

INTERVENORS' ADDITIONAL COMMENTS ON FERC'S MARCH 2018
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE NORTHEAST SUPPLY ENHANCEMENT PROJECT
FERC DOCKET #CP17-101-000

May 14, 2018

SUBMITTED ON BEHALF OF:

NY/NJ Baykeeper,
Food & Water Watch,
Central Jersey Safe Energy Coalition, and
Princeton Manor Homeowners Association

BY:

Aaron Kleinbaum, Esq.
Raghu Murthy, Esq.
Eastern Environmental Law Center
50 Park Place, Suite 1025
Newark, NJ 07102

TABLE OF CONTENTS

INTRODUCTION	3
A. FERC Does Not Sufficiently Assess the “No Action” Alternative.	4
B. The DEIS Fails to Take a “Hard Look” at the Environmental Consequences to Onshore and Offshore Water Resources	6
1. FERC’s Selection of the Compressor Station 206 Site is Based on Flawed Assumptions.	6
2. FERC’s Analysis of Offshore Water Impacts is Wholly Inadequate to Form a Basis for Reasoned Agency Decision Making.	9
C. The DEIS Fails to Take a Hard Look at the Pipeline’s Emissions of Air Pollutants.	12
1. The Emissions of NOx During Construction of the Pipeline Will Exacerbate New Jersey and New York’s Ozone Pollution. Transco Has Not Provided Sufficient Information to Demonstrate that NOx Emissions Will Be Mitigated. The DEIS Must Therefore Consider NOx Emissions to Be a Significant Environmental Impact.	13
2. The HAP Emissions from Compressor Station 206 Exceed State Reporting Thresholds, and Therefore the HAP Impact to Human Health and the Environment Must Be Revisited.	17
D. The DEIS Fails To Take a Hard Look at How the Old & New Pipeline May Expose the Public to Risk of Rupture and Tragedy	19
E. FERC Failed To Take a Hard Look at System Alternatives	21
F. Economic Benefits Asserted in the DEIS Are Exaggerated, and the Economic Harms Are Unfairly Minimized.	22
G. The DEIS Fails to Demonstrate That the Pipeline’s Greenhouse Gas Emissions Are Not a Significant Environmental Impact.	25
CONCLUSION	27

INTRODUCTION

The Eastern Environmental Law Center (“EELC”) offers its comments on behalf of Intervenor NY/NJ Baykeeper, Food & Water Watch, Central Jersey Safe Energy Coalition, and the Princeton Manor Homeowners Association on the Federal Energy Regulatory Commission’s (“FERC’s”) Draft Environmental Impact Statement (“DEIS”) for the Northeast Supply Enhancement Project (the “Pipeline Project,” “Pipeline” or “Project”), Docket No. CP17-101-000, dated March 2018. We have already voiced their concerns regarding this proposed Pipeline in Comments dated April 9, 2018, Docket No. CP17-101-000, Accession # 20180410-5035. That prior submission is incorporated herein by reference, and, as many remain unaddressed by this premature DEIS, we reiterate our ongoing concerns with this Pipeline below.

At the outset, we note that the FERC made multiple requests for further information to the applicant, Transcontinental Gas Pipe Line Company, LLC (“Transco”) to complete the record; in many cases the DEIS specifically required Transco to submit this material in time for public review and comment. Transco submitted responsive material during the afternoon of Friday, May 11, 2018: one business day before the deadline for comments on the DEIS (Transco’s submission included over 50 documents, with over 3500 pages). To allow for proper public review and comment, FERC must withdraw the DEIS or extend the deadline for public comments.

We make seven objections to the DEIS for the proposed Pipeline:

1. The DEIS fails to create a “baseline” in its discussion of the no-action alternative, making it impossible to compare other alternatives or the proposed alternative with the status quo.

2. Under no circumstances should FERC proceed without a closer look at the environmental consequences of the proposed Pipeline on Raritan Bay and other open water and wetland resources throughout the Project because Transco's data is incorrect or missing.
3. Air emissions from Project construction (NOx) and Compressor Station 206 (HAPs) must be further investigated and/or mitigated with enforceable agreements.
4. The DEIS completely misses the mark on safety because the potential risks and tragedy from older pipeline ruptures are ignored.
5. Transco has not adequately demonstrated a need for the new Compressor Station 206.
6. Transco has significantly exaggerated the economic benefits of the Pipeline, and thus do not provide the basis for proceeding with the Pipeline.
7. The impact of greenhouse gases must be reviewed based on current data.

