



STOP THE ALGONQUIN PIPELINE EXPANSION!

29 Highland Rd.
Rye, NY 10580

September 27, 2014

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1
Washington, DC 20426

**RE: Algonquin Incremental Market (“AIM”) Project:
FERC Docket No. CP14-96-000**

Dear Secretary Bose:

Please accept the following comments on behalf of Intervenor Stop the Algonquin Pipeline Expansion (“SAPE”), on the Draft Environmental Impact Statement (“DEIS”) for the proposed Algonquin Incremental Market (“AIM”) Project (“Project”), particularly as it affects the counties of Rockland, Westchester and Putnam in New York State. As an Intervenor in these proceedings, SAPE urges the Federal Energy Regulatory Commission (“Commission” or “FERC”) to withdraw the DEIS and take no further action on the application until all of the matters set forth in these comments are addressed in a revised DEIS.

For the reasons explained below, the DEIS is inadequate as a National Environmental Policy Act (“NEPA”) document and a revised DEIS must be prepared with a new period for review and public comment on the proposed project to ensure that the Commission satisfies its obligations under NEPA.

I. The Time Period Designated to Submit Comments on the DEIS is Wholly Insufficient, Violates the Public Right to Meaningful Participation, and is Contrary to the Express Purpose of NEPA

While SAPE appreciates the additional nine (9) days that the Commission has given to the public for comment—extending the original comment period from August 6, 2014 to September 29, 2014—a comment period of just over fifty (50) days is still wholly insufficient time to properly review the DEIS and provide substantive and useful comment given the enormity and complexity of the proposed Project. The Commission should have at least doubled the comment period for a project of this scale. The DEIS

and its exhibits total well over 1,000 pages—including appendices—and discuss complex technical and scientific information, including engineering, ecological and environmental studies and data upon which the Commission relies to justify its conclusions.

To meet the proposed Project’s goals, the public should be provided appropriate time to allow for meaningful review of this lengthy DEIS with all its complexity. In that way, the public can adequately assess the study of methodologies, assumptions made and conclusions made before providing the type of meaningful comments to the Commission that NEPA expects. SAPE notes that a coalition of elected officials¹ recently sent a letter to the Commission requesting that the DEIS be withdrawn and a revised DEIS be released when all the missing information is complete, and that a ninety (90) day public comment period commence at that time.

Further, for many who attended the scheduled public meetings over the past week, the meetings represented the only opportunity to have their voices heard on their legitimate concerns regarding the proposed Project. The limited amount of time provided to the public for comment on the DEIS suggests that the Final EIS has already been written and that the Commission is merely going through the motions to create an illusion of meaningful public participation.

II. The DEIS is Grossly Incomplete and Premature

Virtually no aspect of the DEIS is complete; its deficiencies are pervasive and substantial. Taken together they deprive the public of a meaningful opportunity to comment on the proposed plans and fail to impose enforceable mitigation prior to permitting. Significant omissions addressed in the DEIS include, but are not limited to, the following:

- Final conclusion on safety-related conflicts with the Indian Point Energy Center (“IPEC”) not provided (Section 4.12.3);
- Field Sampling Plan for potential soil contamination not provided (Section 4.2.2.6);

¹¹ To date, the list of politicians that have signed-on to that letter requesting additional time to review and comment on the DEIS includes, but is not limited to: New York State Senator Andrea Stewart-Cousins; New York State Senator George Latimer; Assemblyman Tom Abinanti; Assemblyman David Buchwald; Assemblywoman Sandy Galef; Assemblywoman Shelley Mayer; Assemblyman Steve Otis; Westchester Legislator Catherine Borgia; Westchester Legislator Peter Harckham; Westchester Legislator Michael Kaplowitz; Westchester Legislator Catherine Parker; Westchester Legislator MaryJane Shinsky; Westchester Legislator Lyndon Williams; Putnam Legislator Carl Albano; Putnam Legislator Sam Oliverio; Rockland Legislator Harriet Cornell; Buchanan Mayor Theresa Knickerbocker; Cortlandt Town Supervisor Linda Puglisi; Peekskill Mayor Frank Catalina; Buchanan Town Board Member Duane Jackson; Cortlandt Town Board Member Debbie Costello; Cortlandt Town Board Member Seth Freach; Peekskill City Council Member Drew Claxton; Peekskill City Council Member Kathleen Talbot; Peekskill City Council Member Vinnie Vesce; North Salem Town Board Member Amy Rosmarin; Ossining Town Board Member Victoria Gearity; Yorktown Town Board Member Nick Bianco; Yorktown Town Board Member Visnu Patel.

- Insufficient analysis of impacts to vernal pools in New York (Section 4.4.3.2);
- Non-saturated wetlands not identified (Section 4.4.4);
- Compensatory Mitigation Plan not prepared (Section 4.4.5);
- Tree survey of Harriman State Park not complete (Section 4.6.1.5);
- Alternatives for the Hudson River crossing not prepared (Section 4.4.3);
- Final plans for the Catskill Aqueduct crossing not developed (Section 4.3.2.1);
- Plans for to address trench dewatering not developed (Section 4.3.2.6);
- Survey for the presence of the Indiana bat not complete (Section 4.7.1.2);
- Survey for the presence of the northern long-eared bat not complete (Section 4.7.1.3);
- Incomplete information on impacts to migratory birds (Section 4.7.2);
- Incomplete information on impact to bald eagles (Section 4.7.3);
- Survey for the presence of Timber Rattlesnakes not complete (Section 4.7.5.1);
- NYSDOS approval of consistency assessment for Hudson Crossing (Section 4.8.4.1);
- Design modifications for New York M&R stations not complete (Section 4.11.1.2);
- Site Specific construction plan for St. Patrick Church not provided (Section 4.8.5.1);
- Site Specific construction plan for Buchanan-Verplanck Elementary not provided (Section 4.8.5.1).

These omissions go to the very heart of the question of whether the proposed Project can or should be constructed. By providing a wholly incomplete DEIS for public comment, FERC has put the public and members of SAPE in an uncertain position. Undoubtedly, the permitting of this Project should not be considered further until all of the documents and information identified on the face of the DEIS are completed and made available for review and public comment. Until this occurs, the DEIS is premature and must be withdrawn.

III. The Project Poses A Significant Threat to Public Health and Safety.

The transmission of highly flammable natural gas creates significant risks of loss of life and major property damage. The greatest hazard is a fire or catastrophic explosion following a major pipeline rupture. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration reports that in the past 20 years alone, on-shore gas transmission incidents have caused 41 fatalities, 195 injuries requiring in-patient hospitalization and over \$1.7 billion in property damage.²

Safety is of paramount concern to SAPE members because the proposed Project plans to replace an existing 26-inch diameter pipeline with 42-inch diameter high-pressure pipelines and to add an additional 42-inch diameter high-pressure segment across the Hudson River entering a highly populated, high risk area in Cortlandt, New York in Westchester County. As a result, the Project will allow significantly greater amounts of combustible natural gas to flow through the infrastructure, thereby presenting greater risk of hazard to the public.

