

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Algonquin Gas Transmission, LLC

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Docket No. CP14-96-000

REQUEST FOR REHEARING OF ALLEGHENY DEFENSE PROJECT

Pursuant to section 19(a) of the Natural Gas Act (“NGA”), 15 U.S.C. §717r(a) and Rule 713 of the Federal Regulatory Energy Commission’s (“FERC”) Rules of Practice and Procedure, 18 C.F.R. §385.713, the Allegheny Defense Project (“Allegheny”) hereby requests rehearing of FERC’s Order Issuing Certificate And Approving Abandonment in *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 (Mar. 3, 2015) (“Order”). The Order approved Algonquin Gas Transmission’s (“Algonquin”) Algonquin Incremental Market Project (“AIM Project”) to ship gas from the Marcellus and Utica shale formations to the northeast United States. Allegheny requests that the Order be withdrawn and that FERC prepare a supplemental EIS for the AIM Project. All communications regarding this request should be addressed to and served upon Ryan Talbott, 5020 NE 8th Avenue, Portland, OR 97211.

I. STATEMENT OF ISSUES

1. FERC has not provided substantial evidence for mitigation of environmental impacts. Mitigation measures supported by agency studies may be sufficient so long as the agency studies provide substantial evidence to support those mitigation measures. *See New York v. U.S. Nuclear Reg. Commn.*, 589 F.3d 551, 555 (2d Cir. 2009). Insufficient mitigation measures, though perhaps longstanding in their use, are still insufficient. *See Summit Petroleum Corp. v. U.S. E.P.A.*, 690 F.3d 733, 746 (6th Cir. 2012).

2. FERC violated NEPA by failing to adequately consider the indirect and cumulative effects of natural gas drilling, failing to consider other connected, cumulative and similar actions, and failing to prepare a programmatic EIS. 40 C.F.R. § 1508.8(b) requires FERC to consider the indirect effects of a proposed action. 40 C.F.R. § 1508.7 requires FERC to consider the incremental effect of the proposed action when combined with past, present, and reasonably foreseeable future effects. 40 C.F.R. § 1508.25(a) requires FERC to consider other connected, cumulative and similar actions in the same analysis. 40 C.F.R. § 1502.4(b) requires federal agencies, in certain circumstances, to prepare a programmatic EIS for “broad federal actions.”

a. FERC violated NEPA by failing to consider the indirect effects of Marcellus and Utica shale gas drilling that is both causally related to and a reasonably foreseeable consequence of the Projects.

FERC claims that the Project and related shale gas drilling are not causally related and, even if they were, the scope of the impacts of such drilling “is not reasonably foreseeable.” Order at PP 127-130. FERC is wrong on both points. Gas drilling in the Marcellus and Utica shale formations and the Project are “two links of a single chain.” *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1980). This supports the need for FERC to take a hard look at the indirect effects of Marcellus and Utica Shale gas production. FERC cannot avoid considering these indirect effects by assessing the Projects with “tunnel vision” that is “tantamount to limiting its assessment to primary impacts.” *Colorado River Indian Tribes v. Marsh*, 605 F.Supp. 1425, 1433 (C.D. Cal. 1985).

Additionally, FERC is required to engage in “reasonable forecasting” because “speculation...is implicit in NEPA.” *Northern Plains Resource Council v. Surface Transportation Board*, , 668 F.3d 1067, 1079 (9th Cir. 2011). Reasonable forecasting of induced Marcellus and Utica Shale gas production would provide meaningful information to inform

FERC's decision about whether the Project is in the public interest. Even if FERC does not know the extent of such production, it is certainly aware of its nature and may not simply ignore the effect. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003).

FERC's failure to make any attempt to quantify the indirect effects of shale gas drilling "require[s] the public, rather than the agency" to ascertain the effects of the Project. *Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Department of the Interior*, 608 F.3d 592, 605 (9th Cir. 2010). "Such a requirement would thwart one of the 'twin aims' of NEPA – to 'ensure[] that the *agency* will inform the *public* that it has indeed considered environmental concerns in its decision making process.'" *Id.* (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983)) (emphasis added by Ninth Circuit). Compliance with NEPA "is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs." *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1161 (9th Cir. 1997) (quoting *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975)). *See also* *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1166 (9th Cir. 2003) ("The procedures prescribed both in NEPA and the implementing regulations are to be strictly interpreted 'to the fullest extent possible' in accord with the policies embodied in the Act... '[g]rudging, pro forma compliance will not do.'" (citations omitted)).

b. FERC failed to take a hard look at the cumulative impacts of gas drilling in the Marcellus and Utica shale formations.

FERC claims that a cumulative impacts analysis "may require an analysis of actions unrelated to the proposed project if they occur in the project area or region of influence of the project being analyzed." Order at P 113; (citing CEQ Guidance, *Considering Cumulative Effect*

under the National Environmental Policy Act (January 2007)). FERC then constructs an arbitrarily narrow geographic scope in order to substantially ignore consideration and disclosure of the environmental impacts of past, present, and reasonably foreseeable natural gas drilling in the Marcellus and Utica shale formations. Order at PP 116. The CEQ guidance that FERC relies on actually supports a much broader analysis of cumulative impacts than FERC used in the EA.

Additionally, as stated above, FERC is required to engage in “reasonable forecasting” because “speculation...is implicit in NEPA.” *Northern Plains*, 668 F.3d 1067, 1079 (9th Cir. 2011). Even if FERC does not know the extent of Marcellus/Utica gas extraction, it is certainly aware of its nature and may not simply ignore the effect. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003). While FERC need not engage in analysis that is “fruitless or well nigh impossible,” it also “may not go to the opposite extreme” by treating a project in isolation when there is persuasive evidence concerning other projects with similar environmental consequences. *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975); *See also LaFlamme v. FERC*, 852 F.2d 389, 402 (9th Cir. 1988) (“[FERC] examined the Sayles Flat project in isolation, without considering the ‘net’ impact that all projects in the area may have on the environment.”). An impermissibly restrictive cumulative effects analysis “subject[s] the decisionmaking process contemplated by NEPA to the ‘tyranny of small decisions.’” *Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002). The “foreseeability of future development underscores the importance of performing a comprehensive cumulative impact analysis....before any more development proceeds.” *LaFlamme*, 852 F.2d at 401. FERC must consider the “inter-regional” cumulative effects that the Project will have, including increased shale gas extraction in the Marcellus and Utica Shale

formations. *See Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 299 (D.C. Cir. 1988).

c. FERC violated NEPA by failing to consider other connected, cumulative, and similar actions in the same environmental analysis.

FERC must consider other connected, cumulative and similar actions in the same environmental analysis. Actions are connected if they are “closely related.” 40 C.F.R. § 1508.25(a)(1). Connected actions include actions that “automatically trigger other actions,” “cannot or will not proceed unless other actions are taken previously or simultaneously,” or “are interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* Cumulative actions are those actions that, “when viewed with other proposed actions have cumulatively significant impacts” that should be discussed in the same EIS. 40 C.F.R. § 1508.25(a)(2). Significance “cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). Similar actions are those actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide for evaluating their environmental consequences together, such as common timing or geography” that should be considered in the same analysis when that is the best way to “assess adequately the combined impacts of similar actions or reasonable alternatives to such actions.” 40 C.F.R. § 1508.25(a)(3). “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.” *Delaware Riverkeeper v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

FERC claims that the AIM Project, Atlantic Bridge Project and Access Northeast Project are not being improperly segmented because the latter two projects “are not *proposals* before the Commission[.]” Order at P 111 (emphasis added). FERC cites CEQ’s regulations stating that a

“proposal” only exists when “an agency subject to the Act has a goal and is actively preparing to make a decision . . . and the effects [of that action] can be meaningfully evaluated.” *Id.* at P 109 (*quoting* 40 C.F.R. § 1508.23). Since the Atlantic Bridge Project is in pre-filing and the Access Northeast Project is still being “evaluated [for] potential development,” FERC says that these two projects “are not fully defined proposals.” *Id.* at P 110.

FERC cannot allow Algonquin and other pipeline companies to use the pre-filing process as a way to shield their broader plans from comprehensive review. Once a project reaches the pre-filing stage, the “effects [of the action] can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Pipeline companies, however, seem accustomed to holding certain projects in abeyance at the pre-filing stage until FERC is close to or actually issues a certificate for a project at the application stage. Once it becomes clear that FERC is about to or actually does issue a certificate for the project under review, then the pipeline company files an application for the project that had been in pre-filing. What was a “not fully defined proposal” the previous day is now, all of a sudden, “fully defined.” This makes a mockery of the NEPA process and plays the public for fools. FERC and the pipeline companies have detailed plans for building out gas infrastructure for Marcellus and Utica shale gas. FERC cannot continue to allow pipeline companies to parcel these plans and ignore the broader, regional impacts of this infrastructure build-out.

d. FERC failed to properly consider the urgent need for a programmatic EIS that analyzes natural gas infrastructure projects related to takeaway capacity from the Marcellus and Utica shales.

