

¹⁰⁰ 40 C.F.R. § 1508.7 (2016).

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.¹⁰¹

The cumulative impacts analysis in the Draft EIS is consistent with NEPA's requirements. The Draft EIS identifies a geographic and temporal scope for numerous different types of impacts to guide its cumulative impacts analysis,¹⁰² and it discusses a host of past, present, and reasonably foreseeable activities with effects that may be felt within the geographic and temporal scope of effects.¹⁰³ As part of this discussion, the Draft EIS identifies four (4) particular types of actions that would potentially cause cumulative impacts when considered with the PennEast Project: Commission jurisdictional and non-jurisdictional natural gas projects; electric generation and transmissions projects; transportation projects; and commercial and large-scale residential developments.¹⁰⁴

1. The geographic scope selection complies with NEPA.

Several commenters claim that the geographic scope of the cumulative impacts analysis was too narrow and that the Draft EIS fails to provide criteria supporting its selection.¹⁰⁵ On the contrary, the geographic scope for each affected resource was appropriately based on where the effects of the Project would be felt. The Draft EIS describes how impacts to geology and soils, land use, residential areas, visual resources, air quality from construction, and construction noise would be highly localized, and those resource areas merited a geographic scope of all areas within 0.25 mile of the Project's construction areas.¹⁰⁶ For operations air quality, the Draft EIS recognizes that the Kidder Compressor Station would affect the air quality control region and evaluates other projects with the potential to affect the same region.¹⁰⁷ Similarly, the Draft EIS determines that the Kidder Compressor Station's long-term noise impacts would be localized to within one (1) mile of the site, and the Draft EIS determines that impacts to waterbodies, wetlands, groundwater, vegetation, and wildlife would be localized to sub-watersheds.¹⁰⁸

For each of these resource areas, the Draft EIS identifies reasonable bases supporting its selection of appropriate geographic areas to include in the scope of its cumulative impacts analysis, consistent with other recent natural gas pipelines' NEPA environmental review documents.¹⁰⁹ Commission Staff appropriately exercised discretion in determining the

¹⁰¹ See *Grand Canyon Tr. v. Fed. Aviation Admin.*, 290 F.3d 339, 345 (D.C. Cir. 2002); *San Juan Citizens All. v. Stiles*, 654 F.3d 1038, 1056 (10th Cir. 2011); *Gulf Restoration Network v. U.S. Dep't of Transp.*, 452 F.3d 362, 368 (5th Cir. 2006).

¹⁰² Draft EIS at 4-273.

¹⁰³ *Id.* at 4-265 to 4-273. One commenter notes that the Draft EIS mentions a Project in-service date of 2017. Comment of Michael Spille, Accession No. 20160725-5047, Docket No. CP15-558-000 (July 25, 2016). PennEast revised its proposed in-service date for the Project to be the third quarter of 2018 based on the Commission's March 29, 2016 Notice of Schedule for Environmental Review. This anticipated date does not otherwise affect any of the Draft EIS's findings or data. Similarly, it does not affect the information that PennEast provided the Commission since the issuance of the Draft EIS.

¹⁰⁴ *Id.* at 4-265.

¹⁰⁵ EPA Region III Comment, Encl. at 13; Stony Brook Millstone Watershed Ass'n Comment at 29; NJCF and SBMWA Comment at 18; Sierra Club and Penn Future Comment at 5.

¹⁰⁶ Draft EIS at 4-273.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; see, e.g., Final EIS for the AIM Project, Docket No. CP14-96-000, at 4-283 (Jan. 23, 2015).

geographical scope of its environmental review, and the selection of the affected environments is reasonable and well-supported.¹¹⁰ The Commission's approach is both commonly applied and appropriate in this case because the geographic scope of NEPA's cumulative impacts analysis is bounded by the environments affected by the direct and indirect impacts of an action. The Commission is not required to look at impacts caused by other activities outside that geographic scope because the direct and indirect impacts of the Commission's action will not contribute to cumulative actions there.

Some commenters disagree with the geographic scope for effects considered in the Draft EIS, arguing that the Commission should expand its review to include distant locations, such as upstream areas where natural gas may be produced, the larger area of existing and proposed natural gas pipelines, and downstream areas where natural gas may allegedly be exported.¹¹¹ But these areas are all outside the areas where the PennEast Project's direct and indirect impacts will occur and therefore they need not be included in the cumulative impacts analysis. The Draft EIS adequately explains why natural gas exportation was outside the scope of the Draft EIS given the fact that the Project is proposed based on commitments from shippers in the Pennsylvania and New Jersey area, not for the purpose of supporting natural gas exports.¹¹² Commission Staff appropriately investigated upstream natural gas production and other midstream transportation projects within the areas affected by the Project.

In particular, the Draft EIS reflects the finding that there were no current or reasonably foreseeable natural gas well development activities within ten (10) miles of the Project,¹¹³ and discusses numerous recently constructed or planned gathering systems and gas transmission projects within the same areas, watersheds, and air quality control region where Project effects would be felt in the cumulative impacts analysis.¹¹⁴ Commenters claim that the Commission should consider numerous specific gas transmission projects,¹¹⁵ but the Draft EIS reasonably omits these because they occur outside the geographic area where the Project's effects will be felt, and thus, would not contribute to cumulative effects in combination with the PennEast Project. Examples of these out-of-area projects include Texas Eastern's TEAM 2014 Project; Columbia Gas's East Side Expansion Project; the Pilgrim Pipeline; New Jersey Natural Gas's Southern Reliability Link; the South Jersey Gas Pipeline Reliability Project; Tennessee Gas Pipeline's Northeast Upgrade Project; Transco's Northeast Supply Enhancement Project; and Crestwood Midstream's MARC I Hub Line.

Moreover, the Commission need not look farther upstream beyond where the Project's effects will be felt. Upstream natural gas production and other projects unrelated to the Project done at distant locations are neither direct nor indirect effects of the PennEast Project.¹¹⁶ Without

¹¹⁰ *San Juan Citizens All.*, 654 F.3d at 1057 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976) (the "determination of the extent and effect of [cumulative environmental 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")).

¹¹¹ See, e.g., Lower Saucon Comment at 27-37, 40; Delaware Riverkeeper Network Comment at 12-15.

¹¹² Draft EIS at 1-17.

¹¹³ *Id.* at 4-274.

¹¹⁴ *Id.* at 4-274 to 4-276.

¹¹⁵ See, e.g., NJCF and SBMWA Comment at 32-33; Delaware Riverkeeper Network Comment at 16-17; Stony Brook Millstone Watershed Ass'n Comment at 31-32.

¹¹⁶ See *supra* Section IV.A for "indirect effects" discussion.

any effects caused by the Project occurring in those distant locations, the Commission need not extend the geographic scope of its cumulative effects analysis to include those areas. The purpose of the cumulative impacts analysis is to determine the aggregate effect of the Project plus other cumulative impacts *in the same affected environments*. It would not serve NEPA's purpose to require the Commission to evaluate distant impacts that do not inform the decision-making process for the Project and numerous courts have upheld agency decisions to exclude actions from a cumulative impacts analysis because those actions were geographically or ecologically too distant from the proposed project's assessment.¹¹⁷

2. The Draft EIS appropriately analyzes past actions.

Several commenters challenge the cumulative impacts analysis, claiming that the Draft EIS did not adequately consider past actions or failed to address them entirely.¹¹⁸ The CEQ stated in its guidance for reviewing past actions in the cumulative impacts analysis that, because NEPA is forward-looking, reviewing past actions should be done in a way that focuses on the proposed project's potential impacts and informs agency decision-making.¹¹⁹ Agencies should look for present effects of past actions that are, in the agency's judgment, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal and its alternatives.¹²⁰ Agencies have substantial discretion when determining the extent of their inquiry and the appropriate level of explanation,¹²¹ and they may properly limit the scope of their cumulative impacts analysis based on practical considerations.¹²²

Here, Commission Staff did not simply look at current and reasonably foreseeable future projects, but rather included past projects where they determined that effects may be continuing in a way that merited consideration. For example, the Draft EIS includes several linear natural gas and electric projects completed between 2012 and 2015 in its analysis¹²³ and discusses potential visual effects when added to numerous existing highways, railroads, pipelines, mines, and existing crossings of the Appalachian Trail.¹²⁴ The Draft EIS also considers the permanent cumulative impacts of tree and vegetation removal in forests from projects in the area, as well as impacts on species that prefer deep forests and those that prefer edge habitat.¹²⁵ It is thus inaccurate to suggest that the Draft EIS ignores past actions in its cumulative impacts analysis.