FERC's conclusion that the Project will have no significant environmental impacts is unsupportable where virtually no aspect of the DEIS is complete. The public has the right to know with certainty what environmental impacts of the proposed Project will be. This is particularly true where the Project raises significant health and safety concerns that have not been sufficiently addressed in the DEIS.

A. Indian Point Energy Center ("IPEC") ("Indian Point")

A site that is of particular concern to SAPE members is the Indian Point Energy Center ("IPEC") ("Indian Point") in Buchanan, New York, located in close proximity to the proposed Project route. There are three existing gas pipelines that run under the Hudson River in Algonquin's Right-of-Way and abut the IPEC security barrier. The proposed route of the new 42-inch diameter high-pressure segment would be 0.5 miles south of the existing Right-of-Way, and would cross a portion of IPEC land less than a mile from the IPEC-protected security barrier around the main facility.

Title 10 to the Code of Federal Regulations ("C.F.R.") requires that nuclear power plants be appropriately protected against the dynamic effects and conditions that may occur outside the nuclear power plant. These events include the effects of explosion of hazardous material that may be associated with nearby industrial activities such as transportation routes such as pipelines. Since the Project's proposed route passes within the confines of the IPEC site the requirements of 10 C.F.R. §100.20 should have been considered in the DEIS.

Based almost entirely on data contained in Table 4.12.3-1 ("Existing or Potential Impact Range for the AIM Project"), the DEIS concludes that the proposed Project should not pose any new safety hazards to IPEC. However, this analysis falls short of

² Stakeholder Communications, US DEPT OF TRANS PIPELINE AND HAZ SAFETY ADMIN: <http://primis.phmsa.dot.gov/comm/reports/safety/SigPSI.html?nocache+970#ngtrans>.

adequately addressing the safety-related risk of a major failure of a high-pressure natural gas pipeline in close proximity to IPEC. This failure cannot be ignored where other publicly available evaluations of natural gas pipeline hazards have concluded that a 16-inch diameter natural gas pipeline (at 50 psi) posed an undue risk to a nuclear enrichment center.³ In light of these potential dangers, the proposed Project's 42-inch diameter pipeline (at 850 psi) plainly poses an unacceptable risk to IPEC.

While we are pleased that FERC has addressed its concern regarding a pipeline explosion near the IPEC facility, its analysis of the safety-related information in connection with the Project's proximity to IPEC is woefully inadequate. Notably, for example, Algonquin is still awaiting receipt of a Hazards Analysis being performed by Entergy. Without an opportunity to review that Hazards Analysis, Algonquin has not made any final conclusions with regard to the safety of its proposed pipeline in the vicinity of IPEC. The absence of final conclusions regarding potential safety-related conflicts with IPEC suggests at the very least that the proposed Project requires additional analysis. The DEIS also fails to fully consider the risk due to seismic activity in the project area and fails to fully analyze the adequacy of Algonquin's emergency response procedures to a major explosion in the vicinity of IPEC.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file its final conclusions regarding any potential safety-related conflicts with IPEC based on the Hazards Analysis currently being performed by Entergy. SAPE respectfully requests that at minimum, Algonquin must be *required* to file its final conclusions regarding those potential safety-related conflicts and that Algonquin must make all further communication regarding potential safety-related conflicts with IPEC available to the public for review and comment.

The absence of any complete information on potential safety-related conflicts with IPEC deprives the public of a meaningful opportunity to comment on the proposed Project. A Supplemental DEIS must be prepared for review and public comment to analyze potential safety-related conflicts with IPEC. *See* Section 4.12.3.

B. Existing/Unknown Contaminated Sites

It is anticipated that the Project will traverse parts of New York State that are in close proximity to existing hazardous sites and facilities. In New York alone, the DEIS identifies three properties where a release of contaminants occurred and had the potential to impact soils along the proposed pipeline route.

Potential contaminants that may be encountered in soils proximate to these facilities include VOCs, petroleum hydrocarbons, polychlorinated biphenyls and other industrial chemicals. Additional soil contamination along the proposed Project route may result from hazardous material or fuel spills during construction and/or those occurring before construction in pre-existing contaminated areas. However, Algonquin has not

³ *See, e.g.*, The Nuclear Regulatory Commission's 2004 hazard evaluation for the National Enrichment Facility (NEF) (Accession ML0424600718), *available online*.

even completed its inventory of locations where sampling may be necessary and has not provided details to FERC on the protocols for any such additional sampling.

Based on the foregoing, the DEIS *recommends* that prior to construction of the Project, Algonquin file a Field Sampling Plan for potentially contaminated sites that could be encountered during construction, including, but not limited to, the locations of all proposed sampling, the number of samples to be taken and how and where the samples will be analyzed. SAPE respectfully suggests that Algonquin be required to make all further communication regarding the development of its Field Sampling Plan for potentially contaminated sites in New York available to the public for review and comment.

The absence of complete information on potential soil contamination along the proposed Project route deprives the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze the Field Sampling Plan for potentially contaminated sites in New York. *See* Section 4.2.2.6.

IV. The Project Will Affect Numerous Unique Areas And May Cause Destruction of Significant Environmental Resources

An astounding number of unique resource areas will be adversely affected by the Project, which will cross through several critical environmental areas.

The proposed pipeline will cross the Hudson River, an American Heritage River, as well as Harriman State Park, the Blue Mountain Reservation, the Sylvan Glen Park Preserve, Cheesecote Mountain, the Washington-Rochambeau National Historic Trail and a Village Park in the Village of Buchanan. The proposed pipeline will cross water bodies located within sub-basin level watersheds of the Lower Hudson Watershed in Rockland, Westchester and Putnam Counties. These include crossings at the Minisceongo Creek, Cedar Pond Brook and Dickey Brook, which serve as cold- and warmwater fisheries.

The exceptional value of these unique resource areas cannot be disputed. American Heritage Rivers, including the Hudson River, are so designated because they have characteristics that render them distinctive or unique. The public lands and resources protected at the state level that will be adversely affected by the Project are no less remarkable. For example, the Haverstraw to Stony Point Take-up to Relay segment will affect approximately 15 acres of diverse forested land across a section of the Harriman and Sterling Forests in Rockland County, New York. These areas support a wide variety of flora and fauna.

A. Wetlands & Vernal Pools

Wetlands are areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support and under normal circumstances do support, a prevalence of vegetation typically adapted for live in saturated soil conditions. Wetlands are a source of significant biodiversity and serve a variety of functions including flood control, wildlife habitat, recreational opportunities, and improving water quality.

The Project will impact approximately 25 acres of wetlands and 7 vernal pools in New York State. The Project will result in 77 wetland crossings in New York alone. In particular, the Project will impact a large wetland system (B13-RLR-W3) between about MPs 0.8 and 1.0 of the Haverstraw to Stony Point Take-up and Relay segment and the 2 vernal pools in Cortlandt, New York that are located within the temporary construction area for the Project.