FERC failed to address the need for a programmatic EIS. A programmatic EIS is sometimes required “for broad Federal actions.” 40 C.F.R. § 1502.4(b). “Programmatic NEPA reviews address the general environmental issues relating to broad decisions, such as those

establishing policies, plans, programs, or suite of projects, and can effectively frame the scope of subsequent site- and project-specific Federal actions.” CEQ, *Effective Use of Programmatic NEPA Reviews*, p. 10 (2014). “A well-crafted programmatic NEPA review provides the basis for decisions to approve such broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities can be taken or identifying broad mitigation and conservation measures that can be applied to subsequently tiered reviews.” *Id.*

In *Kleppe v. Sierra Club*, the Supreme Court recognized that NEPA may mandate a comprehensive EIS “in certain situations where several proposed actions are pending at the same time.” 427 U.S. 390, 409 (1976). Further, the Court noted that:

when several proposals....that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental impacts must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.

Id. at 410. Appellate courts have also defined a two-pronged inquiry to establish whether a programmatic EIS is appropriate: (a) Could the programmatic EIS be sufficiently forward looking to contribute to the decisionmakers’ basic planning of the overall program? and, (b) Does the decisionmaker purport to ‘segment’ the overall program, thereby unreasonably constricting the scope of primordial environmental evaluation?” *Churchill County v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001) (citing *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 889 (D.C. Cir. 1981)). See also *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985). Here, a programmatic EIS would be sufficiently forward looking to contribute to FERC’s (and the public’s) basic understanding of the true scope of the current and reasonably foreseeable build-out of gas infrastructure to connect the Marcellus and Utica shale formations to market areas. With respect to the second prong, FERC cannot escape the existence of a comprehensive program with cumulative environmental effects by “disingenuously

describing it as only an amalgamation of unrelated smaller projects.” *Churchill County*, 276 F.3d at 1076 (citing *Nat’l Wildlife Fed’n*, 677 F.2d at 890). In *City of Tenakee Springs*, the court held that:

Where there are large scale plans for regional development, NEPA requires both a programmatic and site-specific EIS. See *City of Tenakee Springs*, 778 F.2d at 1407 (citations omitted). This court has held that where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS. See *LaFlamme v. Federal Energy Regulatory Commission*, 852 F.2d 389, 401-02 (9th Cir. 1988). There, emphasizing the likelihood of future development, the court remanded to [FERC] for further consideration of cumulative impacts because the agency had examined single projects in isolation without considering the net impact that all the projects in the area might have on the environment. See *LaFlamme*, 852 at 401-03.

915 F.2d at 1312. A programmatic EIS is critical for the public to understand the actual scope of environmental impacts from natural gas infrastructure projects in the Marcellus and Utica shale formations.

II. ARGUMENT FOR REHEARING

A. FERC relied on insufficient mitigation for the FONSI.

FERC says that it “has a 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[.]” Order at P 56. FERC then relies on the conclusion in the FEIS that “if the project is constructed and operated in accordance with applicable laws and regulations . . . impacts . . . will be reduced to less-than-significant levels with the implementation of Algonquin’s proposed mitigation and staff’s recommendations (now adopted as conditions in Appendix B of this order).” *Id.* at P 58. A recent settlement agreement between the Pennsylvania Department of Environmental Protection (“PADEP”) and Tennessee Gas Pipeline Company (“Tennessee”) demonstrates the ineffectiveness of FERC’s mitigation program.

On December 22, 2014, PADEP announced an \$800,000 settlement with Tennessee “for multiple violations of the [Pennsylvania] Clean Streams Law during the construction of [the 300 Line Project] in 2011 and 2012 through four counties in northeast and north-central Pennsylvania.” PADEP Press Release (Dec. 22, 2014), *available at* http://www.portal.state.pa.us/portal/server.pt/community/search_articles/14292 (Attachment 1). Clearly, Tennessee was unable to reduce the impacts of the 300 Line Project to “less-than-significant levels” – otherwise, we do not believe it would have entered into an \$800,000 settlement agreement with PADEP. At no point did FERC issue a stop work order or take any action against Tennessee as the Line 300 Project was constructed. This demonstrates that FERC cannot be trusted to effectively monitor the companies it authorizes to engage in construction of jurisdictional facilities.¹

While FERC may rely on the expertise of its staff when implementing mitigation measures, those mitigation measures are only sufficient if the agency studies upon which they are based provide substantial evidence to support those mitigation measures. *See New York v. U.S. Nuclear Reg. Commn.*, 589 F.3d 551, 555 (2d Cir. 2009) (agency relied on “numerous studies detailing the effectiveness of its required mitigation measures; these studies constitute substantial evidence”) (emphasis added). There is nothing in FERC’s Order that provides any sort of evidence, let alone substantial evidence, that FERC’s Plan and Procedures are sufficient to avoid and minimize any potential impacts caused by the AIM Project.

¹ It should also be noted that the Line 300 Project was one of the four projects that the D.C. Circuit said were illegally segmented in *Delaware Riverkeeper v. FERC*. *See* 753 F.3d 1304 at 1314 (D.C. Cir. 2014). Thus, FERC allowed Tennessee to illegally segment four pipeline projects over a multi-year period and then failed to monitor construction of at least one of those illegally segmented projects and forcing Pennsylvania to take action to protect its citizens after their environmental resources were degraded due to FERC’s ineffective monitoring.

Although the Order requires the Plan and Procedures as a condition, this alone does not provide substantial evidence that the mitigation measures are sufficient. FERC seems to think that because the measures are supposedly “required” and of “longstanding practice,” that they are sufficient. The information above regarding the PADEP-Tennessee settlement dispels that notion.

The fact that the Line 300 Project violated state Clean Streams Law standards, despite the implementation of FERC’s Plan and Procedures as mitigation, is evidence that the Plan and Procedures may not be sufficient to mitigate impacts for each project. Consequently, it is FERC and its blanket statements that the Plan and Procedures are sufficient for mitigation, without any evidence or explanation, that is most troubling and in violation of NEPA. Simply because they are longstanding practices does not make the Plan and Procedures sufficient for every single project. Insufficient mitigation measures, though perhaps longstanding in their use, are still insufficient. *See Summit Petroleum Corp. v. U.S. E.P.A.*, 690 F.3d 733, 746 (6th Cir. 2012). Clearly, in the case of the Line 300 project where FERC also used blanket conclusory statements regarding mitigation, the Plan and Procedure was not sufficient, not only to minimize impacts, but to prevent violations of law. This continued use of the Plan and Procedures through conclusory statements about their impact minimization and longstanding use, without any substantial evidence as to their effectiveness, is arbitrary and capricious.

B. FERC violated NEPA by failing to consider the indirect effects of Marcellus and Utica shale gas drilling that is both causally related to and a reasonably foreseeable consequence of the Projects.

FERC must take a “hard look” at the environmental consequences of the Project. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). FERC failed take a hard look at the indirect effects caused by the Project. Indirect effects are:

[C]aused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b). Contrary to FERC's assertions, the indirect effects of shale gas development in the Marcellus and Utica shale formations are both causally related to the Project and reasonably foreseeable. Therefore, FERC has an obligation to take a hard look at the environmental effects of Marcellus and Utica shale extraction as an indirect effect of the Project.

1. There is a clear causal connection between the Project and shale gas development in the Marcellus and Utica shale formations.

FERC relies on two cases for the proposition that the Projects and gas drilling in the Marcellus and Utica shale formations are not causally related. *See* Order at PP 127-28. One case is an unpublished Second Circuit decision. In that case, which is not binding precedent, the Second Circuit stated that there was an insufficient causal relationship between a proposed pipeline and gas drilling in the Marcellus shale formation. *Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 2012 WL 1596341 (2d Cir. 2012). In reaching this conclusion, the Second Circuit simply accepted all of FERC's arguments at face value without addressing *any* of the case law that FERC relied on in the underlying proceedings. *Id.* *See also Central New York Oil and Gas Co., LLC*, 137 FERC § 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012). An examination of the case law demonstrates why FERC's interpretation of its NEPA obligations is without merit.

For example, the Ninth Circuit has said that an agency must consider something as an indirect effect if the agency action and the effect are "two links of a single chain." *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989). This is the other case that FERC relies on for support. The issue in *Sylvester* concerned the construction of a golf course

that was part of a larger resort construction project. The golf course construction involved filling wetlands, which triggered the jurisdiction of the U.S. Army Corps of Engineers (“Corps”). The Corps limited its analysis to “the secondary and cumulative impacts of the golf course” and “did not include the other resort facilities.” *Sylvester*, 884 F.2d at 400. The court held that the Corps was not required “to look further than it did” because the golf course and the resort were not “two links of a single chain” since “each could exist without the other.” *Id.*

The situation in *Sylvester* is inapposite to the situation here where Algonquin itself connects its project to shale gas drilling. For example, Algonquin says that it “will utilize a strategic receipt point located at Ramapo, New York, to obtain additional access to growing supply areas, thereby providing the Project Shippers with additional economical supplies of natural gas.” Application at 6. There can be no doubt that the “growing supply area” refers to the Marcellus and Utica shale formations in the Appalachian Basin. *See Spectra Energy, New Projects and Our Process – Algonquin Incremental Market (AIM) Project, available at* <http://www.spectraenergy.com/Operations/New-Projects-and-Our-Process/New-Projects-in-US/Algonquin-Incremental-Market-AIM-Project/> (noting that the AIM Project “will allow abundant regional natural gas supplies from the Appalachian basin to flow reliably to the Northeast”). Once the Project Shippers (eight local distribution companies and two municipal utilities) are connected to the Marcellus and Utica through Algonquin’s “strategic receipt point,” it is highly likely to induce further development of Marcellus and Utica shale gas. Therefore, the Projects and gas drilling in the Marcellus and Utica shale formations are “two links of a single chain.”