¹¹⁷ See *Natural Res. Def. Council, Inc. v. Fed. Aviation Admin.*, 564 F.3d 549, 560 (2d Cir. 2009) (finding that the Federal Aviation Administration reasonably omitted the cumulative impact of the proposed airport on surrounding counties); *Gulf Restoration Network*, 452 F.3d at 370-71 (upholding exclusion of impacts from other proposed offshore LNG terminals in the Gulf of Mexico because they were geographically too distant and speculative); *Pearson v. U.S. Dep't of Transp.*, 2009 U.S. Dist. LEXIS 14440 (D. Or. Feb. 24, 2009); *Hogback Basin Pres. Ass'n v. U.S. Forest Serv.*, 577 F. Supp. 2d 1139 (W.D. Wash. 2008).

¹¹⁸ See, e.g., NJCF and SBMWA Comment at 31; Sierra Club and Penn Future Comment at 7.

¹¹⁹ CEQ, *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis* 1 (2005) (hereinafter, "CEQ Cumulative Effects Guidance").

¹²⁰ *Id.* at 3.

¹²¹ *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 376-77 (1989).

¹²² *Kleppe*, 427 U.S. at 413-14.

¹²³ Draft EIS at 4-266 to 4-269.

¹²⁴ *Id.* at 4-281.

¹²⁵ *Id.* at 4-280.

Some of the commenters quote a statement that the EPA Region III made in comments on a different draft EIS in a different Commission proceeding, suggesting that a cumulative impacts analysis typically uses a baseline timeframe of 30 to 50 years into the past, prior to sprawl and extensive highway networks.¹²⁶ Such a baseline is not required.¹²⁷ Indeed, as CEQ states, “agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions.”¹²⁸ Some commenters further argue that the Commission should consider various long-term trends in development because data is readily available from various sources such as municipal zoning offices.¹²⁹ However, as the CEQ notes, “[s]imply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking [*sic*].”¹³⁰ The choice of the temporal scope of analysis in the Draft EIS reflects an appropriate level of consideration about the types of cumulative impacts Commission Staff deemed relevant and useful for its analysis of the PennEast Project.

3. NEPA does not require that the Commission analyze actions or effects that are not reasonably foreseeable.

Commenters identify other actions that they believe the Draft EIS should have included in the cumulative impacts analysis, such as William Partners’ Diamond East Project and Crestwood’s MARC II Project.¹³¹ However, as PennEast explained in the November 13 Answer, NEPA does not require such actions to be included in the cumulative impacts analysis because they are not reasonably foreseeable.¹³² Evaluating the impacts of such actions would be little more than guesswork and would result in a meaningless analysis.¹³³ The Diamond East and MARC II projects are speculative at this time, as neither project appears to have proceeded beyond the development phase and neither has been proposed to the Commission in a certificate application.¹³⁴ Thus, the absence of these projects from the cumulative impacts analysis reflects a reasonable choice by the Commission to study only reasonably foreseeable impacts of future actions.

¹²⁶ See, e.g., NJCF and SBMWA Comment at 33; Stony Brook Millstone Watershed Ass’n Comment at 32; Sierra Club and Penn Future Comment at 7.

¹²⁷ See *Friends of Congaree Swamp v. Fed. Highway Admin.*, 786 F. Supp. 2d 1054, 1067 (D.S.C. 2011) (stating, in the context of a cumulative impacts analysis, “[t]he Court is unaware of any authority for finding an [Environmental Assessment] inadequate because an agency chose, as the baseline from which to measure the potential impacts of a proposed project, the environment in its current condition”).

¹²⁸ CEQ Cumulative Effects Guidance at 2.

¹²⁹ See, e.g., Stony Brook Millstone Watershed Ass’n Comment at 32.

¹³⁰ CEQ Cumulative Effects Guidance at 3.

¹³¹ See, e.g., Stony Brook Millstone Watershed Ass’n Comment at 31. Some commenters argue that GHG emissions associated with the production and ultimate consumption should also have been included in the cumulative impacts analysis. These comments are addressed in Section IV.C.3, *infra*.

¹³² November 13 Answer at 24-25, 27.

¹³³ See *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 513 (D.C. Cir. 2010) (stating that a reasonably foreseeable action does not need to be finalized but must not be so preliminary as to make determining its cumulative impact meaningless).

¹³⁴ See *Transcontinental Gas Pipe Line Co., LLC*, 154 FERC ¶ 61,166 at P 5, n.6 (2016) (recognizing the lack of information on the Diamond East Project and the lack of a proposal for that project); *Transcontinental Gas Pipe Line Co., LLC*, 155 FERC ¶ 61,016 at P 48 n.40 (2016) (recognizing the lack of any proposal for the MARC II project).

4. When analyzing cumulative impacts, the Draft EIS correctly assumes compliance with permits and regulatory requirements.

Some commenters challenge the Draft EIS's assumption that other projects in the area would obtain and comply with various plans and permit requirements, such as spill prevention plans, erosion and sediment control plans, the Commission's best management practices, and wetlands mitigation requirements,¹³⁵ arguing that the Commission should instead consider potential cumulative impacts regardless of whether these other projects implement the prepared or required plans or comply with permits or regulatory thresholds.¹³⁶ NEPA does not require the Commission to disregard the likelihood that other projects would comply with legal requirements and would, when required by the conditions in permits or in regulations, implement various plans and controls that minimize, avoid, or mitigate impacts on the environment. The Commission must give a "realistic evaluation of the total impacts,"¹³⁷ so it is reasonable for the Commission to determine that other projects will comply with legal requirements.

C. The Draft EIS Appropriately Addresses GHG and Climate Change Issues

1. The Commission has discretion with respect to the recently finalized CEQ Guidance.

Several commenters claim that the Draft EIS does not comply with the recently finalized CEQ guidance regarding the Consideration of GHG Emissions and the Effects of Climate Change in NEPA Reviews (CEQ Guidance).¹³⁸ However, as the CEQ makes clear, this is a guidance document: it "is not a rule or regulation" and it "is not legally enforceable."¹³⁹ Thus, the commenters' argument that the failure to comply with some aspect of a guidance document somehow rises to the level of legal deficiency is incorrect.

Moreover, the CEQ Guidance recognizes that agencies have substantial discretion in tailoring their NEPA processes to accommodate the document's approach.¹⁴⁰ Indeed, the document notes that the "recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances."¹⁴¹ The CEQ Guidance also notes that the "rule of reason" inherent in NEPA and in CEQ's NEPA regulations should guide an agency in determining how to consider an environmental effect. Relying on its experience and expertise, an agency should take into account the usefulness of information to the decision-making process and the extent of the anticipated environmental consequences when applying the "rule of

¹³⁵ See Draft EIS at 4-279 to 4-281.

¹³⁶ See, e.g., Lower Saucon Comment at 51-54; EPA Region III Comment, Encl. at 14-15.

¹³⁷ *Grand Canyon Tr.*, 290 F.3d at 342.

¹³⁸ See, e.g., Delaware Riverkeeper Network Comment at 35-37 ("The [Draft EIS] fails in its legal obligation to consider [GHG] emissions and climate change implications of the PennEast Pipeline.") (citing 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* (Aug. 1, 2016), (https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf) (hereinafter, "CEQ Guidance on GHG Analysis").