Project construction activities can affect wetland resources in many ways. During construction, the primary direct impact of the Project on wetlands in New York would be the short and long-term alteration of wetland vegetation. Other direct impacts associated with the Project could include changes in wetland hydrology and water quality. These disturbances could result in altered biological activities and chemical conditions that could affect the establishment of native vegetation. Secondary impacts could include reduced riparian buffers, disturbance to adjacent habitats and incremental fragmentation. Notwithstanding the identified impacts, the DEIS concludes that the Project would not result in adverse impacts on the functions of the wetlands.

Based on the foregoing, the DEIS *recommends* that prior to construction beginning in the vicinity of the 2 vernal pools in New York, Algonquin file revised site-specific crossing plans incorporating any additional avoidance or mitigation measures for the two vernal pools as required by state agencies. SAPE respectfully requests that Algonquin be *required* to make all further communication regarding site-specific crossing plans for the two vernal pools in New York available to the public for review and comment.

Algonquin's failure to provide site-specific plans with respect to the crossing of two vernal pools in New York means that the public has had no meaningful opportunity for comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze site-specific crossing plans incorporating any additional avoidance or mitigation measures for the two vernal pools in New York. *See* Section 4.4.3.2.

1. Non-Saturated Wetlands & Construction Right-of-Way Width

Algonquin's Erosion and Soil Control Plan ("E&SCP") stipulates that construction right-of-way width in wetlands be limited to 75 feet and that all additional

temporary work space should be located at least 50 feet from wetlands except where an alternative measures has been requested and approved by FERC.

Not surprisingly, Algonquin identified numerous areas (in Table 4.4.4-1) where it believed that the 75-foot right-of-way was insufficient to accommodate its wetland construction—and that a wider right-of-way was necessary. Without considering the full scope of the environmental impacts on these non-saturated wetlands and without providing data or methodology to support its determination the DEIS simply concludes that Algonquin’s modification requests for a wider right-of-way are justified. Further, the DEIS acknowledges that Algonquin’s E&SCP was not consistent with FERC Procedures with regard to construction in site-specific non-saturated wetland conditions.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file its final site-specific information regarding the location of those wetlands it believed would meet the criterion of non-saturated conditions at the time of construction. SAPE respectfully requests that Algonquin make all further information regarding the location of those wetlands it believed would meet the criterion of non-saturated conditions at the time of construction available to the public for review and comment.

Algonquin’s failure to provide any site-specific information regarding the location of non-saturated wetlands in its E&SCP deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any site-specific information regarding the location of wetlands believed to meet the criterion of non-saturated conditions at the time of construction. *See* Section 4.4.4.

2. Compensatory Mitigation Plan

The majority of the wetland impacts would be on PEM (Palustrine Emergent) and PSS (Palustrine Scrub-Shrub) wetlands, with only 17 acres of PFO (Palustrine Forested) wetland impacts. About 2.5 acres of PFO wetlands would be permanently converted to non-forested conditions as a result of the Project. Algonquin developed a Compensatory Mitigation Plan to provide compensatory mitigation for both temporary impacts and permanent conversion of wetlands to another cover type.

Even though the United States Army Corps of Engineers (“USACE”) NY District indicated what it would require in terms of on-site restoration for temporary wetland impacts and off-site mitigation for permanent conversion, Algonquin has not yet developed any final mitigation plan. Further, Algonquin has not even confirmed New York’s compensatory mitigation requirements for wetland impacts and has just assumed that the proposal submitted to the USACE NY District would be acceptable to the New York State Department of Environmental Conservation (“NYSDEC”). Notwithstanding these deficiencies, the DEIS concludes that impacts on most wetland resource would be minimal and would be temporary in duration.

Based on the foregoing, the DEIS *recommends* that prior to beginning construction in New York, Algonquin file its final Compensatory Mitigation Plan, developed in consultation with USACE and NYSDEC and file documentation of consultation with these agencies regarding the Compensatory Mitigation Plan. SAPE respectfully suggests that Algonquin must be *required* to make all further communication regarding development of its final Compensatory Mitigation Plan available to the public for review and comment.

Algonquin's failure to finalize a Compensatory Mitigation Plan deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any final Compensatory Mitigation Plan. *See* Section 4.4.5.

B. Harriman State Park – Site Specific Plan

Algonquin's existing right-of-way is currently recognized as existing scrub-shrub and open field wildlife habitats used by a variety of species inhabiting Harriman State Park and Blue Mountain Reservation.

Since Project construction is expected to have impacts on wildlife species that inhabit these habitats, Algonquin met with the Palisades Interstate Park Commission ("PIPC") in January 2014 to discuss the Project's impacts on Harriman State Park. As a result of the meeting, Algonquin agreed to conduct tree counts for the portions of the Project's pipeline construction located in the park to address compensation for tree removal. Algonquin still has not completed *any* tree surveys and continues to consult with the New York State Office of Parks Recreation and Historic Preservation ("NYSOPRHP") and PIPC.

Based on the foregoing, the DEIS *recommends* that, prior to construction of the Haverstraw to Stony Point Take-up and Relay segment, Algonquin file a site-specific plan for the Harriman State Park, including any avoidance or mitigation measures developed with the NYSORPH and PIPC. SAPE respectfully suggests that Algonquin be *required* to make all further communications with NYSORPH and PIPC regarding the site-specific plan for the Harriman State Park available to the public for review and comment.

The absence of any completed tree survey of Harriman State Park deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project as currently envisioned will have on Harriman State Park. *See* Section 4.6.1.5.

C. St. Patrick's Church (Verplanck, New York)

St. Patrick's Church is located in the hamlet of Verplanck, New York. The Stony Point Take-up and Relay segment of the pipeline is expected to cross church property. A

new easement would be required for this crossing as it deviates from the existing right-of-way. Without mitigation, project construction will result in significant adverse impacts to the church property. For example, the project will restrict church parking, interfere with access to the church, and result in noise and dust disturbances. Notably, however, Algonquin has not filed a site-specific construction plan for the church.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file a site-specific construction plan for the St. Patrick Church developed in consultation with church leadership. SAPE respectfully suggests that Algonquin be *required* to file its site-specific plan for the church property and to make all further communications regarding its site-specific construction plan for the St. Patrick's Church available to the public for review the public for review the public for review and comment.

The absence of any site-specific construction plan for the St. Patrick's Church deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on St. Patrick Church. *See* Section 4.8.5.1.

D. Buchanan-Verplanck Elementary School

The Buchanan-Verplanck Elementary School is a public elementary school serving about 300 people in Westchester County. The Stony Point to Yorktown Take-up and Relay segment of the Project would be located adjacent to the back portion of the school property between MPs 4.9 and 5.0.

The DEIS fails to adequately analyze the potential safety-related impacts of siting a 42-inch diameter high-pressure gas pipeline in close proximity to an elementary school. However, the DEIS acknowledges that, since construction activity could potentially coincide with the school year, construction noise and dust could cause a disturbance to school operations. SAPE suggests that such disturbances are, more likely, a certainty that is unacceptable both in terms of the impact on children's health and their studies.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file a site-specific construction plan for the Buchanan-Verplanck Elementary School developed in consultation with school management. SAPE respectfully suggests that Algonquin be *required* to file its site-specific construction plan and to make all further communications regarding that site-specific construction plan for the Buchanan-Verplanck Elementary School available to the public for review and comment.