Another case cited by the *Sylvester* court, *Colorado River Indian Tribes v. Marsh*, 605 F.Supp. 1425 (C.D. Cal. 1985), strongly supports the close causal connection between the

Projects and gas drilling. In that case, the Corps issued a permit allowing a developer to stabilize a riverbank without considering the indirect and cumulative effects of the stabilization – namely, future residential and commercial development. The court held that the Corps “assess[ed] the project with tunnel vision” that “was tantamount to limiting its assessment to primary impacts.”

Colorado River Indian Tribes, 605 F.Supp. at 1433. The court further noted that:

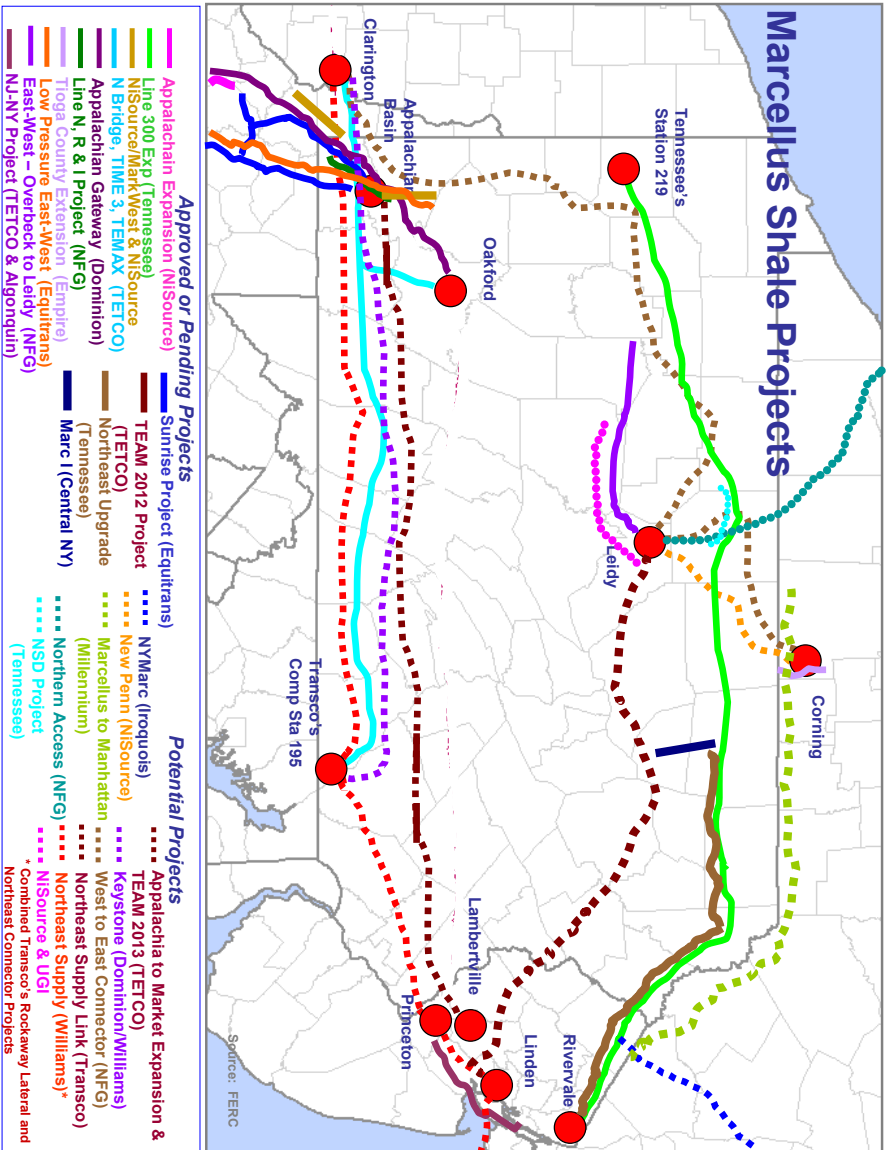
The Corps should have analyzed the indirect effects of the bank stabilization on both “on site” and “off site” locations, i.e., the growth-inducing effects related to the changes in the pattern of land use and population growth. It would appear that the Corps failed to consider the cumulative impact associated with the bank stabilization project when it may have been reasonably foreseeable that the placement of ripraps was just a stepping stone to major development in the area.

Id. Like the Corps in *Colorado River Indian Tribes*, FERC assessed the impacts of the AIM Project with “tunnel vision.” Just as the bank stabilization was a “stepping stone” to residential and commercial development, so too is the AIM Project in the context of induced shale gas development in the Marcellus and Utica shale formations. FERC failed to take a hard look at the indirect effects of authorizing the AIM Project on both “on site” and “off site” locations, including the growth-inducing effects related to the changes in the pattern of land use and related effects on air and water and other natural systems, including ecosystems. *Id.* See also 40 C.F.R. § 1508.8(b).

It is also important to note that FERC itself considers shale gas extraction and infrastructure (including transmission pipelines) as “two links of a single chain.” According to a 2010 presentation in Berlin, Germany, FERC identified numerous jurisdictional “Marcellus Shale Projects” in Pennsylvania and surrounding states. FERC, *Natural Gas in the U.S.: Supply and Infrastructure = Security*, p. 28 (Oct. 26-27, 2010) (Attachment 2). FERC’s map of “Marcellus Shale Projects” is provided below:

Marcellus Shale Projects

Figure 1: FERC-jurisdictional “Marcellus Shale Projects.”



On the next page of the presentation, FERC identified numerous jurisdictional “Natural Gas Facilities Impacting the Marcellus Shale Basin.” *Id.* at 29. The projects are broken down by company and identify the capacity, miles of pipe, and compression of each project “impacting the Marcellus Shale Basin.” *Id.* FERC also discussed the impacts of drilling and hydraulic fracturing for shale gas. *See id.* at 30-33 (discussing the process of hydraulic fracturing, volumetric composition of fracture fluids, and estimated water needs per shale well in the Marcellus, Barnett, Fayetteville and Haynesville Shale Basins). It is arbitrary and capricious for FERC to refer to projects under its jurisdiction as “Marcellus Shale Projects” and then claim there is an insufficient causal relationship between those projects and gas drilling in the Marcellus shale formation.

FERC’s refusal to consider the effects of upstream gas drilling in the Marcellus and Utica shale formations is reminiscent of similar arguments made by the Surface Transportation Board that were rejected by the Eighth Circuit. In that case, the Surface Transportation Board argued that because many utilities were likely to switch to the kind of low-sulfur variety of coal that a planned railroad would make available, “this shift will occur regardless of whether [the railroad company’s] new line is constructed.” *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003). The Eighth Circuit rejected this argument outright:

....the proposition that the demand for coal will be unaffected by an increase in availability and a decrease in price, which is the stated goal of the project, is illogical at best. The increased availability of inexpensive coal will at the very least make coal a more attractive option to future entrants into the utilities market when compared with other potential fuel sources, such as nuclear power, solar power, or natural gas. Even if this project will not affect the short-term demand for coal....it will most assuredly affect the nation’s long-term demand for coal[.]

Mid States, 345 F.3d at 549. It is similarly illogical for FERC to ignore the impact that jurisdictional projects have on gas drilling in the Marcellus and Utica shale formations because once the AIM Project is constructed and in service and the target market areas are connected to Marcellus and Utica shale gas supplies, it makes drilling in this region much more likely.

The AIM Project and gas drilling in the Marcellus and Utica shale formations are “two links of a single chain.” *Sylvester*, 884 F.2d 394, 400 (9th Cir. 1989). Instead of examining the indirect effects of gas drilling, however, FERC assessed the AIM Project with “tunnel vision” to ignore these effects just as the Corps did in *Colorado River Indian Tribes*. 605 F.Supp. 1425, 1433 (C.D. Cal. 1985). This was arbitrary and capricious and, as a result, FERC should withdraw its Order and prepare a supplemental EIS that examines the indirect effects of Marcellus and Utica shale gas drilling.

2. Gas drilling in the Marcellus and Utica shale formations is reasonably foreseeable.

Gas drilling in the Marcellus and Utica shale formations is also reasonably foreseeable. An indirect impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.” *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). “[W]hen the *nature* of the effect is reasonably foreseeable but its *extent* is not, [an] agency may not simply ignore the effect.” *Mid States*, 345 F.3d at 549 (emphasis in original). *See also Habitat Education Center v. U.S. Forest Service*, 609 F.3d 897, 902 (7th Cir. 2010). Here, it is sufficiently likely to occur that a person of ordinary prudence would take Marcellus and Utica shale gas drilling into account before reaching a decision about whether the Projects are in the public interest.

FERC, however, claims that even if there is a causal connection between the Project and induced gas production, “such induced production is not reasonably foreseeable.” Order at P 130.

The notion that Algonquin would construct and operate the AIM Project without future production being at least reasonably foreseeable is confusing at best and willfully ignorant at worst. Clearly, the project's proponent believes it is reasonably foreseeable that its pipeline will induce at least some development, so FERC should as well.