¹³⁹ CEQ Guidance on GHG Analysis at 1-2 n.3.

¹⁴⁰ *Id.* at 3 ("Agencies have discretion in how they tailor their individual NEPA reviews to accommodate the approach outlined in this guidance.").

¹⁴¹ *Id.* at 1 n.3.

reason.”¹⁴² Finally, the CEQ Guidance advises agencies to “exercise judgment” when considering whether to apply the guidance to a NEPA process that began before the CEQ Guidance was finalized,¹⁴³ such as the Commission’s NEPA review for the PennEast Project.

2. GHG emissions associated with natural gas development and consumption are not indirect effects of the Project.

Commenters rely on the CEQ Guidance to argue that the Draft EIS should have considered, as indirect effects, GHG emissions associated with natural gas production in the Marcellus Shale region and natural consumption.¹⁴⁴ The CEQ Guidance recommends that federal agencies “quantify a proposed agency action’s projected direct and indirect GHG emissions” and use those projected emissions “as a proxy for assessing potential climate change effects.”¹⁴⁵ As discussed, however, impacts related to the upstream production and end use of natural gas, including alleged climate change impacts due to GHG emissions, are not reasonably foreseeable or causally linked to the Project.¹⁴⁶ Moreover, the CEQ Guidance’s suggested use of GHG emissions as a proxy for climate change impacts is both legally and scientifically improper. NEPA only requires agencies to evaluate *impacts*, not emissions without discernable impacts.¹⁴⁷ Specific GHG emissions cannot be linked to discernable climate change effects and thus analysis of such emissions as a proxy for the PennEast Project’s impacts is inappropriate.

As the Supreme Court has explained, NEPA “requires a reasonably close causal relationship between the environmental effect and the alleged cause” for consideration of the alleged impact.¹⁴⁸ The Court has equated this causation requirement to the doctrine of proximate causation under tort law, which serves NEPA’s purpose of focusing on impacts that are meaningful to an agency’s analysis, not effects over which an agency has no control.¹⁴⁹ Here, climate change impacts do not meet the proximate causation requirement because they result from GHGs emitted from billions of global sources. Because global GHGs mix in the atmosphere before any climate change impacts occur, such impacts cannot be attributed to specific emissions or to any particular action.¹⁵⁰ Due to this lack of causation, the Commission

¹⁴² *Id.* at 6.

¹⁴³ *Id.* at 33.

¹⁴⁴ *See, e.g.*, Delaware Riverkeeper Network Comment at 35-37 (citing CEQ Guidance on GHG Analysis); EPA Region III Comment, Encl. at 15; Comments of N.J. Conservation Found. on the PennEast Draft EIS: Air Quality, Accession No. 20160902-5043, Docket No. CP15-558-000, at 2 (Sept. 2, 2016).

¹⁴⁵ CEQ Guidance on GHG Analysis at 4; *see also id.* at 10.

¹⁴⁶ *See supra* Section IV.A.

¹⁴⁷ *See, e.g.*, 40 C.F.R. § 1508.25(c) (Agencies shall consider “impacts, which may be: (1) direct; (2) indirect; (3) cumulative”); *id.* § 1502.9(a) (“The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.”); *id.* § 1507.2(a) (Agencies shall “fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking [*sic*] which may have an impact on the human environment”).

¹⁴⁸ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quotations and citations omitted).

¹⁴⁹ *Id.* at 767, 768.

¹⁵⁰ Although traditional air pollutants often have an identifiable “dose-response relationship” between the pollutant and its environmental effects, this is not true of GHGs. In other words, it is not scientifically possible to determine a relationship between specific GHG emissions and specific environmental effects, and an analysis of those effects is

cannot control or regulate climate change under its NGA-granted authority and analysis of such impacts would not be meaningful in the Commission's decision-making or required under NEPA.¹⁵¹ In a recent order, the Commission agreed, holding that "there is no standard methodology to determine how a project's incremental contribution to GHG emissions would result in physical effects on the environment, either locally or globally."¹⁵²

3. GHG emissions associated with natural gas development and consumption are outside the scope of the Draft EIS's cumulative impacts analysis.

Some commenters also argue that GHG emissions associated with natural gas production and consumption should be evaluated as a proxy for climate-related impacts in the cumulative impacts section.¹⁵³ This is also incorrect. Although NEPA requires an agency to consider the cumulative impacts from reasonably foreseeable actions that are expected to have impacts in the same area,¹⁵⁴ it does not require an agency to consider impacts of another action if those impacts are "speculative."¹⁵⁵ Nor does NEPA require an agency to "do the impractical" when evaluating cumulative impacts.¹⁵⁶

Attempting to evaluate the climate impacts in any particular geographic area resulting from individual actions (such as regional natural gas production) simply by estimating the action's GHG emissions is the epitome of "speculative" and "impractical." As explained above, it is scientifically impossible to foresee climate impacts that result from any individual action. Moreover, NEPA does not require the analysis of any cumulative impacts resulting from future production of gas in the Marcellus Shale region because future production is not reasonably foreseeable.¹⁵⁷ As the Draft EIS explains, "the location and subsequent production activity is unknown and too speculative to assume based on the interconnected interstate natural gas pipeline system."¹⁵⁸ Thus, the scope and extent of potential GHG emissions from upstream natural gas production are not reasonably foreseeable.¹⁵⁹ Given this lack of information, the Draft EIS properly concludes that "[i]t is simply impractical for this EIS to consider impacts associated with additional shale gas development in separate geographic areas than the proposed

not required by NEPA. *See, e.g., Envtl. Def. Fund v. Tenn. Val. Auth.*, 492 F.2d 466, 468 n.1 (6th Cir. 1974) ("[NEPA] . . . does not require . . . the impossible.").

¹⁵¹ *Pub. Citizen*, 541 U.S. at 768.

¹⁵² *Transcontinental Gas Pipe Line Co., LLC*, 149 FERC ¶ 61,258 at P 109 (2014); *see also Columbia Gas*, 153 FERC ¶ 61,064 at P 69; *Sabine Pass*, 151 FERC ¶ 61,253 at P 45.

¹⁵³ *See, e.g., Clean Air Council Comment* at 13.

¹⁵⁴ 40 C.F.R. § 1508.7 (2016).

¹⁵⁵ *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) (citing *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)).

¹⁵⁶ *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 764 (9th Cir. 1996) (citing *Kleppe*, 427 U.S. at 414 (noting that "practical considerations of feasibility might well necessitate restricting the scope of comprehensive statements"); *Krichbaum v. Kelley*, 844 F. Supp. 1107, 1118 (W.D.Va. 1994)).

¹⁵⁷ *See* 40 C.F.R. § 1508.7 (defining cumulative impacts as incremental impacts when added to other past, present, and reasonably foreseeable future actions).

¹⁵⁸ Draft EIS at 1-18.

¹⁵⁹ *Id.* at 4-286.

Project.”¹⁶⁰ Again, evaluating the impacts of such development would therefore be highly speculative and would result in a meaningless analysis.¹⁶¹

4. The Draft EIS appropriately analyzes climate-related impacts and commenters’ other concerns related to GHGs are misplaced.

Because climate change effects cannot be linked to GHG emissions associated with any single action, the Draft EIS properly analyzes climate-related impacts in the cumulative impacts section. The Draft EIS has properly done so by providing analysis of the cumulative projected climate change impacts for the Northeast Region of the United States over the course of the Project’s lifetime.¹⁶²

Commenters raise several other unfounded issues. First, some commenters argue that the Draft EIS fails to quantify and consider GHG emissions for each alternative, including the no-action alternative. This is incorrect. As explained, quantifying GHG emissions as direct or indirect effects of specific actions is not required under NEPA because it is inherently speculative and does not provide meaningful analysis. Thus, quantifying GHG emissions for Project alternatives is as unnecessary as quantifying GHG emissions associated with upstream production and downstream consumption of natural gas. Again, an agency is not required to engage in speculative analysis or “to do the impractical, if not enough information is available to permit meaningful consideration.”¹⁶³ The Supreme Court has emphasized that an agency may, given practical considerations of feasibility, properly limit the scope of its cumulative impacts analysis.¹⁶⁴ Such is the case here.