The absence of a site-specific construction plan for the Buchanan-Verplanck Elementary School deprived the public and, more to the point, the parents of affected students attending the school, of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on St. Patrick Church. *See* Section 4.8.5.1.

E. Hudson River Crossing -- Horizontal Directional Drilling (“HDD”)

The Hudson River is the only major water body (greater than 100 feet wide) crossed by the pipeline. Algonquin plans to use the Horizontal Directional Drilling (“HDD”) crossing method at the Hudson River in New York.

In accordance with the prescribed (Delft Geotechnics) method, Algonquin completed a hydraulic fracture evaluation for the Hudson River HDD to estimate the maximum effective pressure (*i.e.*, drilling fluid pressure) that can be induced during a HDD operation within a particular soil. The results of the evaluation suggested that there exists a relatively high potential for hydraulic fracture in the soft sediments of the Hudson River HDD alignment. Despite the high risk of hydraulic fracturing using HDD, the DEIS concluded that the HDD method was an appropriate technique for installing the pipeline at the Hudson River crossing.

While the DEIS briefly assesses alternatives to the proposed route, it does so without providing any data to support its conclusion that the proposed route is the most suitable. Notably, Algonquin has not provided the Commission with a contingency plan that incorporates another location or another construction methodology for the Hudson River crossing. If the Project proceeds as planned and the HDD proves unsuccessful, Algonquin will have no alternative location or methodology identified in connection with the proposed Project’s largest water crossing. This is unacceptable.

Algonquin’s failure to develop a contingency plan that incorporates another location or another construction methodology for the HDD crossing of the Hudson River falls short of what is required under NEPA.

Algonquin’s failure to include an alternative location or methodology for the planned Hudson River crossing deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to fully examine any alternative plan considered by Algonquin for the HDD crossing of the Hudson River. *See* Section 4.4.3.

F. The Catskill Aqueduct Crossing

The proposed Stony Point to Yorktown Take-up and Relay segment crosses the Catskill Aqueduct. The Catskill Aqueduct is a part of the New York City water supply system. It brings water from the Catskill Mountains to Yonkers where it connects to other parts of the system.

As currently proposed, Algonquin would remove its existing 26” pipeline that currently crosses over the aqueduct and replace those removed section(s) with 42-inch diameter pipeline. Remarkably, however, Algonquin has still not finalized its planned crossing of the Catskill Aqueduct and is still in consultation with NYCDEP regarding the crossing and evaluating an alternative route that would relocate the segment to the south.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file a site-specific crossing plan for the Catskill Aqueduct developed in consultation with the NYCDEP, containing the location relative to the aqueduct, the construction methods, timing of construction and any mitigation measures to minimize impacts. SAPE respectfully suggests that Algonquin be *required* to file its site-specific crossing plan for the Catskill Aqueduct and to make all further communication regarding the development of a site-specific crossing plan for the Catskill Aqueduct developed in consultation with the NYCDEP available to the public for review and comment.

Algonquin's failure to finalize its planned crossing of the Catskill Aqueduct deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to fully examine the extent of any impacts of the planned Catskill Aqueduct crossing. *See* Section 4.3.2.1.

G. Trench Dewatering

Project construction activities could negatively affect water resources in many ways. During construction, open trenches may accumulate water, either from seepage or drainage. Where dewatering becomes necessary, the water would be removed and directed into well-vegetated uplands. However, Algonquin's Erosion and Soil Control Plan ("E&SCP") does not address the need to isolate shorter portions of trench to reduce the volume of water handled at one time.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file additional details describing how it would minimize trench dewatering as recommended by the NYSDEC and file documentation of its consultations with NYSDEC. SAPE respectfully suggests that Algonquin be *required* to file a report setting forth such additional details and to make all further communication regarding trench dewatering developed in consultation with the NYCDEC available to the public for review and comment.

Algonquin's failure to fully address trench dewatering and the need to isolate shorter portions of trench to reduce the volume of water handled at one time in its E&SCP deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on trench dewatering. *See* Section 4.3.2.6.

V. State of New York Parkland Alienation

The proposed Project will intrude onto parkland in the State of New York, including the Blue Mountain Reservation, the Sylvan Glen Park Reserve (note: Granite Knolls West is incorrectly considered the same as Sylvan Glen Park Reserve in the DEIS and they are not the same), Cheesecote Mountain and a Village Park in the Village of Buchanan.

New York law is well settled: dedicated park areas in New York are impressed with a public trust for the benefit of the people of the State. That proposition is reflected both in New York case law and in New York statutes. The leading New York decision on this issue is *Williams v. Gallatin*, 229 N.Y. 248 (1920), in which the Court of Appeals held that legislative approval is required when there is a substantial intrusion on parkland for non-park purposes. This requirement, moreover, exists regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored. Since *Williams*, New York courts have reaffirmed the principle that parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes.

Notwithstanding the still-binding legal precedent requiring legislative authorization, the Commission takes the opposite position: that the proposed Project would fall within recognized “*de minimis*” exceptions to the rule. Yet the cases cited by the Commission in support of its position are distinguishable from the facts here, in that each of those cases involved land that was found *not* to be parkland.

Respectfully, SAPE believes that the proposed Project as currently envisioned does not fall within any recognized *de minimis* exception and that the proposed Project requires legislative approval for its intrusions onto New York state parkland. In any case, the issue is not one for the parties or the Commission to decide; only a court can properly make such determination in accord with *Williams* and its progeny. See Section 4.8.5.1.

VI. The Project Will Have Cumulatively Significant Impacts on the Environment

NEPA mandates that a proper EIS include a full discussion of the cumulative impacts of a proposed project. See 40 C.F.R. §1508.25(a)(2); *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976) (“Cumulative environmental impacts are, indeed, what require a comprehensive impact statement”). An EIS must include the cumulative effects of projects if those projects are “interrelated and functionally interdependent” to the proposed action. *Stewart v. Potts*, 996 F.Supp. 668, 683 (S.D. Texas 1998). Courts have been very clear that projects must be evaluated together whenever “proceeding with one project, will, because of functional or economic dependence, foreclose options or irretrievably commit resources to future projects. *Fritiofson v. Alexander*, 772 F.2d 1225, 1241 n. 10 (5th Cir. 1985). Under 40 C.F.R. §1508.7, cumulative impacts are defined as:

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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The DEIS’s treatment of cumulative impact falls short of NEPA requirements. The DEIS fails to consider the full scope of impacts. It also assesses the identified impacts without providing any detailed or quantified data to support the analysis.

Finally, the DEIS impermissibly relies entirely on presumed compliance with permitting requirements and mitigation plans to justify its conclusion that most of the adverse impacts environmental impacts associated with the Project would be reduced to less than significant levels.