FERC says that “we can only speculate regarding the exact location, scale, scope and timing of future [gas] production-related facilities, which would not provide meaningful information to inform our decision.” Order at P 123. This is an erroneous interpretation of NEPA case law. As the Ninth Circuit has explained, “speculation is...implicit in NEPA[.]” *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1078 (9th Cir. 2011). FERC “would require the public, rather than the agency, to ascertain the cumulative effects of a proposed action.” *Te-Moak Tribe of Western Shoshone of Nevada v. U.S. Department of the Interior*, 608 F.3d 592, 605 (9th Cir. 2010). “Such a requirement would thwart one of the ‘twin aims’ of NEPA – to ‘ensure[] that the *agency* will inform the *public* that it has indeed considered environmental concerns in its decision making process.” *Id.* (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983)) (emphasis added by Ninth Circuit). Compliance with NEPA “is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs.” *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1161 (9th Cir. 1997) (quoting *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975). See also *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1166 (9th Cir. 2003) (“The procedures prescribed both in NEPA and the implementing regulations are to be strictly interpreted ‘to the fullest extent possible’ in accord

with the policies embodied in the Act....’[g]rudging, pro forma compliance will not do.’”) (citations omitted).

Thus, FERC’s insistence that it is incumbent upon others to produce kind of information it claims to need is wholly inappropriate. FERC is attempting to “shirk [its] responsibilities” under NEPA by labeling any and all discussion of future environmental effects of such drilling as “crystal ball inquiry.” *Northern Plains*, 668 F.3d 1067, 1078-79 (9th Cir. 2011). There is no need for FERC to know the “*exact* location, scale, scope and timing” in order to engage in reasonable forecasting of future gas drilling in the Marcellus and Utica shale formations.

There is a clear causal relationship between the AIM Project and gas drilling in the Marcellus and Utica shale formations and that drilling is reasonably foreseeable. The FEIS failed to consider gas drilling in the Marcellus and Utica shale formations as an indirect effect of the AIM Project and, therefore, violates 40 C.F.R. § 1508.8(b). Therefore, FERC must, at a minimum, withdraw the Order granting the Certificate and prepare supplemental EIS for the AIM Project.

C. FERC failed to take a hard look at the cumulative impacts of gas drilling in the Marcellus and Utica shale formations.

Even if FERC does not consider Marcellus and Utica shale gas drilling to be an indirect effect of the Project under 40 C.F.R. § 1508.8(b), that drilling must nevertheless be considered a cumulative impact of the Project under 40 C.F.R. § 1508.7. A cumulative impact is the:

[I]mpact 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*. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7 (emphasis added). Unfortunately, just as it used “tunnel vision” to avoid analyzing Marcellus and Utica shale gas drilling as an indirect effect, FERC used that same

“tunnel vision” to completely ignore the cumulative impacts of that drilling. For example, FERC only considered the cumulative impacts of other “projects (e.g., residential development, small commercial development, small transportation projects) within 0.25 miles of the construction work areas.” Order at P 116. This ignored the cumulative impacts of related gas drilling in the Marcellus and Utica shale, the very reason why Algonquin is proposing to build the AIM Project in the first place.

While FERC purports to have used CEQ’s guidance on cumulative impacts to develop the restrictive cumulative effects analysis area (or, “region of influence”) that was used in the FEIS (*see* Order at P 115), the fact is that CEQ’s guidance calls for greatly expanding the scope of the analysis area. For example, CEQ states that:

For a project-specific analysis, it is often sufficient to analyze effects within the immediate area of the proposed action. When analyzing the contribution of this proposed action to cumulative effects, however, the geographic boundaries of the analysis *almost always should be expanded*. These expanded boundaries can be thought of as differences in hierarchy or scale. Project-specific analyses are usually conducted on the scale of counties, forest management units, or installation boundaries, *whereas cumulative effects analysis should be conducted on the scale of human communities, landscapes, watersheds, or airsheds*.

CEQ, Considering Cumulative Effects under the National Environmental Policy Act, p. 12 (1997) (emphasis added). CEQ further says that it may be necessary to look at cumulative effects at the “ecosystem” level for vegetative resources and resident wildlife, the “total range of affected population units” for migratory wildlife, an entire “state” or “region” for land use, and the “global atmosphere” for air quality. *Id.* at 15. In other words, only looking at other projects “in the general vicinity” of the Project is clearly inconsistent with CEQ’s guidance. By limiting the scope of the cumulative impacts analysis area to include only those projects that are within a narrow region of influence, FERC arbitrarily ignored substantial and long-term effects on

various resources including wildlife, vegetation, water quality, air quality and recreation caused by shale gas development.

Such flawed cumulative impact analyses is, of course, routine for FERC, which *insists* on using geographic proximity to substantially narrow its review of cumulative impacts of jurisdictional projects. In addition to the Project at issue in this rehearing request, FERC considered a similarly restrictive “region of influence” in the following proceedings:

- In the EA for Columbia Gas Transmission’s East Side Expansion, FERC used “a 0.5-mile radius as the project area/region of influence for most resources impacted (not including air quality).” East Side Expansion EA at 2-112 (Docket No. CP14-17-000; Accession No. 20140827-4001). Such a small “region of influence” ignored the cumulative impacts of shale gas drilling even though Columbia’s application for the East Side Expansion states that the purpose of that project is “to construct facilities to increase its system capacity making it possible for new sources of gas supply to meet emerging market growth needs.” East Side Expansion Application at 12 (Accession No. 20131101-5125). FERC recently approved the East Side Expansion Project. *Columbia Gas Transmission*, 149 FERC ¶ 61,255 (Dec. 18, 2014).
- In the EA for TETCO’s Uniontown to Gas City (“U2GC”) Project, FERC “limited [its] review to projects directly in the vicinity of [the U2GC Project].” U2GC EA at 26 (Docket No. CP14-104-000; Accession No. 20140821-4005). By limiting its review to projects “directly in the vicinity” of the U2GC Project, FERC ignored the cumulative impacts of shale gas drilling even though TETCO’s environmental reports for the U2GC Project explicitly stated that the project “responds to significant interests from customers regarding transportation capacity to accommodate increased production of natural gas from the emerging Marcellus Shale and Utica Shale plays in the supply rich area west of Uniontown, Pennsylvania.” U2GC Resource Report 1 at 1-1 (Accession No. 20140311-5175). FERC recently approved the U2GC Project. *Texas Eastern Transmission*, 149 FERC ¶ 61,259 (Dec. 18, 2014).
- In the EA for Columbia Gas Transmission’s Smithfield III Expansion, FERC only considered “projects directly in the vicinity of the [Smithfield III Expansion] Project.” Smithfield III Expansion EA at 2-37 (Docket No. CP13-477-000; Accession No. 20131029-4012). By limiting its review to projects “directly in the vicinity” of the Smithfield III Expansion, FERC ignored the cumulative impacts of shale gas drilling even though Columbia’s application for the Smithfield III Expansion explicitly stated that the purpose of that project was “to construct facilities necessary to transport gas from the Appalachian basin[.]” Smithfield III Expansion Application at 3 (Accession No. 20130510-5082).
- In the EA for Dominion’s Clarington Project, FERC only considered other projects “within an area of influence of 5 miles of the proposed [Clarington] Project.” Clarington Project EA at 39 (Docket No. CP14-496-000; Accession No. 20150115-4001). By limiting the “area of influence” to within 5 miles of the Clarington Project, FERC ignored

the cumulative impacts of shale gas drilling even though Dominion's application stated that the purpose of the project is "to transport Appalachian production" from the "Marcellus and Utica shales." Clarrington Project Application at 4 (Accession No. 20140602-5213).

- In the EA for Dominion's Appalachian Gateway Project, FERC only considered "other projects in the general Project area." Appalachian Gateway EA at 2-134 (Docket No. CP10-448-000; Accession No. 20110331-4001). By limiting its review to project "in the general [Appalachian Gateway] Project area," FERC ignored the cumulative impacts of shale gas drilling even though Dominion's application expressly referenced increasing gas production "in the Appalachian region of West Virginia and Pennsylvania," including conventional and unconventional (coal bed methane and Marcellus shale) production, and stated that its project would "provide Appalachian producers a secure a reliable route to transport their growing gas supplies to high demand markets in the Mid-Atlantic and Northeastern regions." Appalachian Gateway Application at 4 (Accession No. 20100601-5221).
- In the EA for Columbia's Appalachian Expansion Project, FERC only considered other projects "within the area affected by the proposed Project." Appalachian Expansion EA at 26 (Docket No. CP08-85-000; Accession No. 20080818-4003). By limiting its review to only those projects that occurred "within the area affected by the proposed Project," FERC ignored the cumulative impacts of shale gas drilling even though Columbia's application said its project was "driven by the need to move additional Appalachian production gas that is currently trapped in the production fields." Appalachian Expansion Project Application at 5 (Accession No. 20080229-4007).

In all of these projects, FERC substantially limited the scope of the cumulative impact analysis area. When all of these projects and the AIM Project are considered together, it is obvious that FERC is ignoring the overwhelming majority of cumulative impacts caused by gas drilling in the Marcellus and Utica shale formations. While FERC prepared an EIS for the AIM Project, all of the projects identified above were reviewed in EAs. In *Kern v. BLM*, the Ninth Circuit explained that "the importance of analyzing cumulative impacts in EAs is apparent when we consider that....so many more EAs are prepared than EISs[.]" 284 F.3d 1062, 1076 (9th Cir. 2002) (internal quote and citation omitted). The court further explained that an impermissibly restrictive cumulative effects analysis "subject[s] the decisionmaking process contemplated by NEPA to 'the tyranny of small decisions.'" *Id.* at 1078 (quoting CEQ, *Considering Cumulative Effects*, at 1).