Second, multiple commenters argue that the Draft EIS should discuss how the Project’s environmental impacts will be exacerbated by climate change impacts.¹⁶⁵ However, the Draft EIS properly engages in this analysis, concluding that the “projected climate change effects in the Project area are not anticipated to exacerbate any other impacts from the Project during its expected lifetime.”¹⁶⁶

Finally, multiple commenters also argue that the Commission should follow the CEQ Guidance recommendation to provide a frame of reference for the Project by discussing federal, regional, state, and local policies and laws that aim to reduce GHG emissions or improve climate adaptation, including specific consideration of whether the Project would advance or obstruct progress on the United States’ international commitments to reduce GHG emissions.¹⁶⁷ Although the CEQ Guidance discusses this recommendation generally, the authorities it cites relate

¹⁶⁰ *Id.* at 1-18.

¹⁶¹ *See Theodore Roosevelt Conservation P’ship*, 616 F.3d at 513 (stating that a reasonably foreseeable action does not need to be finalized but must not be so preliminary as to make determining its cumulative impact meaningless).

¹⁶² Draft EIS at 4-286.

¹⁶³ *Northern Plains Resources Council, Inc. v. Surface Transp. Board*, 668 F.3d 1067, 1078 (9th Cir. 2011) (quoting *Envil. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

¹⁶⁴ *Kleppe*, 427 U.S. at 414.

¹⁶⁵ *See, e.g.*, Delaware Riverkeeper Network Comment at 40-49; Clean Air Council Comment at 16; EPA Region III Comment, Encl. at 15.

¹⁶⁶ Draft EIS at 4-285.

¹⁶⁷ Lower Saucon Comment at 63; Sierra Club and Penn Future Comment at 11; Delaware Riverkeeper Network Comment at 40.

specifically to possible conflicts with land use plans, policies, and controls;¹⁶⁸ state or local plans and laws;¹⁶⁹ and federal policy regarding operations for federal facilities.¹⁷⁰ The Draft EIS includes such analysis by, for example, acknowledging specific state programs such as the New Jersey Green Acres program and discussing issues such as carbon sequestration.¹⁷¹

Given that the CEQ Guidance specifically recognizes that “the rule of reason and the concept of proportionality caution against providing an in-depth analysis of emissions regardless of the . . . quantity of [GHG] emissions that would be caused by the proposed agency action,”¹⁷² the level of analysis in the Draft EIS is appropriate. The PennEast Project Draft EIS discusses the estimated GHG emissions resulting from Project construction to be 34,878 tons of carbon dioxide equivalent.¹⁷³ It also discusses that the estimated GHG emissions associated with Project operations are 274,057 tons per year of carbon dioxide equivalent.¹⁷⁴ This amount is miniscule compared to the total national GHG emissions. In 2014 alone, the U.S. emitted 6,870.5 million tons of carbon dioxide equivalent.¹⁷⁵ Under the “concept of proportionality,” analyzing whether this Project’s emissions would advance or obstruct specific climate goals is not required.

D. The Draft EIS Adequately Considers Impacts on Air Quality

Certain comments challenge the Draft EIS for alleged failures to provide sufficient information regarding the Project’s Clean Air Act (CAA) obligations. One comment states that the Draft EIS does not provide sufficient information to confirm that the Project does not trigger New Source Review Requirements under the CAA.¹⁷⁶ The same comment also recommends that the Draft EIS analyze the Project to determine if emissions from the Kidder Compressor Station, interconnects, and processing plants could be aggregated as one emissions source for the purpose of determining whether those emissions should be subject to Title V permit requirements under the CAA.¹⁷⁷ One commenter also argues that the Project should be required to comply with CAA Title V requirements with respect to GHG emissions.¹⁷⁸

Contrary to these comments, NEPA does not require the Commission to perform the in-depth analysis necessary to implement permitting requirements under the CAA. Commission Staff reasonably assumed, as NEPA allows, that the Project will comply with any requirements imposed under Title V.¹⁷⁹ As the Draft EIS explains, these regulatory and permitting requirements are implemented by EPA and the state and local agencies to which EPA has

¹⁶⁸ 40 C.F.R. § 1502.16(c) (2016)

¹⁶⁹ *Id.* § 1506.2(d).

¹⁷⁰ Exec. Order No. 13693, 80 Fed. Reg. 15869 (Mar. 25, 2015).

¹⁷¹ *See* Draft EIS at 4-143, 4-223.

¹⁷² CEQ Guidance on GHG Analysis at 12.

¹⁷³ Draft EIS at 4-285.

¹⁷⁴ *Id.*

¹⁷⁵ *See* U.S. Env’tl. Prot. Agency, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2014 2-1 (Apr. 15, 2016), <https://www3.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2016-Main-Text.pdf>.

¹⁷⁶ EPA Region III Comment, Encl. at 12.

¹⁷⁷ *Id.* at 13.

¹⁷⁸ Comment of Lorraine Crown, Accession No. 20160909-5231, Docket No. CP15-558-000, at 3-4 (Sept. 9, 2106).

¹⁷⁹ *See, e.g., Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244 at P 65 (Sept. 29, 2014) (“[B]ecause the project will be subject to permitting by other agencies and to the regulations in other statutes, it is reasonable to assume the project’s compliance with these permits and regulations under the NEPA analysis.”).

delegated permitting authority, including the Pennsylvania and New Jersey Departments of Environmental Protection (PADEP and NJDEP, respectively).¹⁸⁰ Although the Draft EIS describes the CAA regulatory process and the requirements applicable to the Project,¹⁸¹ any concerns regarding the analysis used to determine which permitting requirements apply are beyond the scope of the Commission's NEPA review.

E. The Draft EIS Appropriately Considers Property Value Impacts

Commenters assert that the Project will negatively impact property values and that the studies in the Draft EIS finding a lack of negative impact on property values due to the presence of a natural gas pipeline are related to other areas—not the areas that the Project will cross.¹⁸² The Draft EIS discusses several studies that have concluded that any impacts on property values due to the existence or proximity of natural gas pipelines are insubstantial or non-existent, while other studies were unable to identify a relationship between the proximity of a pipeline and sales price or property value.¹⁸³ Multiple environmental analyses and studies addressing property values in several different regions, including the Northeast, have reached similar conclusions. One example was published in October 2014, in which the Commission concluded, based on a review of several studies, that there was no evidence that pipelines in Pennsylvania and New York resulted in decreased property values.¹⁸⁴ Numerous studies in other states have reached the same conclusion. Most recently, the Commission considered the question for proposed projects in the southeastern United States.¹⁸⁵ The Commission reviewed several studies, which found that pipelines in both rural and urban areas had no significant impacts on property sale prices.¹⁸⁶ Additional recent studies and literature confirm the conclusion that there is no significant impact on property values from the presence of pipelines.¹⁸⁷ In light of the extensive studies in multiple regions concluding a lack of impacts on property values, such conclusions cannot be disregarded as limited to certain geographic areas.¹⁸⁸

¹⁸⁰ Draft EIS at 1-11, 4-202 to 4-204.

¹⁸¹ *Id.* at 4-205 to 4-208.

¹⁸² *E.g.*, Comment of Judith B. Louis, Accession No. 20160816-5112, Docket No. CP15-558-000, at 1 (Aug. 16, 2016); Comment of Sari DeCesare, Accession No. 20160816-5032, Docket No. CP15-558-000, at 1 (Aug. 16, 2016).

¹⁸³ Draft EIS at 4-167.

¹⁸⁴ Final EIS for the Proposed Constitution Pipeline Project, Docket No. CP13-499-000, at 4-152 to 4-156 (Oct. 24, 2014).

¹⁸⁵ Final EIS for the Southeast Market Pipelines Project, Docket Nos. CP15-17-000 *et al.* (Dec. 18, 2015).