For all of these reasons, FERC's DEIS fails to meet the standards of the National Environmental Policy Act ("NEPA"), and must be withdrawn.

A. FERC Does Not Sufficiently Assess the "No Action" Alternative.

The Council on Environmental Quality's ("CEQ's") regulations implementing NEPA require FERC to evaluate the "no action" alternative as part of the DEIS.¹ The "no action" alternative in an EIS allows policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action."² In fact, the no action alternative must "provide a baseline against which the action alternatives are evaluated"³ – meaning both (1) the proposed action and (2) *other* action alternatives. CEQ's guidance to

¹ 40 C.F.R. § 1502.14(d).

² Center for Biological Diversity v. U.S. Dept. of Interior, 623 F.3d 633, 642 (9th Cir. 2010).

³ Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1065 (9th Cir. 1998) (emphasis added).

federal agencies makes this point clear: “analysis [of the no action alternative] provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives.”⁴

In the DEIS, FERC fails to adequately assess the no action alternative in terms of environmental impacts in order to create the necessary “baseline” for its overall evaluation. Instead, FERC merely provides one conclusory paragraph on the no action alternative. Here, FERC finds that “If the No Action Alternative is selected...the stated purpose of the Project would not be met, likely causing National Grid to seek other sources of natural gas to meet their forecasted need for additional supply.” DEIS at 3-3. Because “other existing interstate natural gas transmission systems in the region could not meet the purpose of the NESE Project without expansion and/or construction of new, greenfield facilities” and “[t]hese facilities would be of similar or greater scope than the facilities proposed by Transco,” they would result in “similar or greater environmental impact and, therefore, would not be preferable to the NESE Project.” *Id.* Considering that the rest of the DEIS touches on a vast range of environmental issues – including geology, soils, water resources, vegetation, wildlife, socioeconomics, cultural resources, air quality and noise, and reliability and safety – over hundreds of pages, this one paragraph can hardly provide a sufficient “baseline” for FERC’s subsequent analysis.

Because the DEIS’s discussion of the no action alternative fails to provide the requisite baseline, it is impossible for FERC to properly evaluate either (1) Transco’s preferred alternative or (2) the *other* action alternatives (e.g. system alternatives, route alternatives, etc.). Such an

⁴ CEQ, “Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” (March 1981), pg. 5 (emphasis added).

analysis lies at the heart of NEPA and its absence renders the DEIS an insufficient basis for reasoned agency decisionmaking.

B. The DEIS Fails to Take a “Hard Look” at the Environmental Consequences to Onshore and Offshore Water Resources

Another deficient aspect of this DEIS is its treatment of the NESE Project’s water impacts. EELC retained water experts at Princeton Hydro who identified many shortcomings in the DEIS, which they outlined in a report submitted herewith (“Princeton Hydro Report”).⁵ The discussion below highlights some of the most prominent deficiencies of FERC’s analysis of onshore and offshore “environmental consequences”⁶ to water resources in this DEIS.

1. FERC’s Selection of the Compressor Station 206 Site is Based on Flawed Assumptions.

Under NEPA, in this DEIS, FERC must take a “hard look”⁷ at the environmental impacts of both Transco’s proposed NESE Project and “all reasonable alternatives” to this Project.⁸ FERC’s conclusions in the DEIS will be evaluated under the Administrative Procedure Act and “will be set aside...if the agency identified no ‘rational connection between the facts found and the choice made,’ [or] if the ‘explanation for its decision [ran] counter to the evidence before the agency.’”⁹ In this DEIS, FERC’s selection of the site for proposed Compressor Station 206 fails the “hard look” test and demonstrates no “rationale connection” between the facts and its ultimate choice. In particular, FERC’s statement that “we conclude that none of the alternatives

⁵ Exhibit A. Intervenor hereby incorporate the Princeton Hydro Report in its entirety into these comments.

⁶ 40 C.F.R. § 1502.16

⁷ *Wilderness Soc. v. Salazar*, 603 F. Supp. 2d 52, 59 (D.D.C. 2009)

⁸ 40 C.F.R. § 1502.14(c).