By using such restrictive geographic parameters in one project after another, whether in an EA or EIS, FERC is ignoring the vast majority of cumulative impacts of Marcellus and Utica shale gas drilling that occur outside of these arbitrary “regions of influence.” In other words, FERC ignores the fact that “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. And, since FERC refuses to consider Marcellus and Utica shale gas drilling as an indirect effect under NEPA, it is clear that these impacts will *never* be addressed by FERC in any meaningful way even though these impacts are directly related to the construction and expansion of facilities under FERC’s jurisdiction.

In *LaFlamme v. FERC*, 852 F.2d 389 (9th Cir. 1988), the Ninth Circuit reviewed FERC’s authorization of the Sayles Flat Project, a hydroelectric power project on the American River in California. FERC prepared an EA for the Sayles Flat Project and ultimately issued a finding of no significant impact. In its decision, the court said that FERC violated NEPA by failing to consider the cumulative impacts of other projects on the American River Basin. Instead, FERC relied on a previous EIS for another project (the Upper Mountain Project) that was “limited to assessing the impact of *that* project’s diversion dams and other proposed facilities in *that* project’s area.” *LaFlamme v. FERC*, 852 F.2d 389, 401 (9th Cir. 1988) (emphasis added). The court continued:

At no point did the [Upper Mountain Project] EIS analyze the effects of *other projects*, pending or otherwise, might have on *this* section of the American River Basin. Such a narrow analysis of one project’s impact on this area cannot possibly provide the necessary broad consideration of all “past, present, and reasonably foreseeable future actions” required in a cumulative impact analysis. *Considering that the Upper Mountain Project represents only the initial development of the remaining water resources in the South Fork of the American River basin, the foreseeability of future development underscores the importance of performing a comprehensive cumulative impact analysis of the project’s effects on the environment before any more development proceeds.* The

Upper Mountain Project's EIS does not provide the necessary comprehensive analysis of the cumulative impact of all projects in this area, especially the Sayles Flat Project.

Additionally, FERC's analysis of the Sayles Flat project in their order denying rehearing does not support their conclusion that this project does not have a potential for significant adverse cumulative impacts on the resources in this area. FERC and the FERC staff make the same analytical error with Sayles Flat as they did in their study of the Upper Mountain Project: *they examined the Sayles Flat project in isolation, without considering the "net" impact that all projects in the area may have on the environment.* National Wildlife Federation v. FERC, 801 F.2d at 1507. Therefore, because FERC has not considered the impact that all past, present, and reasonably foreseeable future projects may have on the basin's resources, the record simply cannot support FERC's conclusion that the Sayles Flat project does not have a potential for adverse cumulative impacts on the environment. Accordingly, FERC's decision not to prepare an EIS on the project's cumulative impacts was unreasonable.

Id. at 401-02 (emphasis added). Just as it was unreasonable for FERC to consider the Sayles Flat Project "in isolation," so too was it unreasonable for FERC to consider the AIM Project in isolation in terms of its cumulative impacts.

Even if FERC does not know the extent of such drilling activities, it is certainly aware of its nature and may not simply ignore the effect by constructing an arbitrarily narrow cumulative impact analysis area. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003). As the Ninth Circuit has explained:

[P]rojects need not be finalized before they are reasonably foreseeable. "NEPA requires that an EIS engage in reasonable forecasting. *Because speculation is ... implicit in NEPA, [] we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.*" As the [EPA] also has noted, "reasonably foreseeable future actions need to be considered even if they are not specific proposals."

Northern Plains, 668 F.3d at 1078-79 (citations omitted) (emphasis added).

Another case supporting the need for FERC to consider the reasonably foreseeable impacts of Marcellus and Utica Shale gas extraction is *Natural Resources Defense Council v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988). In *Hodel*, the D.C. Circuit remanded the case because the Department of Interior failed to adequately consider the "inter-regional" cumulative impacts of

its 5-year oil and gas leasing program in the outer continental shelf on migratory species. *Id.* at 299. The court noted that it would “eviscerate NEPA” to approve of the DOI’s environmental analysis. *Id.* FERC must not ignore the “inter-regional” impacts of Marcellus and Utica Shale gas extraction.

One of the impacts that FERC largely ignored by virtue of its arbitrarily narrow “region of influence” was the impact that shale gas drilling has on wildlife habitat. According to recent research published in *Environmental Science & Technology*:

Potential effects [of shale gas drilling] on terrestrial and aquatic ecosystems can result from many activities associated with the extraction process and the rate of development, such as road and pipeline construction, well pad development, well drilling and fracturing, water removal from surface and ground waters, establishment of compressor stations, and by unintended accidents such as spills or well casing failures....The cumulative effect of these potential stressors will depend in large part on the rate of development in a region. Depending on extent of development, oil and gas extraction has the potential to have a large effect on associated wildlife, habitat and aquatic life.

Brittingham, M.C., et al., *Ecological Risks of Shale Oil and Gas Development to Wildlife, Aquatic Resources and their Habitats*, *Environmental Science & Technology*, pp. 11035-11037 (Sept. 4, 2014) (citations omitted) (Attachment 3). This research further explains the impacts of shale gas drilling:

- Shale oil and gas development changes the landscape. Land is cleared for pad development and associated infrastructure, including pipelines, new and expanded roads, impoundments, and compressor stations, and much of this exploration and development is occurring in relatively undeveloped landscapes. Seismic testing, roads, and pipelines bisect habitats and create linear corridors that fragment the landscape. *Id.* at 11037 (citations omitted).
- Habitat fragmentation is one of the most pervasive threats to native ecosystems and occurs when large contiguous blocks of habitat are broken up into smaller patches by other land uses or bisected by roads, transmission lines, pipelines or other types of corridors. Habitat fragmentation is a direct result of shale development with roads and pipelines having a larger impact than the pads (Table 1). For example, in Bradford and Washington counties Pennsylvania, forests became more fragmented primarily as a result of the new roads and pipelines associated with shale development, and development resulted in more and smaller forest patches with loss of core forest (forest > 100 m from an edge) at twice the rate of overall forest loss. Pipelines and roads not only resulted in

loss of habitat but also created new edges. Similar results have been shown in other studies. *Id.* (citations omitted).

- Fragmentation from linear corridors such as pipelines, seismic lines, and roads can alter movement patterns, species interactions and ultimately abundance depending on whether the corridor is perceived as a barrier or territory boundary or used as an avenue for travel and invasion into habitats previously inaccessible. *Id.* (citations omitted).
- [T]he New York State Department of Environmental Conservation estimates that development of one horizontal well requires over 3300 one-way truck trips. This is a concern because roads of all types have a negative effect on wildlife through direct mortality, changes in animal behavior, and increased human access to areas, and these negative effects are usually correlated with the level of vehicular activity. Even after a well is drilled and completed, new roads and pipelines provide access for more people, which results in increased disturbance. *Id.* at 11038 (citations omitted).
- In Wyoming, Sawyer et al. found that mule deer migratory behavior was influenced by disturbance associated with coal bed gas development and observed an increase in movement rates, increased detouring from established routes, and overall decreased use of habitat along migration routes with increasing density of well pads and roads. *Id.* (citations omitted).
- Exploration and development of the shale resource is associated with both short-term and long-term increases in noise. In the short term, site clearing and well drilling, [high volume hydraulic fracturing], and construction of roads, pipelines and other infrastructure are a limited time disturbance similar to disturbance and sound associated with clearing land and home construction (Table 1). Depending on number of wells drilled, construction and drilling can take anywhere from a few months to multiple years. Compressor stations, which are located along pipelines and are used to compress gas to facilitate movement through the pipelines, are a long-term source of noise and continuous disturbance (Table 1). Because chronic noise has been shown to have numerous costs to wildlife, compressors have potential to have long-term effects on habitat quality. *Id.* (citation omitted).
- For many species of wildlife, sound is important for communication, and noise from compressors can affect this process through acoustical masking and reduced transmission distances. Studies on effects of noise from compressors on songbirds have found a range of effects including individual avoidance and reduced abundance, reduced pairing success, changes in reproductive behavior and success, altered predator-prey interactions, and altered avian communities, for example, refs 55-59 Greater sage-grouse (*Centrocercus urophasianus*) gather at leks where males display in order to attract females. Lek attendance declined in areas with chronic natural gas-associated noise and, experimentally, sage-grouse were shown to experience higher levels of stress when exposed to noise. *Id.* (citations omitted).
- Because of the large overlap between the Appalachian shale play and core forest habitat in the East, many forest species are vulnerable to development. Area-sensitive forest songbirds are primarily insect-eating Neotropical migrants, are an important component of forest ecosystems, and, as a group, many have declined in numbers in response to forest fragmentation. These birds are area-sensitive because breeding success and abundance are highest in large blocks of contiguous forest, and numerous research studies have documented negative effects of fragmentation on abundance and

productivity....The impact that shale development has on this group of species will depend on the scale and extent of development. *By some estimates, less than 10% of potential shale gas development has occurred in the Appalachian basin. If this is the case, there is the potential for a 10-fold increase in the amount of shale gas development which would likely have negative impacts on area-sensitive forest songbirds and other forest specialists. Id.* at 11040 (citations omitted) (emphasis added).