Although it includes a small section on cumulative impacts, the DEIS failed to consider the cumulative environmental impacts associated with the planned Atlantic Bridge Project and the Access Northeast Project. Remarkably, the DEIS failed to even mention the Access Northeast Project. Since the AIM Project, the Atlantic Bridge Project and the Access Northeast Project are connected actions and thus “interrelated and functionally interdependent,” the present DEIS does not suffice to analyze their cumulative effects. *Stewart*, 996 F.Supp. at 683.

The DEIS represents that “three types of projects (past, present and reasonably foreseeable projects) could potentially contribute to a cumulative impact when considered with the proposed AIM Project.” However, the DEIS fails to consider the full scope of connected and similar actions as well as the cumulative impacts arising from the full scope of those actions. *See* Section 4.4.3.2.

VII. The DEIS Improperly Segments the AIM Project from Connected Actions

One of the DEIS’s principle deficiencies is that it improperly segmented the AIM Project from other connected actions which are part of Spectra/Algonquin’s larger development plan to expand its existing pipeline system. Segmentation is a means of circumventing NEPA’s purpose by dividing a larger action into smaller proposed actions, thereby minimizing the environmental consequences of a larger plan by dividing it into several proposals for analysis in separate NEPA documents. *See Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1028 (10th Cir. 2002).

Indeed, Algonquin and its parent company, Spectra Energy, plan to modify other parts of its existing interstate pipeline system in expansions known as the Atlantic Bridge Project and the Access Northeast Project. While no formal applications have yet been filed, the DEIS acknowledges that the Atlantic Bridge Project would be similar in scope to the AIM Project and would involve facilities in the same region of influence. Nevertheless, the DEIS fails to consider the cumulative impacts of the Atlantic Bridge Project since it would “not occur at the same time” as the AIM Project and its details were unknown.

Remarkably, the DEIS makes no reference whatsoever to the Access Northeast Project, a \$3 billion dollar Spectra project that would expand the existing Algonquin pipeline from New Jersey through New York and Connecticut to Everett, outside of Boston. The Access Northeast Project is specifically intended to complement the AIM and Atlantic Bridge projects and would reportedly boost capacity on Spectra’s Algonquin (and Maritimes) pipelines by as much as 1 billion cubic feet a day, by installing new larger diameter pipelines on existing routes. FERC’s failure to analyze the Atlantic

Bridge Project and the Access Northeast Project as connected actions raises serious questions about the adequacy of the DEIS's cumulative impacts analysis.

As explained below, the Atlantic Bridge Project and the Access Northeast Project are clearly connected to the AIM Project, and thus must be reviewed, pursuant to NEPA, in the same EIS, particularly with regard to potential cumulative effects associated with the several projects. *See* 40 C.F.R. §1508.25(a).

To determine whether the AIM Project has been improperly segmented, the proper inquiry is whether the Atlantic Bridge Project and the Access Northeast Project are connected for the purposes of NEPA. Under 40 C.F.R. 1508.25(a)(1), actions are connected, meaning that they must be analyzed under the same EIS, if they:

- i) Automatically trigger other actions which may require environmental impact statements;
- ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or
- iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

The purpose for the rule against segmentation is to “prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, *but which collectively have a substantial impact.*” *Wilderness Workshop v. BLM*, 531 F.3d 1220, 1228(10th Cir. 2008) (emphasis added); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006). In other words, the rule prevents applicants and agencies from thwarting their NEPA obligations by improperly segmenting projects into smaller components in order to avoid considering their collective impact.

Under this definition, the AIM Project, the Atlantic Bridge Project and the Access Northeast Project are plainly connected actions that must be considered together under the same EIS. The primary collective purpose of these interdependent projects is to increase Spectra/Algonquin's existing pipeline capacity and to provide it access to growing natural gas supply and demand markets.

The fact that there is no formal application currently filed by Algonquin for the Atlantic Bridge Project or the Access Northeast Project should not preclude a finding that the NEPA process was unlawfully segmented. Algonquin should not be allowed to circumvent heightened environmental scrutiny by timing its applications to FERC in an effort to manipulate the NEPA process to avoid a cumulative impact analysis of its larger development plans.

In short, we believe that the AIM Project is a wholly arbitrary subdivision of a larger development project, apparently created for the purpose of thwarting NEPA review of the cumulative effects of the project in its entirety. The DEIS fails to evaluate the AIM Project in conjunction with the Atlantic Bridge Project and the Access Northeast Project even though the three projects are clearly connected and will unavoidably create a

greater cumulative effect than might be anticipated by a focused or limited review of any one of the interrelated segments.

In *Delaware Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. 2014), the D.C. Circuit recently applied NEPA's segmentation policy to a pipeline project. Giving considerable deference to the applicable NEPA regulations on segmentation (40 C.F.R. §1508.25), requiring federal agencies to consider the effect of "connected actions" and "similar actions" when carrying out their responsibilities under NEPA, the Court found that where four upgrades were "physically, functionally and financially connected and interdependent," they warranted a single NEPA analysis. We suggest that this analysis should be applied to the Project.

In light of the foregoing, we question why FERC would allow the AIM Project, the Atlantic Bridge Project and the Access Northeast Project to be submitted in a piecemeal fashion without a full analysis of their cumulative impacts. We urge FERC to reevaluate Spectra/Algonquin's overarching development plans to markedly expand its existing pipeline infrastructure in New York, Connecticut, Rhode Island and Massachusetts. By omitting from the DEIS any substantive discussion of the Atlantic Bridge Project and the Access Northeast Project, FERC has effectively failed to take into account the cumulative impacts of connected projects, and has thus acted contrary to NEPA and thwarted effective review by segmenting the AIM Project.

By failing to consider the Atlantic Bridge Project and the Access Northeast Project as interdependent pieces of Spectra/Algonquin's larger development plan to expand its existing pipeline infrastructure, FERC facilitated the unlawful segmentation of the AIM project.

The DEIS's failure to consider the cumulative impacts of the Atlantic Bridge and Access Northeast projects is not cured by its cursory treatment of twelve (12) other existing or proposed projects evaluated for potential cumulative impacts analysis. Notably, the DEIS fails to provide any substantive information about the additive impacts of those actions, and instead only provides brief descriptions of the actions in Table 4.13-1. Yet the information in Table 4.13-1 fails to provide anything substantive about the projects listed or any meaningful analysis of their potential for cumulative impacts.

As a result, the DEIS is inadequate in considering the combined environmental impacts of related existing and reasonably foreseeable pipelines within the Commission's jurisdiction, and a new EIS must be prepared that includes an analysis of the cumulative impacts of those projects, including the Atlantic Bridge Project and the Access Northeast Project.

A. Marcellus Shale – Natural Gas Development

Remarkably, the DEIS fails to address the effect of the Project together with the existing or reasonable foreseeable gas development activities, most notably hydraulic fracturing that has already been determined to have impacts on seismic activity. Instead, the DEIS omits any substantive discussion of foreseeable gas development, concluding

that the resources that may be affected by shale development would not be affected by the Project and the Project would not be affected by the development in the shale region.