¹⁸⁶ *Id.*, Section 3.10.1.6, at 3-184 to 3-185. In particular, the Final EIS cites to PGP Valuation Inc. (2008) for Palomar Gas Transmission Inc.; ECONorthwest (Fruits, 2008) for the Oregon LNG Project; Diskin, Friedman, Peppas, and Peppas (2011); and Hansen *et al.* (2006).

¹⁸⁷ *See, e.g.*, Steven R. Foster, LPC Commercial Services, *A Study of Natural Gas Pipelines and Residential Property Values*, at 5 (Nov. 12, 2015) (filed as Attachment 5-3 at Accession No. 20160317-5169) (“All of the analysis completed for this study supports that proximity to a pipeline has no measurable, systematic impact on residential property values.”); Louis Wilde, Christopher Loos & Jack Williamson, *Pipelines and Property Values: An Eclectic Review of the Literature*, 20.2 J. OF REAL ESTATE LITERATURE 254-59, at 4 (2012) (“Our review of studies of the effects of pipelines on property values indicates that there is no systematic evidence, based on actual sales data, that proximity to pipelines reduces property values.”).

¹⁸⁸ One comment also appears to suggest that the Commission must quantify alleged negative impacts on property value in the Draft EIS. *See* HALT-PennEast re Conditional Approval Comment at 21-25. This comment cites to no legal authority for its argument seeking quantification of alleged impacts to property value. Given the numerous studies and environmental analyses concluding a lack of impacts on property value from pipeline projects, any

Commenters also argue that their submission of additional articles and studies¹⁸⁹ demonstrates that the Project will negatively impact property values.¹⁹⁰ The Draft EIS recognizes that in some instances a “potential buyer may decide against acquiring the property with a pipeline easement” if the presence of a pipeline interferes with future plans and concludes that the “impact a pipeline may have on the value of a tract of land depends on many factors” that the Draft EIS identifies.¹⁹¹ However, as the Draft EIS also points out, numerous studies have reached the conclusion that property values are not impacted by natural gas pipelines.¹⁹² This analysis is consistent with the Commission’s recent final environmental impact statements and case law concluding that the Commission took the requisite “hard look” at property values under NEPA and properly determined that an alleged decrease in property value did not change the fact that a project was required by the public convenience and necessity under the NGA.¹⁹³

V. Recommended Conditions: The Draft EIS’s Recommended Conditions are within the Commission’s Authority.

One comment wrongly contends that eminent domain authority cannot be conferred through a conditional certificate.¹⁹⁴ Section 7(e) of the NGA provides that “the Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.”¹⁹⁵ Section 7(h) in turn provides the holder of a certificate with eminent domain authority, irrespective of whether the Commission has exercised its authority under Section 7(e) to attach conditions to the certificate.¹⁹⁶ Accordingly, courts have consistently rejected arguments that the existence of conditions on a certificate prevents use of eminent domain

attempt to quantify such alleged impacts would amount to speculation for which additional analysis is not required under NEPA.

¹⁸⁹ See Sonia Wang & Spencer Phillips, *Review of INGAA Foundation Report, “Pipeline Impact to Property Value and Property Insurability,”* KEY-LOG ECONOMICS LLC (Mar. 11, 2015); see, e.g., Kurt Kielisch, *Study on the Impact of Natural Gas Transmission Pipelines*, FORENSIC APPRAISAL GROUP, LTD. (2015).

¹⁹⁰ E.g., Delaware Riverkeeper Network Comment at 5-6, 32-33; Comment of Richard J. Kohler re Property Values, Accession No. 20160909-5291, Docket No. CP15-558-000, at 1 (Sept. 9, 2016).

¹⁹¹ Draft EIS at 4-166.

¹⁹² *Id.* at 4-167.

¹⁹³ *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1325-26 (D.C. Cir. 2015); see *supra* notes 184-86.

¹⁹⁴ HALT-PennEast re Conditional Approval Comment at 2 (“Granting ‘conditional certificates’ that also authorize eminent domain violates the Natural Gas Act on its face and in these circumstances.”).

¹⁹⁵ 15 U.S.C. § 717f(e).

¹⁹⁶ *Id.* § 717f(h).

authority¹⁹⁷ and consistently enforced a certificate holder's use of eminent domain regardless of conditions in the certificate.¹⁹⁸

Commenters also argue that the Commission may not use certificate conditions to require that applicants gather and provide additional information to meet statutory obligations.¹⁹⁹ As reviewing courts have recognized, “[a]ny attack on a condition in a certificate issued by the Commission must confront the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity.”²⁰⁰ Courts have thus upheld a broad variety of conditions imposed by the Commission on certificates, including conditions requiring completion of environmental review pursuant to NEPA.²⁰¹ Likewise, the D.C. Circuit has upheld the Commission's decisions conditioning certificates to require additional site-specific analyses for NEPA purposes²⁰² and to correct any issues or alleged deficiencies under the NGA.²⁰³ The Draft EIS's recommended conditions are thus well within the Commission's broad authority to impose requirements on certificate holders.

In its comment on the Draft EIS, the Pennsylvania Game Commission (PGC) requests that any certificate issued for the Project include a condition requiring PennEast to follow the PGC's siting, right-of-way, and workspace requirements on State Game Lands.²⁰⁴ PennEast has had active and productive communications with the PGC regarding the crossing of State Game Lands.²⁰⁵ PennEast continues to be fully committed to cooperating with the PGC on requirements related to these lands consistent with the Commission's longstanding policy that encourages cooperation between the applicant and state agencies.²⁰⁶ PennEast respectfully

¹⁹⁷ *Tenn. Gas Pipeline Co. v. 104 Acres of Land More or Less, Providence Cty., R.I.*, 749 F. Supp. 427, 433 (D.R.I. 1990) (“The requirements in the FERC order arise after ownership of the rights of way are obtained and do not operate as a ‘shield’ against the exercise of eminent domain power.”); *see also United States v. 162.20 Acres of Land, More or Less, Clay Cty., Miss.*, 639 F.2d 299, 305 (5th Cir. 1981) (statutorily mandated compliance with National Historic Preservation Act does not limit eminent domain power); *United States ex rel. Tenn. Valley Auth. v. Three Tracts of Land Containing Total of 312 Acres, More or Less, Monroe Cty., Tenn.*, 415 F. Supp. 586, 588 (E.D. Tenn. 1976) (same).

¹⁹⁸ *E.g., Portland Nat. Gas Transmission Sys. v. 4.83 Acres of Land*, 26 F. Supp. 2d 332, 335 (D.N.H. 1998) (“Courts have concluded that a landowner cannot use a FERC certificate-holder's alleged non-compliance with the conditions in the certificate to prevent a taking of private property by eminent domain.”).

¹⁹⁹ *E.g., HALT-PennEast re Conditional Approval Comment at 13-27.*

²⁰⁰ *Transcon. Gas Pipe Line Corp. v. FERC*, 589 F.2d 186, 190 (5th Cir. 1979) (citing *Atl. Ref. Co. (CATCO) v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378 (1959)).

²⁰¹ *Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 282–83 (D.C. Cir. 1990).

²⁰² *Id.* (finding that this practice of using conditions to require site-specific analysis was “eminently reasonable” and consistent with NEPA).

²⁰³ *Florida Econ. Advisory Council v. Fed. Power Comm'n*, 251 F.2d 643, 646 (D.C. Cir. 1957) (“[P]etitioner questions whether the Commission has authority to transform a defective proposal into a valid one by the addition of curative conditions. The argument is made that the Commission may attach conditions to valid proposals, but not to invalid proposals such as the present one would be, but for the conditions. It is sufficient to say that the Natural Gas Act specifically authorizes the grant of a certificate subject to ‘such reasonable terms and conditions as the public convenience and necessity may require.’ We see no error here.”).

²⁰⁴ Comment of PGC, Accession No. 20160909-5329, Docket No. CP15-558-000, at 1 (Sept. 9, 2016).