- Development of shale resources, which clears land for well pads and roads, is occurring across a large portion of the native range of brook trout, especially in Pennsylvania (Figure 3). If remaining high-quality stream reaches become unsuitable to brook trout, there may be further fragmentation of the larger meta-population. *Id.*
- Freshwater mussels are an additional taxonomic group of interest because of already high numbers of listed species and relative sensitivity to toxicants. The endangered Indiana Bat, (*Myotis sodalis*), is another example of a species where a large portion of its native range is within areas of shale development (Figure 3). Gillen and Kiviat 2012 reviewed 15 species that were rare and whose ranges overlapped with the Marcellus and Utica shale by at least 35%. The list included the West Virginia spring salamander (*Gyrinophilus subterraneus*), a species that is on the IUCN Red List as endangered and whose range overlaps 100% with the shale layers. It requires high quality water and is sensitive to fragmentation suggesting that this species is at great risk to oil and gas development. The list also included eight Plethodontid salamanders, a group that tends to be vulnerable because of the overlap between their range and shale layers, their dependence on moist environments and sensitivity to disturbance. *Id.* at 11040-11041.

The Brittingham research demonstrates the substantial impact that shale gas drilling is having and will continue to have on wildlife throughout the Marcellus and Utica shale region, especially if FERC continues facilitating such drilling by authorizing infrastructure projects such as the AIM Project without analyzing the cumulative impacts on wildlife and disclosing that information to the public. FERC has an obligation under NEPA to take a hard look at these impacts on a much broader scale than it did in the FEIS.

Indeed, Figure 3 in the Brittingham study reveals precisely why FERC must expand the cumulative effects analysis area for resource areas such as wildlife. *See Brittingham, et al.,* at 11042. The map in Figure 3 overlays the spatial position of unconventional vertical and horizontal wells with the distribution of brook trout classification. Between 2000-2013, at least 7,336 unconventional wells were drilled in Pennsylvania. *Id.* By only looking at other projects within its narrow “region of influence,” FERC willfully ignored the vast amount of cumulative

impacts of gas drilling. This not only includes effects on wildlife but also on water quality, public lands, recreation, air quality, and climate change.

D. FERC violated NEPA by failing to consider other connected, cumulative, and similar actions in the same environmental analysis.

FERC must consider other connected, cumulative and similar actions in the same environmental analysis. Actions are connected if they are “closely related.” 40 C.F.R. § 1508.25(a)(1). Connected actions include actions that “automatically trigger other actions,” “cannot or will not proceed unless other actions are taken previously or simultaneously,” or “are interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* Cumulative actions are those actions that, “when viewed with other proposed actions have cumulatively significant impacts” that should be discussed in the same EIS. 40 C.F.R. § 1508.25(a)(2). Significance “cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). Similar actions are those actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide for evaluating their environmental consequences together, such as common timing or geography” that should be considered in the same analysis when that is the best way to “assess adequately the combined impacts of similar actions or reasonable alternatives to such actions.” 40 C.F.R. § 1508.25(a)(3). “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.” *Delaware Riverkeeper v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

FERC claims that the AIM Project, Atlantic Bridge Project and Access Northeast Project are not being improperly segmented because the latter two projects “are not *proposals* before the Commission[.]” Order at P 111 (emphasis added). FERC cites CEQ’s regulations stating that a

“proposal” only exists when “an agency subject to the Act has a goal and is actively preparing to make a decision . . . and the effects [of that action] can be meaningfully evaluated.” *Id.* at P 109 (*quoting* 40 C.F.R. § 1508.23). Since the Atlantic Bridge Project is in pre-filing and the Access Northeast Project is still being “evaluated [for] potential development,” FERC says that these two projects “are not fully defined proposals.” *Id.* at P 110.

FERC cannot allow Algonquin and other pipeline companies to use the pre-filing process as a way to shield their broader plans from comprehensive review. Once a project reaches the pre-filing stage, the “effects [of the action] can be meaningfully evaluated.” 40 C.F.R. § 1508.23. Pipeline companies, however, seem accustomed to holding certain projects in abeyance at the pre-filing stage until FERC is close to or actually issues a certificate for a project at the application stage. Once it becomes clear that FERC is about to or actually does issue a certificate for the project under review, then the pipeline company files an application for the project that had been in pre-filing. What was a “not fully defined proposal” the previous day is now, all of a sudden, “fully defined.” This makes a mockery of the NEPA process and plays the public for fools. FERC and the pipeline companies have detailed plans for building out gas infrastructure for Marcellus and Utica shale gas. FERC cannot continue to allow pipeline companies to parcel these plans and ignore the broader, regional impacts of this infrastructure build-out.

E. FERC failed to properly consider the urgent need for a programmatic EIS that analyzes natural gas infrastructure projects related to takeaway capacity from the Marcellus and Utica shale formations.

FERC must prepare a programmatic EIS for natural gas infrastructure projects that are expanding takeaway capacity from the Marcellus and Utica shale formations. CEQ regulations and guidance support the need for a regional programmatic EIS to better inform the public about

the true nature and scope of natural gas infrastructure projects that are pending before FERC or are reasonable foreseeable. Furthermore, FERC is actively engaged with the natural gas industry to rapidly deploy infrastructure in order to coordinate and harmonize the gas industry with electric utilities. That is especially relevant in this proceeding since two utilities are shippers for the AIM Project.

1. CEQ regulations/guidance and case law support preparation of a programmatic EIS.

A programmatic EIS is sometimes required for “broad Federal actions.” 40 C.F.R. § 1502.4(b). “Programmatic NEPA reviews address the general environmental issues relating to broad decisions, such as those establishing policies, plans, programs, or suite of projects, and can effectively frame the scope of subsequent site- and project-specific Federal actions.” CEQ, *Effective Use of Programmatic NEPA Reviews*, p. 10 (2014) (Attachment 4). “A well-crafted programmatic NEPA review provides the basis for decisions to approve such broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities can be taken or identifying broad mitigation and conservation measures that can be applied to subsequently tiered reviews.” *Id.* Additionally:

Programmatic NEPA reviews may also support policy- and planning-level decisions when there are limitations in available information and uncertainty regarding the timing, location, and environmental impacts of subsequent implementing action(s). For example, in the absence of certainty regarding the environmental consequences of future proposed actions, agencies may be able to make broad program decisions and establish parameters for subsequent analyses based on a programmatic review that adequately examines the reasonably foreseeable consequences of a proposed program, policy, plan, or suite of projects.”

Id. at 11. In other words, just because future gas infrastructure projects may be theoretical does not mean that FERC would not be able to “establish parameters for subsequent analyses.” In fact, this may assist FERC (and the public) in understanding the broader reasonably foreseeable

consequences of jurisdictional projects and non-jurisdictional gas drilling in the Marcellus and Utica shale formations.

The 2014 Guidance recommends preparing a programmatic EIS when “several energy development programs proposed in the same region of the country [have] similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document.” *Id.* at 21. Additionally, CEQ says that “broad Federal actions may be implemented over large geographic areas and/or a long time frame” and “must include connected and cumulative actions, and the responsible official should consider whether it is helpful to include a series or suite of similar actions.” *Id.* at 22.

According to CEQ, the benefit of a programmatic EIS is obvious:

When the public has a chance to see the big picture early it can provide fresh perspectives and new ideas before determinations are made that will shape the programmatic review and how those determinations affect future tiered proposals and NEPA reviews. Early outreach also provides an opportunity to develop trust and good working relationships that may extend throughout the programmatic and subsequent NEPA reviews and continue during the implementation of the proposed action.

Id. at p. 25 (citations omitted). Furthermore:

Programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning, best management practices, and standard operating procedures, as well as monitoring strategies into the Federal policymaking process at a broad or strategic level. These analyses can promote sustainability and allow Federal agencies to advance the nation’s environmental policy as articulated in Section 101 of NEPA.

By identifying potential adverse impacts early during the broad programmatic planning, programmatic NEPA reviews provide an opportunity to modify aspects of the proposal and subsequent tiered proposals to avoid or otherwise mitigate those impacts. A thoughtful and broad-based approach to planning for future development can include best management practices, standard operating procedures, adaptive management practices, and comprehensive mitigation measures that address impacts on a broad programmatic scale (e.g., program-, region-, or nation-wide).

Id. at 35. All of this supports the need for FERC to prepare a programmatic EIS for natural gas infrastructure and gas development in the Marcellus and Utica shale formations so that the public has a chance to see the big picture.

According to the Energy Information Administration (“EIA”), there at least 57 natural gas infrastructure projects that have either recently been put into service or are either in the planning stage or under environmental review in the Northeast, Midwest, and Southeast. EIA, Today in Energy, *Some Appalachian natural gas spot prices are well below the Henry Hub national benchmark*, Oct. 15, 2014, available at <http://www.eia.gov/todayinenergy/detail.cfm?id=18391> (Attachment 5) (Note: scroll to bottom of page and click on the link titled “Several pipeline projects are underway” for a spreadsheet listing the 57 pipeline projects. The spreadsheet is included as a PDF in Attachment 6). Of these 57 pipeline projects, 56 are dedicated to transporting Marcellus and/or Utica shale gas away from states like Pennsylvania. *See* Attachment 6. This is an enormous expansion of the natural gas pipeline system and much of it is due to gas drilling in the Marcellus and Utica shale formations.