On its face, this conflicts with NEPA policy and federal regulation, which require an analysis of the full range of a project's impacts "whether direct, indirect, or cumulative." (40 C.F.R. 1508.8). Under NEPA, indirect impacts are defined as those that occur "later in time or farther removed in distance" and may include

...growth inducing effects and other effects related to induced changes in the pattern of land use ... and related effects on air and water and other natural systems, including ecosystems. (40 C.F.R. §1508.8).

Despite this definition, the DEIS fails to address the indirect impacts of induced gas development, specifically the extent to which the presence of the proposed Project will encourage and facilitate the development of natural gas infrastructure. The DEIS also fails to consider how environmental impacts of the proposed Project may be cumulated with the impacts of gas development in the Marcellus shale region. FERC incorrectly limits its analysis to short- and long-term impacts resulting from construction of the proposed Project, ignoring the potential for future induced development of related infrastructure in New York.

Natural gas development in and around the pipeline's service area, extending into the Marcellus shale region, is a reasonably foreseeable consequence of the Project, and its effects must be considered as cumulative impacts. To the extent the DEIS considers Marcellus Shale activities, however, it fails to provide any quantified or detailed account of such activities, or consider their cumulative impacts.

While the DEIS includes a general acknowledgement that the Commission received numerous comments during the scoping for the Project about the cumulative impacts of natural gas development (including hydraulic fracturing) in the Marcellus shale region, it simply concludes, without discussion, that the local resources affected by natural gas development activities would not be affected by the Project since they would occur more than ten miles from the Project construction area, outside the sub-watersheds crossed by the Project, and outside the air quality control regions for the Project compressor stations.

The absence of any meaningful analysis in the DEIS regarding the cumulative impacts of natural gas development failed to take the requisite hard look at the environmental impacts of the proposed Project. A revised DEIS must be prepared to detail and analyze the cumulative impacts of natural gas development (including hydraulic fracturing) in the Marcellus shale region, including impacts from other reasonably foreseeable activities such as the construction of additional pipeline, access roads, compressor stations and other infrastructure. *See* Section 4.13

VIII. The Project May Adversely Affect Several Endangered and Threatened Species and Their Habitat

The U.S. Fish and Wildlife Service (“FWS”) identified seven federally listed threatened or endangered species that are known to be present in the Project area. For three of the seven species identified (the Indiana bat, Northern long-eared bat and New England Cottontail) the DEIS cited incomplete survey results. For surveys that do exist for the remaining species, the DEIS fails to describe the methodology used or to identify or analyze any data. Further, the DEIS repeatedly recognizes the loss of habitat or changes to other vegetation but fails to carefully examine the impact of those losses on endangered and threatened species.

A. Indiana Bat

The inadequacy of survey results is particularly apparent for the Indiana bat, a federally listed endangered species that may be impacted by the Project. Notably, the FWS identified a section of the Stony Point to Yorktown Take-up and Relay segment as having the potential to provide suitable summer habitat for the Indiana bat. Yet despite the likely presence of Indiana bats in the Project area, Algonquin has still not completed any survey of the area for bats.

While the DEIS states that Algonquin is in consultations with the FWS to *plan* surveys and develop and implement mitigation measures, the fact that there is still no complete survey of the Project in regard to this endangered species is astounding. Further, the DEIS fails to provide any meaningful analysis of the potential for habitat destruction. The incomplete survey results, lack of habitat destruction analysis and the lack of any suggested avoidance or mitigation measures, clearly demonstrate that the DEIS is inadequate.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file all survey results, any avoidance or mitigation measures developed in consultation with the FWS and a statement regarding Algonquin’s intent to comply with those measures.

FERC’s framing here as a mere “recommendation” what should be a necessary precondition casts doubt on whether measures to mitigate harms to the species in the project area will ever be undertaken. Although a segment of the Project has been identified as having the potential to provide suitable summer habitat for the Indiana bat, FERC has not received complete survey results, nor has it sufficiently addressed habitat destruction or mitigation measures to justify approval of this Project at this time. SAPE respectfully requests that Algonquin make all further communication regarding the Indiana bat developed in consultation with the FWS available to the public for review and comment.

Algonquin’s failure to have any completed survey of the Project area for the presence of the Indiana bat deprived the public of a meaningful opportunity to comment

on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on the Indiana bat. *See* Section 4.7.1.2.

B. Bog Turtle

The bog turtle is a federally listed threatened turtle that is potentially present within the Project area. Based on information from the FWS, bog turtles could be present in suitable wetlands along the proposed Southeast to MLV 19 Take-up and Relay segment in Putnam County, New York. Notably, consultation with the FWS identified a known bog turtle habitat within sixteen (16) miles of the proposed Project facilities in New York.

Although Algonquin completed surveys for bog turtles and identified a known bog turtle habitat in the vicinity of the Project area, the DEIS simply concludes without explanation that the Project would not likely affect the bog turtle.

Algonquin's failure to adequately explain its methodology in reaching a determination that bog turtles would not likely be affected by the Project deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on the bog turtle. *See* Section 4.7.1.2.

C. Northern Long-eared bat

The northern long-eared bat, currently proposed for federal listing as an endangered species, may be impacted by the Project. Yet despite the possibility that Northern Long-eared bats are present in the Project area, Algonquin has still not completed any survey of the area.

While the DEIS states that Algonquin will be conducting surveys in connection with this species at the same time as the surveys it plans for the Indiana bat (see above), the incomplete results clearly demonstrate that the DEIS is inadequate.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file its survey results, any avoidance or mitigation measures developed in consultation with the FWS and a statement regarding Algonquin's intent to comply with those measures.

FERC's framing here as a "recommendation" what should be a necessary precondition casts doubt on whether measures to mitigate harms to the species in the project area will ever be undertaken and if so, whether such measures will be effectively designed. Although Algonquin continues to consult with the FWS to assess the potential occurrence of the Northern long-eared bat in the Project area, FERC has not received complete survey results, nor has it sufficiently addressed habitat destruction or mitigation measures to justify approval of this Project at this time. SAPE respectfully suggests that

Algonquin be *required* to make all further communication regarding the Northern long-eared bat developed in consultation with the FWS available to the public for review and comment.

Algonquin's failure to have any survey completed of the Project area for the presence of the northern long-eared bat deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on the northern long-eared bat. *See* Section 4.7.1.3.

D. Migratory Birds

Potential impacts of the Project on migratory birds, including FWS Birds of Conservation Concern (BCC)-listed birds, would include temporary and permanent loss of habitat associated with the removal of existing vegetation during construction. Noise and other construction activities could also potentially affect foraging and breeding activities that occur during the nesting season. Migratory birds could also be affected by the operation and maintenance of the new facilities, including a reduction in habitat, potential increase in parasitic bird species, edge effects and ongoing disturbances associated with maintenance.

The Haverstraw to Stony Point Take-up and Relay segment of the Project as currently envisioned runs adjacent to and across the section of the Harriman and Sterling Forests' Important Bird Area (IBA) in Rockland County, New York. This diverse forested area supports a healthy representative breeding community of migratory birds which may be potentially harmed or disturbed by impacts associated with the Project, including tree removal and construction related disturbances.