²⁰⁵ Draft EIS at ES-10, 4-149 (“PennEast is coordinating with applicable Federal and State agencies and organizations including . . . the Pennsylvania Game Commission regarding the crossing location and appropriate mitigation measures to reduce impacts on trail users during construction and operation of the Project.”); *id.* at 1-8 (listing meetings and progress on PGC consultation).

²⁰⁶ *E.g., Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 at P 151 (2015) (“Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.

believes that such a condition is unnecessary in light of its ongoing and productive consultation with the PGC.

VI. Public Participation: The Commission has Properly Provided the Public with Adequate Opportunities to Comment and Participate in the Proceeding.

A. It is not Necessary for the Commission to Extend the Public Comment Period

Commenters argue that the Commission should extend the comment period because of the Draft EIS's length and its issuance during the summer season, which could coincide with vacations.²⁰⁷ These arguments fail to justify a departure from the Commission's consistent practice regarding the time allocated for comment on a Draft EIS, which the Commission followed for the PennEast Project.²⁰⁸ Here, the Commission provided for a 52-day comment period in compliance with the CEQ's regulations that implement NEPA.²⁰⁹ This 52-day comment period was the same as the comment period provided for projects of similar or greater magnitude with environmental review documents comparable in length and complexity to the Draft EIS for the PennEast Project.²¹⁰ Moreover, individual commenters' vacation schedules do not provide an adequate justification for extending the Draft EIS comment period and the resulting delay of projects and harm for pipeline applicants, shippers, and natural gas end users. The 52-day comment period used for the PennEast Project Draft EIS is consistent with NEPA requirements and the Commission's practice, which provided commenters sufficient time to meaningfully review and comment on the Draft EIS.

B. PennEast has Complied with Landowner Notification Requirements

Some commenters suggest that landowner notification regarding route modifications was confusing for recipients or otherwise insufficient.²¹¹ As discussed in PennEast's route modifications filings, changes to the route were adopted to reduce landowner impacts and

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.” (citing *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992)).

²⁰⁷ See, e.g., Delaware Riverkeeper Network Comment at 1; Comment of Martin S. Wissig, Accession No. 20160825-5025, Docket No. CP15-558-000, at 1 (Aug. 25, 2016); Comment of Charles Slonsky, Accession No. 20160830-5111, Docket No. CP15-558-000, at 1-2 (Aug. 30, 2016).

²⁰⁸ E.g., Notice of Availability of the Draft EIS for the Proposed Southeast Market Pipelines Project, Docket Nos. CP14-554-000 et al. (Sept. 4, 2015); Notice of Availability of the Draft EIS for the Proposed Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects, Docket Nos. CP15-93-000 et al. (Feb. 19, 2016); Notice of Availability of the Draft EIS for the Proposed Nexus Gas Transmission Project and Texas Eastern Appalachian Lease Project, Docket Nos. CP16-22-000 et al. (July 8, 2016).

²⁰⁹ 40 C.F.R. § 1506.10(c) (2016) (“[A]gencies shall allow not less than 45 days for comments on draft statements.”).

²¹⁰ See, e.g., Draft EIS for Florida Southeast Connection, LLC's et al Southeast Market Pipelines Project, Docket Nos. CP14-554-000 et al. (Sept. 4, 2015); Draft EIS for the Proposed Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects, Docket Nos. CP15-93-000 et al. (Feb. 19, 2016); Draft EIS re the NEXUS Gas Transmission Project and the Texas Eastern Appalachian Lease Project, Docket Nos. CP16-22-000 et al (July 8, 2016).

²¹¹ E.g., HALT-PennEast re Public Participation Comment at 4.

mitigate or avoid environmental impacts.²¹² PennEast complied with landowner contact requirements under Section 157.6(d) of the Commission's regulations in connection with the filing of PennEast's Application.²¹³ To the extent right-of-way modifications resulted in new landowners, PennEast notified the new landowners regarding such modifications.

C. Incomplete Data or Plans do not Render the Draft EIS Deficient or Require a Revised or Supplemental Draft EIS

Several commenters assert that, because of missing or incomplete data, the Draft EIS is inadequate under NEPA or reaches premature conclusions before necessary data is available.²¹⁴ Other commenters suggest that the Commission must not issue the Draft EIS until it has all relevant information.²¹⁵ Contrary to commenters' claims,²¹⁶ NEPA does not require that the Commission halt progress on a pending application due to incomplete information. Rather, CEQ regulations address the possibility of incomplete or unavailable information, and provide that the review be done based on the information that is available at the time, including "the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community."²¹⁷ If information that is relevant to the NEPA review is not available, the Commission is simply required to document the reasons for the missing information, its importance, and a summary and evaluation of the information that is currently available from alternate sources.²¹⁸ The unavailability of such information does not render the Commission's NEPA analysis incomplete.

Moreover, much of the incomplete data relates to parcels for which PennEast does not have the necessary access to complete the surveys due to a lack of landowner permission. As the Commission has concluded, "[l]andowners cannot deny access to their property and then use this as a basis for claiming that the Commission's NEPA analysis is insufficient because all studies have not been completed."²¹⁹ Otherwise, landowners would effectively wield a veto power over the Commission's authority, a proposition that has been rejected.²²⁰ In these situations, the Commission includes a post-authorization condition requiring that final surveys be completed

²¹² See PennEast Pipeline Co., LLC, Supplemental Information Filing Regarding Route Deviations, Docket No. CP15-558-000, at 1-3 (Feb. 22, 2016); PennEast Pipeline Co., LLC, Supplemental Information Filing Regarding Route Deviations, Docket No. CP15-558-000, at 1-2 (Dec. 14, 2015).

²¹³ PennEast Application at 23; 18 C.F.R. § 157.6(d) (2016).

²¹⁴ See, e.g., Comment of E. Env'tl. Law Ctr., Accession No. 20160801-5122, Docket No. CP15-558-000, at 2 (Aug. 1, 2016) (hereinafter, "E. Env'tl. Law Ctr. Comment"); Comment of Richard Kohler re Missing Information, Accession No. 20160909-5271, CP15-558-000, at 1-2 (Sept. 9, 2016).

²¹⁵ See, e.g., Stony Brook Millstone Watershed Ass'n Comment at 3.

²¹⁶ *Id.* at 5.

²¹⁷ 40 C.F.R. § 1502.22 requires that agencies facing this situation include in the EIS "(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community."

²¹⁸ See *id.*

²¹⁹ *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257 at P 62 (2006); see also *S. Nat. Gas Co.*, 85 FERC ¶ 61,134, p.61,534 (1998) (same).

²²⁰ *Midwestern Gas*, 114 FERC ¶ 61,257 at P 62; see also *S. Nat. Gas*, 85 FERC ¶ 61,134, at p.61,534.

when the applicant gains access.²²¹ Accordingly, PennEast will conduct environmental surveys on the remaining parcels when access to these properties is secured and submit results of the surveys to the Commission when those surveys are complete.