For example, in 2013, EIA stated that although natural gas pipeline capacity investment had slowed in 2012:

Limited capacity additions were concentrated in the northeast United States, mainly focused on removing bottlenecks for *fast-growing Marcellus shale gas production*. *More than half of new pipeline projects that entered commercial service in 2012 were in the Northeast.*

EIA, Today in Energy, *Over half of U.S. natural gas pipeline projects in 2012 were in the Northeast*, Mar. 25, 2013, (emphasis added) available at

<http://www.eia.gov/todayinenergy/detail.cfm?id=10511> (Attachment 7). In December 2014, EIA stated:

Spurred by growing natural gas production in Pennsylvania, West Virginia, and Ohio, the natural gas pipeline industry is planning to modify its system to allow bidirectional flow to move up to 8.3 billion cubic feet per day (Bcf/d) out of the Northeast. . . . In addition to these bidirectional projects in the Northeast, the industry plans to expand existing systems and build new systems to transport natural gas produced in the Northeast to consuming markets outside the region.

EIA, Today in Energy, *32% of natural gas pipeline capacity into the Northeast could be bidirectional by 2017*, Dec. 2, 2014, available at

<http://www.eia.gov/todayinenergy/detail.cfm?id=19011>. It is clear that there is broad Federal action being implemented over a large geographic area and that natural gas infrastructure projects have similar proposed methods of implementation and similar best practice and mitigation measures. Therefore, FERC must prepare a programmatic EIS.

Finally, case law supports the preparation of a programmatic EIS in appropriate circumstances. In *Kleppe v. Sierra Club*, the Supreme Court recognized that NEPA may mandate a comprehensive EIS “in certain situations where several proposed actions are pending at the same time.” 427 U.S. 390, 409 (1976). Further, the Court noted that:

when several proposals. . . . that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental impacts must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.

Id. at 410.

Appellate courts have also defined a two-pronged inquiry to establish whether a programmatic EIS is appropriate: (a) Could the programmatic EIS be sufficiently forward looking to contribute to the decisionmakers’ basic planning of the overall program? and, (b) Does the decisionmaker purport to ‘segment’ the overall program, thereby unreasonably constricting the scope of primordial environmental evaluation?” *Churchill County v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001) (citing *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677

F.2d 883, 889 (D.C. Cir. 1981)). See also *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985). Here, a programmatic EIS would be sufficiently forward looking to contribute to FERC's (and the public's) basic understanding of the true scope of the current and reasonably foreseeable build-out of gas infrastructure to connect the Marcellus and Utica shale formations to market areas. With respect to the second prong, FERC cannot escape the existence of a comprehensive program with cumulative environmental effects by "disingenuously describing it as only an amalgamation of unrelated smaller projects." *Churchill County*, 276 F.3d at 1076 (citing *Nat'l Wildlife Fed'n*, 677 F.2d at 890).

In *City of Tenakee Springs*, the court held that:

Where there are large scale plans for regional development, NEPA requires both a programmatic and site-specific EIS. See *City of Tenakee Springs*, 778 F.2d at 1407 (citations omitted). This court has held that where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS. See *LaFlamme v. Federal Energy Regulatory Commission*, 852 F.2d 389, 401-02 (9th Cir. 1988). There, emphasizing the likelihood of future development, the court remanded to [FERC] for further consideration of cumulative impacts because the agency had examined single projects in isolation without considering the net impact that all the projects in the area might have on the environment. See *LaFlamme*, 852 at 401-03.

915 F.2d at 1312. As will be explained below, there are clearly large-scale plans for regional development of gas infrastructure to facilitate transmission of Marcellus and Utica shale gas to market areas. FERC, therefore, must prepare a programmatic EIS that considers the regional impacts of such development.

B. FERC is engaged in regional development and planning with the gas industry.

FERC has previously claimed that it does not have an "official policy" to "increase the nation's reliance on natural gas" and that it merely "considers individual proposed infrastructure projects on their own merits, pursuant to its statutory obligation under NGA section 7(c)."

Columbia Gas Transmission, 149 FERC ¶ 61,255 at P 123 (Dec. 18, 2014). This is

disingenuous, at best. As stated above, FERC participated in the development of the National Petroleum Council's *Prudent Development* report, which stresses the need to increase natural gas infrastructure. Moreover, FERC's *FY2014-2018 Strategic Plan* identifies the approval of natural gas infrastructure, including pipelines, as a specific "goal" over the next several years.

Additionally, FERC has recently initiated several docket proceedings related to the coordination of the natural gas and electricity markets. See *Coordination Between Natural Gas and Electricity Markets* (Docket No. AD12-12-000); *Coordination of the Scheduling Processes of Natural Gas Pipelines and Public Utilities* (Docket No. RM14-2-000); *Order Initiating Investigation into ISO and RTO Scheduling Practices*, 146 FERC ¶ 61,202 (Docket Nos. EL14-22 et seq.); and *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (Docket No. RP14-442). FERC explained that "since natural gas is expected to be relied on much more heavily in electricity generation, the interdependence of these industries merits careful attention." *Coordination Between Natural Gas and Electricity Markets* (Docket No. AD12-12-000, Accession No. 20120215-3066). In ordering further conferences and reports, FERC highlighted the "growing concern regarding natural gas-electric interdependencies and in particular whether the natural gas and electric industries are prepared to work together seamlessly in an environment of increasing reliance on the use of natural gas as a fuel for electric generation." *Coordination Between Natural Gas and Electricity Markets*, 141 FERC ¶ 61,125 at P 1 (Nov. 15, 2012). One of the issues that "spurred significant discussion and concern" was "whether electric market incentives are adequate to ensure gas-fired generator performance or otherwise signal the need for pipeline infrastructure to meet growing needs." *Id.* at P 3, n. 2.

Since FERC's order in Docket No. AD12-12, FERC staff has produced several quarterly reports providing updates on "national and regional Gas-Electric Coordination Activities." See

e.g., Gas-Electric Coordination, Quarterly Report to the Commission, p. 1 Sept. 18, 2014

(Docket No. AD12-12-000; Accession No. 20140918-3029). According to this report:

The Eastern Interconnection Planning Collaborative (EIPC) is now working on the Target 2 study, which will evaluate the adequacy of the natural gas infrastructure in 2018 and 2023 to meet the expected core load and non-core gas-fired generation requirements on a Winter Peak Day and a Summer Peak Day. Work is focused on finalizing the second set of natural gas and electricity market assumptions on core and non-core demand levels such as *infrastructure expansions*, load growth, LDC expansion, and oil-to-gas conversion for Target 2 model inputs....

....The ICF-led study on Long-term Electric and Natural Gas Infrastructure Requirements in the Eastern Interconnection, prepared for NARUC and the Eastern Interconnection States Planning Council (EISPC), examines the potential build-out of natural gas infrastructure required to supply power and gas customers to 2030 under three demand and policy scenarios for the power sector in the Eastern Interconnect region. *The preliminary study results presented in September find that the overwhelming factor driving natural gas infrastructure development is the demand for electricity.*

Id. at pp. 5-6 (emphasis added). FERC staff then highlights “relevant natural gas filings” (pp. 15-17) and “relevant electric filings” (pp. 18-19). Thus, it is clear that the backbone of FERC’s “Coordination Between Natural Gas and Electricity Markets” is ensuring there is sufficient gas infrastructure in place to meet future demand for electricity. In other words, FERC is deeply engaged in long-term regional development and planning with the natural gas and electric industries.

Industry comments in Docket No. RM14-2-000 shed further light on FERC’s involvement in regional gas infrastructure development and planning. For example, according to the Independent Oil & Gas Association of West Virginia:

As the Marcellus and Utica Shale formations in West Virginia, Pennsylvania, and Ohio have been developed over the past five years, many of the interstate pipeline expansion projects have been backed by producers who have entered into long-term firm transportation agreements to ensure that their natural gas reaches the marketplace demanding new or geographically more attractive supplies. IOGA encourages power generators or others that may not hold firm capacity to link up with natural gas producers and marketers with supply and capacity to structure capacity release and supply deals that will provide them with the energy services and reliable supply required by the electric

transmission grid...In IOGA's view, suppliers and traditional firm purchasers have and will continue to step forward and support new pipeline capacity projects to move gas to market and ensure reliability[.]

Comments of IOGA of West Virginia at 7 (Docket No. RM14-2-000, Accession No. 20141128-5093). According to the Natural Gas Supply Association: ("NGSA")

*As FERC and industry participants address transitional issues of increased reliance on natural gas by the power sector, the natural gas industry's achievement in serving the power sector's substantial growth in natural gas demand cannot be overlooked. Because the United States is blessed with an abundant supply of clean-burning natural gas, and new technologies to develop shale gas, growth in natural gas production has been enormous. Over the past decade alone, production has increased by approximately 43 percent; growing from nearly 50 Bcf/d in 2005 to 71 Bcf/d projected for 2015. In fact, production has increased by 28 percent in just the past five years, allowing gas sellers to accommodate the 25 percent growth in power generation demand in the same timeframe. However, to take full advantage of these abundant new supplies, additional gas infrastructure **must be in place** to transport and store natural gas from the wellhead to the point of consumption.*

Comments of NGSA at 3-4 (Docket No. RM14-2-000, Accession No. 20141128-5031)

(emphasis added). According to comments submitted on behalf of the Environmental Defense Fund, Conservation Law Foundation, The Sustainable FERC Project, and Clean Energy Group:

Better price signals coming from shorter duration gas-for-electric generation services will call forth competitive offerings in shorter term capacity release, third-party and pipeline no-notice services, and incremental pipeline expansions (e.g., looping and compression) which will institutionalize such sub-day services.