While the DEIS outlines mitigation measures for Algonquin to implement to potentially minimize the proposed Project's impact on migratory birds, it states that the FWS is still reviewing the AIM Project for migratory bird impacts, and Algonquin is still in consultations with the FWS and NYSDEC. The absence of complete information as to the potential impacts of the Project on migratory birds demonstrates that the DEIS is incomplete.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file any updated consultations with the FWS Field Office in New York regarding migratory birds including and avoidance measures developed.

FERC's framing here as a "recommendation" what should be a necessary precondition casts doubt on whether effective measures to mitigate harms to the species in the project area will ever be undertaken. Although Algonquin continues to consult to assess the potential impact on migratory birds in the Project area, FERC has not received complete survey results, nor has it sufficiently addressed habitat destruction or mitigation measures to justify approval of this Project at this time. SAPE respectfully suggests that

Algonquin be *required* to make any further communication regarding migratory birds developed in consultation with the FWS available to the public for review and comment.

The absence of any final assessment by the FWS regarding the potential impact of the Project on migratory birds deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on migratory birds. *See* Section 4.7.2.

E. Bald Eagles

As of March 2013, adult and immature bald eagles were observed flying along the shorelines and hillsides of the Hudson River and an active nest was observed less than 3 miles from the Project. However, the DEIS does not include any substantive analysis of the impacts the Project would have on bald eagle habitats.

While the DEIS states that Algonquin is in consultation with the FWS and NYSDEC to discuss survey results and to develop and implement appropriate avoidance and mitigation measures to avoid impacts on bald eagles in the Project area, the absence of complete information on the bald eagle suggests that the DEIS is inadequate.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin file any updated consultations with the FWS and NYSDEC regarding bald eagles including and avoidance measures developed.

FERC's framing here as a "recommendation" what should be a necessary precondition casts doubt on whether measures to mitigate harms to the species in the project area will ever be undertaken. Although Algonquin continues its consultation to assess the potential impacts on bald eagles in the Project area, FERC has not received complete survey results, nor has it sufficiently addressed habitat destruction or mitigation measures to justify approval of this Project at this time. SAPE respectfully requests that Algonquin make any further communication regarding bald eagles developed in consultation with the FWS or NYSDEC available to the public for review and comment.

Algonquin's failure to assess the potential impacts on bald eagles in the Project area deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on bald eagles. *See* Section 4.7.3.

F. Timber Rattlesnakes

The timber rattlesnake is a state-listed threatened species that inhabits deciduous forest in rugged terrain. According to NYSDEC, timber rattlesnakes are known to be present along the Stony Point to Yorktown Take-up and Relay segment of the Project. Possible impacts to the timber rattlesnake include alteration of forested habitat and direct impacts including mortality. Since Algonquin would not be able to adhere to NYSDEC's

seasonal restrictions for timber rattlesnakes, the DEIS outlined additional measures to be implemented by Algonquin to mitigate impacts to rattlesnakes.

Yet despite the likely presence of timber rattlesnakes along the Project area, Algonquin has still not completed its survey for snakes or performed any included any analysis of habitat destruction.

While the DEIS states that Algonquin is engaged in consultation with the NYSDEC to identify potential existing habitats in construction work areas in Rockland County and determine proper mitigation measures, the fact that there is still no complete survey of the Project in regard to this state-listed threatened species is disturbing. In addition, the DEIS fails to provide any meaningful analysis of the potential for any habitat destruction.

Based on the foregoing, the DEIS *recommends* that Algonquin file any results for timber rattlesnakes habitat, permit requirements, and avoidance or mitigation measures developed in consultation with the FWS and NYSDEC regarding timber rattlesnakes.

FERC's framing here as a "recommendation" what should be a necessary precondition casts doubt on whether measures to mitigate harms to the species in the project area will ever be undertaken. Although Algonquin continues to consult to assess the potential impacts on timber rattlesnakes in the Project area, FERC has not received complete survey results, nor has it sufficiently addressed habitat destruction or mitigation measures to justify approval of this Project at this time. SAPE requests that Algonquin make any further communication regarding timber rattlesnakes developed in consultation with the FWS or NYSDEC available to the public for review and comment.

Algonquin's failure to have any survey completed of the Project area for the presence of timber rattlesnakes deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze any potential impact that the Project would have on timber rattlesnakes. *See* Section 4.7.5.1.

G. Coastal Zone Management

The Stony-Point to Yorktown Take-up and Relay segment crosses the coastal zone management area associated with the Hudson River in the Town of Stony Point and in the City of Peekskill. The Project plans to cross the Hudson River using the HDD method to avoid impacts on aquatic resource and potential impacts on critical environmental areas.

Algonquin filed its consistency assessment application with the New York State Department of State ("NYSDOS") in February 2014 describing how the Project would be consistent with state coastal policies as well as policies of the town approved waterfront revitalization programs. To date, however, NYSDOS has yet to approve Algonquin's consistency assessment application.

Since NYSDOS has not yet concurred with Algonquin's consistency assessment application, the DEIS fails to address whether or not the Project would or would not be consistent with the above mentioned coastal zone management policies to justify approval of this Project at this time.

Based on the foregoing, the DEIS *recommends* that Algonquin file documentation of concurrence from the NYSDOS that the Hudson River crossing is consistent with New York coastal policies, including the Stony Point and Peekskill waterfront revitalization plans. SAPE requests that Algonquin be *required* to make any further communication regarding concurrence from the NYSDOS that the Hudson River crossing is consistent with New York coastal policies available to the public for review and comment.

Algonquin's failure to have its consistency assessment application approved by NYSDOS deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze whether or not the proposed Project's Hudson River crossing is consistent with New York coastal policies. *See* Section 4.8.4.1.

IX. Analysis of Air Quality and Climate Change Impacts is Inadequate

As discussed below, the DEIS dramatically underestimates the extent to which Project construction and operation will emit air pollutants and fails to present a comprehensive analysis of the direct, indirect and cumulative effects of the Project on air quality.

The DEIS acknowledges that construction and operation of the proposed Project will result in significant emissions of various air pollutants, including NO_x, VOCs, carbon monoxide, particulate matter, sulfur dioxide and GHGs. These pollutants affect air quality—and therefore human health—in a variety of ways. NO_x is a precursor of both ozone and fine particulate matter. VOCs are also an ozone precursor. Fine particulate matter is linked to increased heart attacks, aggravated asthma and decreased lung function, and for people with heart or lung disease, premature death. Ozone exposure can lead to coughing, chest pain and throat irritation. It also exacerbates pre-existing bronchitis, emphysema and asthma and can reduce lung function.

With the exception of sections exploring whether air emissions trigger regulatory requirements, the DEIS does not undertake any analysis of the potential impacts on those who may be at risk of exposure to the HAPs. FERC's failure to undertake any meaningful analysis of the effects of emissions from Project construction and operation is particularly concerning, given that the proposed Project would result in significant emissions of NO_x and VOCs. *See* Section 4.4.3.2.