Several commenters argue that the lack of complete information or plans at the time the Draft EIS was issued denies the public and agencies a sufficient opportunity to comment on the information.²²² These claims are contrary to NEPA's requirements because, as the Supreme Court has explained, a Draft EIS should "provide[] a springboard for public comment" and offer "notice of the expected consequences and the opportunity to plan and implement corrective measures in a timely manner."²²³ There is little question that the PennEast Project Draft EIS provided such notice as well as an opportunity to develop and implement mitigation measures. Indeed, the D.C. Circuit has rejected similar arguments to the one raised by commenters here and determined that a lack of site-specific crossing plans did not render a draft EIS incomplete.²²⁴ Because the descriptions contained in the draft EIS in that case were sufficient to engender public comment, the PennEast Project Draft EIS similarly meets NEPA requirements.²²⁵

The Draft EIS properly recommends requirements for PennEast to submit additional information and materials prior to construction or the end of the Draft EIS comment period; these conditions do not mean that the Draft EIS is incomplete as commenters suggest.²²⁶ The Commission has rejected the argument that "issuance of an order subject to conditions that require the future submission of plans and reports defers and delays analysis of relevant environmental impacts . . . without adequate public review."²²⁷ As the Commission explained, requiring additional information and plans to be submitted before construction is within the Commission's "extremely broad authority" to condition certificates under Section 7(h) of the NGA.²²⁸ Based on court precedent, the Commission concluded that there is "no impropriety in our routine practice of issuing a final order granting authorization for a project contingent on findings of future studies."²²⁹ The Draft EIS thus does not impinge on the public's participation

²²¹ *Gas Transmission Nw., LLC*, 142 FERC ¶ 61,186 at P 25 (2013); *Portland Nat. Gas Transmission Sys.*, 83 FERC ¶ 61,080, p. 61,394 (1998) ("Completion of final surveys after an order is issued and prior to construction is a common practice as landowners may deny access to their properties until after the certificate is issued and eminent domain proceedings are initiated."); *Bradwood Landing LLC*, 126 FERC ¶ 61,035 at P 55 (2009) ("[I]t is impractical, and sometimes impossible, to complete all studies and develop the plans necessary to successfully mitigate potential impacts of a natural gas project prior to the issuance of a Commission order . . . Some of the post-authorization conditions requiring site-specific plans and surveys are necessary because NorthernStar cannot gain access to certain land parcels to complete the surveys without the use of eminent domain.").

²²² See, e.g., E. Env'tl. Law Ctr. Comment at 5; Nat'l Park Serv. Comment at 2.

²²³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989).

²²⁴ *National Committee for the New River v. F.E.R.C.*, 373 F.3d 1323, 1327-28 (D.C. Cir. 2004).

²²⁵ *Id.*

²²⁶ See, e.g., Delaware Riverkeeper Network Comment at 55-60; Lower Saucon Comment at 2-4; Comment of Debra J. Bradley, Accession No. 20160822-5087, Docket No. CP15-558-000, at 1-3 (Aug. 22, 2016); HALT-PennEast re Alternatives Analysis Comment at 2 n.9.

²²⁷ *Ruby Pipeline, L.L.C.*, 133 FERC ¶ 61,015 at P 14 (2010).

²²⁸ *Id.* at P 16 (citing *Transcontinental Gas Pipe Line Corp. v. FERC*, 589 F.2d 186, 190 (5th Cir. 1979); *FPC v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 7 (1961) (the Commission is the guardian of the public interest and has a wide range of discretionary authority in determining whether authorizations should be granted)).

²²⁹ *Id.* at P 19; *id.* at P 17 (quoting *P.U.C. of Cal. v. FERC (CPUC)*, 900 F.2d 269, 282 (D.C. Cir. 1990) ("While it is generally true that 'NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken,' . . . this did not prevent an agency from making even a final decision so long as it assessed the environmental data before the decision's effective date.")).

rights by recommending conditions to require that materials be submitted by the end of the Draft EIS comment period or before commencement of construction.²³⁰

Commenters also suggest that the Commission should withdraw and then reissue a revised Draft EIS, or prepare a supplement, based on their argument that the current document reflects incomplete or missing information.²³¹ In rejecting a similar argument seeking preparation of a supplemental draft EIS, the Commission explained its “longstanding practice to issue environmental documents along with recommended mitigation measures that request specific documentation of agency consultation, construction plans, and detailed information to supplement baseline data.”²³² The Draft EIS is consistent with this practice, and its use of recommended conditions to require additional information therefore does not necessitate a revised or supplemental draft EIS.²³³

D. The Commission has not Imposed any Unconstitutional Conditions

One commenter erroneously argues that the Commission has imposed an unconstitutional condition on landowners by allegedly requiring that they relinquish their constitutional right to exclude surveyors from their property in order to comment and have impacts to their land considered.²³⁴ This argument fails to recognize that the Commission has provided landowners and all participants in this proceeding ample opportunity to comment regardless of property survey completion. This fact is made obvious by the numerous docket filings of landowners who both denied survey access to PennEast and also asserted that the Project would have environmental impacts on their properties.²³⁵ There can be no question that landowners and other participants asserted their right to comment and to have impacts on their properties considered, irrespective of their denial of survey access. Moreover, where survey access is not granted, the Commission still considers the property and related impacts through a desktop review for the Draft EIS. This is consistent with the Commission’s draft “Guidance Manual for Environmental Report Preparation,” where the Commission expressly contemplates the use of desktop data (e.g., aerial interpretation, National Wetlands Inventory maps, U.S. Geographical Survey topographical maps) for “segments of the proposed alignment that are subject to an alternatives review.”²³⁶ As reflected in the draft Guidance Manual, the Draft EIS’s use of desktop data is appropriate because it will “allow for an objective comparison.”²³⁷ Therefore, the Commission has not denied landowners any right irrespective of the status of surveys on their land.

²³⁰ *Id.* at P 34 (explaining that requiring all updates to an application to be submitted at once would make it virtually possible to site new infrastructure).

²³¹ *See, e.g.*, EPA Region III Comment at 3; Lower Saucon Comment at 15; Delaware Riverkeeper Network Comment at 55.

²³² *Florida Southeast Connection, LLC et al.*, 154 FERC ¶ 61,080 at P 289 (2016).

²³³ *See Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048 at P 87 (2016) (rejecting an argument “that the draft EIS did not provide sufficient information to allow meaningful analysis because the draft EIS requested that Algonquin provide supplemental information on environmental and safety issues” and affirming the Commission’s decision on rehearing not to reissue or prepare a supplemental draft EIS).

²³⁴ HALT-PennEast re Conditional Approval Comment at 13-15.

²³⁵ *See, e.g.*, Comment of Janine Nichols, Accession No. 20160831-5410, Docket No. CP15-558-000, at 1 (Aug. 31, 2016); Comment of Joan Kager, Accession No. 20160801-5016, Docket No. CP15-558-000, at 1 (Aug. 1, 2016).

²³⁶ *See* Notice of Availability of the Draft Guidance Manual for Environmental Report Preparation and Request for Comments at 4-126, Docket No. AD16-3-000 (Dec. 18, 2015).

²³⁷ *See id.*

VII. Other Federal Statutes: The Draft EIS does not Represent any Failure to Comply with the National Historic Preservation Act (NHPA) or Clean Water Act (CWA).

A. The Commission Should Recognize Various Parties as Consulting Parties under the NHPA; the Commission may Satisfy its Section 106 Obligations After and Separate from the Draft EIS

Several individuals and entities filed comments stating their desire or entitlement to be granted consulting party status in the NHPA Section 106 process.²³⁸ PennEast recognizes that certain individuals and groups are entitled to consulting party status (*e.g.*, representatives of a local government with jurisdiction over the area in which the effects of an undertaking may occur), and others may become additional consulting parties (*e.g.*, individuals and organizations with a demonstrated interest in the undertaking).²³⁹ The Draft EIS identifies some of these individuals and entities that have requested that their status as a consulting party be granted or confirmed.²⁴⁰ PennEast recognizes that the Commission is the federal official charged with ensuring NHPA compliance, including Section 304 provisions regarding the protection of sensitive information from public disclosure. PennEast does not oppose any of the consulting party requests submitted by various parties and remains ready to consult with and share information with consulting parties as they are recognized by the Commission.

Some commenters suggest that Section 106 process compliance is deficient because potential consulting parties have been excluded from a consultative role,²⁴¹ and that the Draft EIS fails to comply with the NHPA.²⁴² Under the NHPA Section 106, the Commission must consider the effects of its undertakings on historic resources.²⁴³ Suggestions that the Commission must withdraw the Draft EIS until it completes the Section 106 process conflate two separate processes. The Commission is not obligated to use the Draft EIS to fulfill its Section 106 obligations.²⁴⁴ Despite assertions to the contrary,²⁴⁵ the language in the Commission's Notice of Intent to Prepare an Environmental Impact Statement for the Planned PennEast Pipeline Project (Notice of Intent) does not indicate that the NEPA process would fulfill the Section 106 process or that the Section 106 process would be completed before the Draft EIS was prepared. The Notice of Intent simply stated that the EIS will "document [the Commission's] findings on the impacts on historic properties and summarize the status of consultations under Section 106,"²⁴⁶ which the Draft EIS has done.²⁴⁷ The Draft EIS similarly states that the Commission used the

²³⁸ *See, e.g.*, Appalachian Trail Conservancy Comment at 1, 4; Nat'l Park Serv. Comment at 5; Lower Saucon Comment at 6.