Comments of EDF, *et al.* at 19 (Docket No. RM14-2-000, Accession No. 20141128-5097)

(emphasis added).

According to PJM Interconnection's 2013 annual report, its transmission system "is clearly undergoing an extraordinary transition as many coal-fired power plants retire and more natural gas-fired plants are built." PJM 2013 Annual Report, p. 8 (Attachment 8). PJM further explained that:

PJM and other grid operators, along with the gas industry and regulatory agencies, are carefully examining the gas/electric interface to identify issues and develop

solutions....In a major initiative *with Department of Energy funding*, six grid operators partnered to analyze the *natural gas infrastructure* serving a large portion of the Eastern Interconnection. They are PJM, the Midcontinent ISO, ISO-New England, the New York ISO, the Tennessee Valley Authority and the Ontario Independent Electricity System Operator.

The study is being coordinated by the Eastern Interconnection Planning Collaborative, the umbrella organization for electric grid planning activities in the Eastern Interconnection.

Id. at pp. 22 (emphasis added).

It is beyond dispute that FERC is engaged in long-term regional gas infrastructure planning and development related to the Marcellus and Utica shale formations. The Department of Energy, FERC's parent department (42 U.S.C. § 7171), funded a "major initiative" to "analyze the natural gas infrastructure serving a large portion" of the areas where Marcellus and Utica shale gas are being and will increasingly be delivered as the government and industry work to increase coordination between the gas and electric industries. The network of recently constructed, planned and proposed projects reveals an urgent need for a forward-looking comprehensive EIS that thoroughly evaluates all environmental impacts together in a single document.

When FERC claims that it only reviews individual proposals, it obfuscates its active participation in this large-scale planning to build out infrastructure in order to increase takeaway capacity from the Marcellus and Utica shale formations. FERC also avoids meaningfully analyzing the direct, indirect and cumulative effects on this region as a whole, including the impacts of Marcellus and Utica shale gas development.² FERC also substantially limits the

² The fact that gas drilling activities are not regulated by FERC is irrelevant since FERC must consider these cumulative impacts "regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. Indeed, CEQ emphasizes that "all NEPA reviews," regardless of whether it is a site-specific review or a programmatic review, are concerned with reasonably foreseeable cumulative impacts (as well as direct and indirect

development and consideration of reasonable alternatives to natural gas as a supply for electric generation. Therefore, FERC must prepare a programmatic EIS that addresses 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.

The benefits of preparing a programmatic EIS may best be demonstrated by two recent examples. In 2005, the Corps, EPA, Department of Interior's Office of Surface Mining, U.S. Fish & Wildlife Service, and West Virginia Department of Environmental Protection published a "Mountaintop Mining / Valley Fills in Appalachia Final Programmatic Environmental Impact Statement" ("Mountaintop Mining PEIS"). *See* EPA, Mid-Atlantic Mountaintop Mining, *available at* <http://www.epa.gov/region3/mtntop/eis2005.htm>. The Mountaintop Mining PEIS evaluated options for "improving agency programs" under the Clean Water Act (CWA), Surface Mining Control and Reclamation Act (SMCRA) and the Endangered Species Act (ESA) in order to "reduc[e] the adverse environmental impacts of mountaintop mining operations and excess spoil valley fills [] in Appalachia." Mountaintop Mining PEIS at 1. The Mountaintop Mining PEIS was "designed to inform more environmentally sound decision-making for future permitting" of mountaintop removal coal mining in Appalachia and included "a substantial amount of environmental and economic data" that provided "much valuable information [to] assist [the] respective agencies to better coordinate the review necessary under each agency's mandates." *Id.* According to the preparers, the results of preparing the Mountaintop Mining PEIS would "contribute to more efficient decision-making by coordinating data collection and environmental analyses by the respective agencies, resulting in better permit decisions on a

effects). CEQ, *Effective Use of Programmatic NEPA Reviews*, p. 23 (2014). CEQ further says that one of the benefits of a programmatic review is that "impacts can often be discussed in a broad geographic and temporal context with particular emphasis on cumulative impacts." *Id.* at p. 33.

watershed basis.” *Id.* Importantly, the Mountaintop Mining PEIS analyzed “the scope of remaining surface-minable coal in the study area,” which included the states of Kentucky, West Virginia, Tennessee, and Virginia. *Id.* at III.o-1 (Attachment 9).

Another recent programmatic EIS further demonstrates why FERC should prepare one for gas infrastructure related to the Marcellus and Utica shale formations. In July 2012, the Department of Energy and Bureau of Land Management (“BLM”) published a final programmatic EIS for Solar Development in southwest United States. See BLM, Final PEIS for Solar Energy Development in Six Southwestern States, available at <http://solareis.anl.gov/documents/fpeis/index.cfm>. According to the Executive Summary:

This document was prepared by the [BLM] and [DOE] as co-lead agencies (Agencies). The BLM and DOE prepared this document in consultation with cooperating agencies and in accordance with [NEPA], as amended; the [CEQ], DOE, and Department of the Interior regulations implementing NEPA (40 CFR Parts 1500-1508, 10 CFR Part 1021, 43 CFR Part 46); and the Federal Land Policy and Management Act of 1976, as amended.

Solar FPEIS, Executive Summary at Cover Page (Attachment 10). For DOE, the Solar FPEIS “includes the evaluation of developing new guidance to further facilitate utility-scale solar energy development and maximize the mitigation of associated environmental impacts.” *Id.* at ES-1.

Finally, it is important to note that FERC unwittingly bolters the case for preparing a programmatic EIS. In responding to Allegheny’s arguments about the reasonable foreseeability of Marcellus and Utica shale gas drilling, FERC tries to distinguish the Ninth Circuit’s decision in *Northern Plains* from the AIM Project. According to FERC:

Northern Plains is distinguishable because, as part of an earlier, programmatic EIS, the Bureau of Land Management had already analyzed reasonably foreseeable [coal bed methane] well development, which provided the Surface Transportation Board with information about the timing, scope, and location of future CBM well development.

Here, the Commission has no similar information in the present case about the timing, location, and scope of future shale (or conventional) well development in the project area.

Order at P 126. First, Allegheny does not believe that FERC must wait for a programmatic EIS to be completed before it can analyze the environmental impacts of reasonably foreseeable gas drilling in the Marcellus and Utica shale formations. But, more importantly, FERC's rationale for allegedly "distinguishing" the situation here from *Northern Plains* actually supports the case for preparing a programmatic EIS. As FERC acknowledges, because "an earlier, programmatic EIS . . . had already analyzed reasonably foreseeable CBM well development," the Surface Transportation Board had information "about the timing, scope, and location of future CBM well development." Here, not only does FERC refuse to consider gas drilling in the Marcellus and Utica shale formations as "reasonably foreseeable" because it does not know the "exact location, scale, scope and timing" of future drilling, but it refuses to do anything to ascertain that information.

These programmatic EISs demonstrate that FERC is clearly capable of performing a similar analysis in relation to infrastructure projects that are connecting Marcellus and Utica shale gas supplies to market areas. FERC's failure to prepare a programmatic EIS for infrastructure projects targeting the Marcellus and Utica shale formations is arbitrary and capricious. More importantly, by failing to look at the impacts of infrastructure projects on a regional level, there is no baseline for FERC to measure impacts of future site-specific projects. The failure to look at the AIM Project and other projects increasing the takeaway capacity from the Marcellus and Utica shales is demonstrated by the information provided above as well as the maps in Attachment 11. Each map represents a jurisdictional project that FERC has reviewed in recent years and each project is specifically related to Marcellus and Utica shale gas

development. FERC cannot continue to ignore these regional impacts. FERC should withdraw its Order and stay all current proceedings until it completes a programmatic EIS.

III. CONCLUSION

FERC must withdraw the Order, FEIS and all authorizations to proceed with construction activities. FERC should at least prepare a supplemental EIS for the AIM Project and take a hard look at the direct, indirect and cumulative impacts of the Project. FERC must consider Marcellus and Utica shale gas drilling as both an indirect and cumulative effect of the Project. Such drilling is an indirect effect because it is both causally related to the Project and is reasonably foreseeable. Such drilling is also a cumulative effect and cannot be ignored because of an arbitrary “region of influence” that serves to substantially restrict the geographic scope of the analysis area so as to eliminate consideration of relevant cumulative impacts. FERC must also consider other connected, cumulative and similar actions, including the Atlantic Bridge and Northeast Access Projects. FERC must also prepare a separate programmatic EIS that addresses natural gas infrastructure projects that are targeting the Marcellus and Utica shale formations to increase takeaway capacity. No site-specific jurisdictional projects should be authorized until that programmatic EIS is completed.

Dated: April 1, 2015

Respectfully submitted,

/s/ Ryan Talbott

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I, Ryan Talbott, hereby certify that I have this day served the foregoing document upon each person designated on this official list compiled by the Secretary in this proceeding.

Dated: April 1, 2015

Respectfully submitted,

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