⁹ *Envtl. Def. v. U.S. Army Corps of Engineers*, 515 F. Supp. 2d 69, 76 (D.D.C. 2007) [quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)].

[for Compressor Station 206] offer a significant environmental advantage over Transco’s proposed site, and do not recommend any of the alternative locations” (DEIS at ES-10) is based on two flaws: (1) an improper assumption that Transco will satisfy all applicable laws and regulations and (2) outdated information.¹⁰

a. FERC Improperly Assumes that Transco Will Satisfy All Applicable Laws and Regulations.

As the Princeton Hydro Report points out, the DEIS states that “The conclusions in this EIS are based on our analysis of the environmental impact and [several] assumptions” – including that “Transco would comply with all applicable laws and regulations.” DEIS at 4-1. But there are at least two reasons, as explained in the Princeton Hydro Report, why Transco’s compliance with “all applicable laws and regulations” cannot be assumed.

First, Transco’s NESE Project will need to comply with both the Clean Water Act (CWA) and New Jersey’s Freshwater Protection Act (FWPA). Those laws require that, when a project may impact wetlands, the analysis of various potential locations focus *first* on avoiding wetland impacts, *second* on minimizing impacts, and *last* on mitigating impacts. Princeton Hydro notes that FERC does technically acknowledge the proper order of these statutory requirements in the DEIS on pages 4-63 to 4-66.¹¹ In reality, however, Princeton Hydro explains that Transco and FERC’s alternatives analysis – as revealed in Transco’s Resource Reports and FERC’s DEIS -- actually follows the *opposite* approach of these statutes by deploying mitigation first and avoidance last.¹² As a result of this method, Transco first “selected a short list of five

¹⁰ We make a separate point below that Compressor Station 206 may not be needed because a system alternative eliminating this station has not been adequately investigated because the hydraulic and process parameters for the station have not been provided or examined to the public.

¹¹ Princeton Hydro Report at 11.

¹² *Id.* at 1-2.

sites that all included significant wetland resources and will result in significant wetland impacts”¹³ and then chose as its final selection “a site with significant wetland impacts, including the permanent loss of 2.64 acres of forested wetland.”¹⁴ Put simply, “It is apparent when reviewing the DEIS that both FERC and Transco’s site selection for compressor station 206 is at odds with the FWPA and CWA regulations.”¹⁵

Second, Transco’s NESE Project will also need to comply with New Jersey’s Stormwater Management Rules. But Princeton Hydro’s “analysis of the proposed Compressor Station 206 site basin indicates that it fails on many levels to satisfy the minimum design standards of the Stormwater Best Management Practices (BMP) manual for infiltration basins.”¹⁶ The proposed Compressor Station 206 site’s “geologic qualities” make it “a poor candidate for infiltration,”¹⁷ which would negatively affect its ability to reduce the volume of stormwater runoff.

b. FERC Relies on Outdated Information.

The Princeton Hydro Report also notes that “FERC relied heavily on the results of Transco’s resource report No.10 in the DEIS to base its decision to select Transco’s preferred alternative [for the site of Compressor Station 206].”¹⁸ This Resource Report was initially submitted to FERC in March 2017. But Transco subsequently submitted a document to the New Jersey Department of Environmental Protection (“NJDEP”) in January 2018 containing *different* environmental impact numbers (e.g. permanent wetland impacts, forested wetland impacts, etc.) than those in Resource Report No. 10.¹⁹ Thus, FERC’s conclusion regarding Compressor Station

¹³ Id. at 5.

¹⁴ Id. at 6.

¹⁵ Id.

¹⁶ Id. at 16.

¹⁷ Id.

¹⁸ Id. at 6.

¹⁹ Id. at 5-6.

206 was based on outdated information. Moreover, in this instance, FERC also failed to uphold its responsibility to ensure the accuracy of Transco's environmental information included in the DEIS.²⁰

2. FERC's Analysis of Offshore Water Impacts is Wholly Inadequate to Form a Basis for Reasoned Agency Decision Making.

FERC's treatment of the NESE Project's impact on offshore water resources also fails the "hard look" test. Specifically, the DEIS (1) does not provide a sufficient alternatives analysis, (2) contains incomplete and inadequate data, (3) includes inaccurate data, and (4) does not offer appropriate mitigation measures.

a. The DEIS Alternatives Analysis is Insufficient.