A. Compressor Stations / M&R Stations

The compressor stations in New York are already major sources of Hazardous Air Pollutants (HAPs). Peer-reviewed scientific studies indicate that emissions from

compressor stations and other shale gas infrastructure are associated with negative health impacts. Current emissions will be significantly increased by the expansion of the Southeast and Stony Point compressor stations, and the region including Putnam, Rockland and Westchester counties is already considered a non-attainment zone for air quality standards according to the United States Environmental Protection Agency (USEPA).

Submissions made by Algonquin (Resource Report #9 in Docket CP12-96-000) do not reflect the aggregate (existing or proposed) and cumulative emissions from compressor stations, metering stations and pipelines for the Project. In addition, modifications are needed to the M&R stations in Peekskill, Cortlandt and Stony Point, New York, to connect the existing valve to the new 42-inch diameter pipeline. However, the design modifications are still not complete.

Without considering any proposed design modification to the M&R stations, the DEIS largely dismisses the impacts of air pollution, and concludes that modeling analysis for all modeled pollutants would not contribute to a violation of the National Ambient Air Quality Standards (NAAQS). Since Algonquin's M&R design modifications are not yet complete, the DEIS could not have addressed the unknown.

Based on the foregoing, the DEIS *recommends* that prior to the end of the DEIS comment period, Algonquin provide an update regarding the air permitting requirements associated with the modification to the M&R stations in New York, as well as any application filed with NYSDEC regarding air permitting/registration. SAPE requests that Algonquin be *required* to provide its update requiring the air permitting requirements and that it be further *required* to make any further communication regarding the air permitting requirements associated with the modification to the M&R stations in New York available to the public for review and comment.

The absence of any completed design modifications for the M&R stations in New York deprived the public of a meaningful opportunity to comment on the proposed Project. A revised DEIS must be prepared for review and public comment to analyze the final design modifications for the M&R stations in New York. *See* Section 4.11.1.2.

B. Fugitive Emissions

The DEIS fails to adequately address fugitive emissions from the proposed Project. The DEIS provides an annual estimate of these emissions in Table 4.11.1-13, but that table fails to provide any basis for those estimates. In particular, the DEIS provides no analysis of potential malfunctions of either pipeline or compressors that could lead to unintended emissions of various HAPs. This is a significant oversight, given that the PHMSA reported *nearly 300 significant pipeline incidents* in 2013. The data makes clear that spills, explosions and other unintended releases of pollutants from pipelines occur with a measurable degree of frequency. The resulting—and equally predictable—emissions should be taken into account as part of the DEIS's assessment of the impacts associated with the Project.

The DEIS's failure to adequately address fugitive emissions from the proposed Project and further, its failure to provide any data or methodology to support its conclusion, deprived the public of a meaningful opportunity to comment on the proposed Project and failed to take the requisite hard look at the proposed Project's environmental impact. A revised DEIS must be prepared for review and public comment to adequately address fugitive emissions from the proposed Project. *See* Section 4.11.1.3.

C. Cumulative Impacts on Air Quality

As discussed *supra*, the DEIS's analysis of cumulative impacts of the proposed Projects on air quality is insufficient. The DEIS concedes that the construction and operation of the Project will contribute cumulatively to air quality impacts, but concludes that it does not anticipate that the construction and operation of the proposed Project facilities will have a significant impact on air quality. Although it is unclear exactly to what extent the DEIS has calculated the potential emissions from other projects and included them in its cumulative impact analysis, the DEIS nonetheless discounts the impacts of those projects without offering any justification for such discounting of those dangers.

The DEIS's failure to adequately address the cumulative impacts of the proposed Projects on air quality deprived the public of a meaningful opportunity to comment on the proposed Project. Moreover, the DEIS failed to take the requisite hard look at the proposed Project's environmental impact. A revised DEIS must be prepared for review and public comment to adequately address the cumulative impacts of the proposed Projects on air quality. *See* Section 4.13.7.

D. Climate Change

The DEIS fails to undertake a meaningful analysis of the climate change impacts of GHG emissions, including fugitive GHG emissions, which would result from the construction and operation of the Project. The DEIS concludes, without pointing to any evidence in support of its conclusion, that emission of GHGs from the proposed Project would not have any direct impacts on the climate change in the Project area. As discussed *supra*, this conclusion fails to take into account the likelihood of a significant incident with the pipeline, resulting in a spill, leak, explosion or other unintended emission of GHGs.

The absence of any meaningful analysis of the climate change impacts of GHG emissions associated with this Project deprived the public of a meaningful opportunity to comment on the proposed Project. The DEIS, moreover, failed to take the requisite hard look at the proposed Project's environmental impact. A revised DEIS must be prepared for review and public comment to analyze the climate change impacts of GHG emissions associated with this Project. *See* Section 4.13.8.

VII. Environmental Justice

In New York, environmental justice communities are defined according to the following thresholds: communities where 23.6 percent of the individuals within a given census block are living below the poverty line as low-income populations; and/or communities where minorities comprise more than 51.1 percent of the population within a given census block as minority populations. Low income communities and communities of color have historically been overburdened as a result of air pollution from energy-generating facilities. In particular, the proposed Project would have adverse impacts on neighborhoods within a 12.5-mile radius of downtown Peekskill, New York, an area that is already home to more than its fair share of hazardous waste facilities.

The primary adverse impacts on the environmental justice communities associated with the construction of the Project would be the temporary increases in dust, noise and traffic from the Project construction. These adverse impacts would occur along the entire pipeline route. However, the DEIS does not provide sufficient financial analysis of the Project to effectively determine if the Project would result in a disproportionately high and adverse impact on these minority and low-income populations.

Other than acknowledging that two census block groups crossed by the Project in Westchester County have minority populations greater than the minority threshold, the DEIS lacks any meaningful analysis of environmental justice issues. The lack of any discussion of the costs of the Project, including a full analysis of the discarded alternatives, prevents any meaningful understanding of the impact upon environmental justice communities.

The absence of any meaningful analysis in the DEIS of the proposed Project's impact on environmental justice issues along the pipeline route failed to take the requisite hard look at the proposed Project's environmental impact. A revised DEIS must be prepared for review and public comment to analyze the impact on environmental justice issues along the pipeline route. *See* Section 4.9.10.

CONCLUSION

For all of the reasons stated above, the DEIS is premature, incomplete, unsupported by evidence and fails to adequately consider the direct, indirect and cumulative impacts of the proposed Project. The proposed Project is unnecessary, improperly located in close proximity to a nuclear power facility, with significant environmental impacts that have not been fully addressed in the DEIS. The defects in the DEIS are fundamental and pervasive. We therefore request that the Commission: (1) take no further action with respect to permitting of the proposed Project on the basis of this profoundly flawed DEIS; and (2) prepare a revised DEIS with a new period for review and public comment to ensure that the FERC satisfies its obligations under NEPA.

Respectfully submitted,

Stop the Algonquin Pipeline Extension (SAPE)

Founding Members:

Susan Van Dolsen
Paula Clair
Suzannah Glidden
Susan McDonnell
Jerry Ravnitzky
Marian Rose
Ellen Weininger