²³⁹ 36 C.F.R. § 800.2(c) (2016).

²⁴⁰ *See* Draft EIS at 4-179, 4-183.

²⁴¹ *See, e.g.*, Lower Saucon Comment at 12-13; Comment of HALT-PennEast re Historic and Cultural Resources, Accession No. 20160912-5624, Docket No. CP15-558-000, at 7-11 (Sept. 12, 2016) (hereinafter, "HALT-PennEast re Historic Resources Comment").

²⁴² *See, e.g.*, HALT-PennEast re Historic Resources Comment at 5-18; Lower Saucon Comment at 6-10.

²⁴³ 54 U.S.C. § 306108 (2016).

²⁴⁴ *See* 36 C.F.R. § 800.8(c) (2016).

²⁴⁵ *See* HALT-PennEast re Historic Resources Comment at 6.

²⁴⁶ *Notice of Intent to Prepare an Environmental Impact Statement for the Planned PennEast Pipeline Project*, 80 Fed. Reg. 5744, 5746 (Feb. 3, 2015).

²⁴⁷ For example, Section 4.9.2 of the Draft EIS summarizes survey results, potential impacts to historic resources, and various avoidance measures; and Section 4.9.1 summarizes the status of consultations.

Notice of Intent to initiate consultations and solicit stakeholder views.²⁴⁸ The Section 106 process remains underway, and additional consulting parties have ample opportunity to participate in efforts to identify historic resources and mitigate impacts to those resources.

The Commission does not violate either NEPA or the NHPA by completing the Section 106 process after the Draft EIS has been issued or even after issuing a certificate. Regulations implementing Section 106 explicitly contemplate scenarios where alternatives under consideration include corridors where property access is restricted and phased identification or evaluation is appropriate.²⁴⁹ The Draft EIS explicitly discloses that Section 106 compliance has not been completed and directs PennEast to continue with survey and consultation activities that remain subject to Commission review and approval.²⁵⁰ The Draft EIS includes a recommendation that the Commission require the Section 106 process be completed prior to PennEast commencing any construction or use of all staging, storage, temporary work areas and access roads. An agency may issue an order or certificate that is conditioned on subsequent completion of the Section 106 process without violating the NHPA.²⁵¹

Similarly, claims by commenters that the cultural resource analysis in the Draft EIS is deficient are unfounded.²⁵² The Draft EIS analyzes potential effects to various cultural resources using information where it is available, including those areas where PennEast has been able to conduct field surveys.²⁵³ Numerous commenters challenged this cultural resources analysis because PennEast has not completed surveys for the entire alignment. The Draft EIS incorporates available information regarding impacts to cultural resources, and as discussed herein above, it is not rendered deficient because information that is inaccessible to PennEast and the Commission has not been obtained.²⁵⁴

B. The Draft EIS is not Deficient Because of Separate CWA Obligations

1. The Commission is not required to await receipt of a state's Section 401 Water Quality Certification before issuance of a certificate for the Project.

Commenters argue that the Commission should not grant a certificate prior to the issuance of Water Quality Certifications under the CWA Section 401.²⁵⁵ As the Commission has determined numerous times, the Commission is not required to wait for Water Quality Certifications from each state before issuing a certificate for a proposed project.²⁵⁶ The Commission's common practice of issuing a certificate order conditioned on the subsequent

²⁴⁸ Draft EIS at 4-176.

²⁴⁹ 36 C.F.R. § 800.4(b)(2) (2016).

²⁵⁰ Draft EIS at 4-200.

²⁵¹ *See Yerger v. Robertson*, 981 F.2d 460, 465-66 (9th Cir. 1992).

²⁵² *See, e.g.,* HALT-PennEast re Historic Resources Comment at 18-27.

²⁵³ Draft EIS at 4-183 to 4-197.

²⁵⁴ *See supra* Section VI.C.

²⁵⁵ Delaware Riverkeeper Network Comment at 78; Lower Saucon Comment at 57-58.

²⁵⁶ *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 154 FERC ¶ 61,166 at PP 41-47 (2016); *Florida Southeast Connection, LLC et al.*, 156 FERC ¶ 61,160 at PP 79-81 (2016); *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048 at PP 23-27 (2016).

acquisition of 401 Water Quality Certifications is also consistent with, and supported by, a long line of judicial precedent.²⁵⁷

Commenters rely on several cases²⁵⁸ in support of their claim that the Commission should not grant a certificate prior to the issuance of Section 401 Water Quality Certifications.²⁵⁹ However, the Commission has previously rejected similar arguments, noting that these cases “are inapplicable as they do not evaluate the Commission’s authority to condition its project approval on the successful completion of the state review process required by the CWA.”²⁶⁰ Such a conditional certificate does not result in any discharge unless and until Water Quality Certifications are received and the Commission grants a subsequent authorization to commence construction, so there is no CWA Section 401 violation.

2. The Clean Water Act does not prohibit the Commission from issuing an order authorizing tree felling while the Water Quality Certifications are pending.

Comments claim that the Commission would violate the CWA should it “issue[] any letter orders to proceed with tree felling construction activity prior to the issuance of the Clean Water Act Section 401 water quality certifications.”²⁶¹ Contrary to commenters’ premature assertions, a Commission order following certification of the PennEast Project that allows PennEast to proceed with clearing would not violate the CWA. The CWA Section 401 requires receipt of Water Quality Certification for an “activity . . . which may result in any discharge into the navigable waters.”²⁶² Further, Water Quality Certifications are only required for a “license or permit” which are defined in the EPA’s CWA regulations as any federal “license or permit . . . to conduct any activity which may result in any discharge into the navigable waters of the United States.”²⁶³ An order solely authorizing clearing does not allow any activities that would result in any discharge into the navigable waters of the United States, and thus does not fall within Section 401’s prohibition.

²⁵⁷ See *City of Grapevine v. Dep’t of Transp.*, 17 F.3d 1502, 1508-09 (D.C. Cir. 1994); see also *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1315, 1317-21 (D.C. Cir. 2015) (holding that the Commission did not violate or preempt the CAA by issuing a conditional certificate authorizing natural gas facilities prior to the project sponsors obtaining the required CAA permits); *Del. Dep’t of Nat. Res. and Env’tl. Control v. FERC*, 558 F.3d 575, 578-79 (D.C. Cir. 2009) (upholding the Commission’s approval of a liquid natural gas terminal conditioned on the applicant’s attainment of a state certification under the Coastal Zone Management Act and a state permit under the Clean Air Act); *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 282-83 (D.C. Cir. 1990) (holding that the Commission did not violate NEPA when it issued a certificate whose effectiveness was conditioned upon the successful completion of environmental analysis required by NEPA).

²⁵⁸ *PUD No. 1 of Jefferson Cty. v. Wash. Dep’t of Ecology*, 511 U.S. 700, 707 (1994); *City of Tacoma, Wash. v. FERC*, 460 F.3d 53, 60-61, 67-68 (D.C. Cir. 2006).

²⁵⁹ Delaware Riverkeeper Network Comment at 78; Lower Saucon Comment at 57-58.

²⁶⁰ *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048 at P 28 (2016).

²⁶¹ See Delaware Riverkeeper Network Comment at 78; Lower Saucon Comment at 58.

²⁶² 33 U.S.C. § 1341(a)(1) (2016) (emphasis added).

²⁶³ 40 C.F.R. § 121.1(a) (2016) (emphasis added).