The DEIS must "[r]igorously explore and objectively evaluate all reasonable alternatives"²¹ as this is "the linchpin of the entire impact statement."²² Princeton Hydro provides numerous examples of how FERC failed to do this, presumably in order to prop up Transco's preferred alternative route for the Pipeline through Raritan Bay.²³ Most significantly, while "[t]here is benthic biogeochemical data collected for points along the preferred route...the information presented about all other alternative routes for the Pipeline includes only physical attributes."²⁴ Therefore, "there is no context in which to evaluate the data in order to assess potential impacts."

²⁵ In addition, the preferred alternative goes through two fishing areas (the Tin Can grounds and

²⁰ 40 C.F.R. § 1506.5(a).

²¹ 40 C.F.R. § 1502.14(a).

²² Dubois v. U.S. Dep't of Agric., 102 F.3d 1273, 1286-87 (1st Cir. 1996).

²³ Princeton Hydro Report at 17.

²⁴ Id.

²⁵ Id. at 18.

the Ambrose Channel), yet “[n]o explanation is provided as to why the preferred alternative route could not be located adjacent to -- but not actually in -- those areas.”²⁶

b. The DEIS is Incomplete and Inadequate.

FERC’s DEIS will be considered adequate only “if the agency has made *an adequate compilation of relevant information*, has analyzed it reasonably, has not ignored pertinent data, and has made disclosures to the public.”²⁷ In fact, this type of “relevant information” may only be left out of a DEIS if it is incomplete or unavailable due to (1) the overall costs of obtaining it being exorbitant or (2) the means of obtaining it being unknown.²⁸ Here, there are several pieces of pertinent information missing whose exclusion from the DEIS FERC has not justified. A sampling of these information gaps is listed below:

- “There is no clear assessment of impact from dredging for backfill from 4 separate offshore sources....Without detailed evaluation of the impacts of sites sourced for backfill, complete impacts of the projects cannot be assessed.”²⁹
- Analysis of whether the Project may influence conditions in the Raritan Bay conducive to the growth of harmful algal blooms is completely absent. “Without addressing this issue, the DEIS does not adequately evaluate all aspects of the environment and community that may be impacted by the NESE Project.”³⁰
- “There has been no evaluation of the Project’s potential impact on clams’ susceptibility to [Quahog Parasite Unknown] disorder.”³¹

²⁶ Id. at 26.

²⁷ See Sierra Club v. U.S. Army Corps of Engineers, 701 F.2d 1011, 1029 (2d Cir. 1983) (emphasis added).

²⁸ 40 C.F.R. § 1502.22.

²⁹ Princeton Hydro Report at 19.

³⁰ Id. at 20.

³¹ Id. at 22.

- “The DEIS lacks sufficient detail to discuss how impacts to Atlantic sturgeon...and winter flounder...will be avoided.”³² “There is no clear evaluation of how the impacts to benthic and demersal marine species will also impact the economics of the local recreational and commercial fishing industry.”³³

c. The DEIS is Inaccurate.

As mentioned above, FERC has a responsibility to ensure the accuracy of Transco’s environmental information included in the DEIS.³⁴ Here, FERC has not fulfilled that duty by including inaccurate – oftentimes outdated – information in the DEIS. A few examples are that:

- “Studies cited in the impact of re-suspended contaminants report are from 1994--*more than 20 years ago* and likely no longer relevant.”³⁵ “Transco has severely *underestimated* the benthic resources directly disturbed by the Project area.”³⁶ “FERC’s analysis [of impacts to hard clams] uses *outdated* data, a study from 1983, to help prove that the Pipeline’s impact would be low.”³⁷
- “Information in the DEIS related to horseshoe crabs is from relatively *old* survey data.”³⁸
- Samples taken to evaluate water quality in order to analyze potential impacts to Essential Fish Habitat “*do not reflect* conditions throughout the construction period

³² Id. at 23.

³³ Id. at 26.

³⁴ 40 C.F.R. § 1506.5(a).

³⁵ Princeton Hydro Report at 18 (emphasis added)

³⁶ Id. at 20. (emphasis added).

³⁷ Id. at 21 (emphasis added).

³⁸ Id. at 22 (emphasis added).

and represent *a gross underestimate* of what peak discharge, runoff, and nutrient loading rates would be.”³⁹

d. Impacts to Benthic Resources are Not Properly Mitigated.

FERC’s DEIS must contain a discussion of possible mitigation measures. This requirement stems from both NEPA itself⁴⁰ and CEQ’s implementing regulations.⁴¹ The Supreme Court has held that this discussion must be “reasonably complete.”⁴² Regarding benthic resources in particular, the DEIS falls well short of that standard. Though the DEIS mentions monitoring and mitigation, Transco has not submitted the actual detailed monitoring plans necessary to properly assess the Project’s post-construction impact. As Princeton Hydro states, “[p]lans need to be in place to be properly prepared in the event that certain planned thresholds (noise, sediment disturbance, etc.) are exceeded.”⁴³ Moreover, no remediation measures have been identified that will be enacted if initial mitigation has failed. “Remediation and mitigation strategies that would be outlined in such plans would have to be based on detailed quantitative analysis of each impact and these are missing.”⁴⁴

C. The DEIS Fails to Take a Hard Look at the Pipeline’s Emissions of Air Pollutants.

As detailed above, FERC is required to take a “hard look” at each environmental impact caused by the proposed Pipeline. The DEIS does not meet that standard for the Pipeline’s

³⁹ Id. at 24 (emphasis added).

⁴⁰ 42 U.S.C. § 4332(C)(ii) (“any adverse environmental effects which cannot be avoided should the proposal be implemented”).

⁴¹ See 40 C.F.R. § 1502.14(f) and § 1502.16(h).

⁴² Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352 (1989).

⁴³ Princeton Hydro Report at 20.

⁴⁴ Id.

emissions of two categories of air pollutants: oxides of nitrogen (“NOx”) and Hazardous Air Pollutants (“HAPs”).

1. The Emissions of NOx During Construction of the Pipeline Will Exacerbate New Jersey and New York’s Ozone Pollution. Transco Has Not Provided Sufficient Information to Demonstrate that NOx Emissions Will Be Mitigated. The DEIS Must Therefore Consider NOx Emissions to Be a Significant Environmental Impact.

New Jersey and New York already suffer from unhealthy air due to ozone pollution: these states are in a “nonattainment area.” DEIS ES-6, 4-278. If approved, construction of the Pipeline will emit over six hundred tons of NOx, a precursor to ozone, into New Jersey and New York.⁴⁵ DEIS 4-286, 4-288. The DEIS must consider these NOx construction emissions to be a significant environmental impact, because Transco has failed to demonstrate that the emissions will be mitigated.

In 1970, Congress ordered the U.S. Environmental Protection Agency (“EPA”) to establish National Ambient Air Quality Standards “to protect the public welfare from any known or anticipated adverse effects associated with the presence of ... air pollutant[s] in the ambient air.”⁴⁶ The ambient air in New Jersey and New York fails to attain these minimum standards, due to an excess of ozone. DEIS ES-6, 4-278. Excess ozone in New Jersey and New York is already leading to chronic illnesses and premature deaths, especially among vulnerable populations like asthmatics and children.⁴⁷

⁴⁵ This does not include Compressor Station 206’s annual emissions of 22.74 tons of NOx. DEIS 4-286, 4-288.

⁴⁶ 42 U.S.C. 7409

⁴⁷ Exhibit B, Expert Report of Michael Aucott (“Aucott Report”), p. 2. Intervenors hereby incorporate the Aucott Report in its entirety into these comments.

The Clean Air Act prohibits approval of any project that will emit a significant quantity of pollutants into a nonattainment area, unless those emissions are *completely* offset.⁴⁸ The Clean Air Act sets high standards for these offset programs through the General Conformity Rule.⁴⁹ Specifically, the General Conformity Rule prohibits approval of the Pipeline unless Transco can guarantee no net increase of NOx within New Jersey and New York; in order to do so, Transco must provide an enforceable schedule of mitigation projects that will fully offset all NOx emissions from pipeline construction.⁵⁰ The DEIS's conclusion, that NOx emissions will be insignificant, rests on the assumption that Transco can comply with this Rule; yet Transco has not supplied the documents requested by FERC. DEIS 4-1, 4-286. FERC must therefore consider Transco's NOx emissions as a significant environmental impact.

The information supplied to date by Transco fails to meet the standards of the General Conformity Rule, and fails to justify an assumption of complete NOx emissions mitigation, for two reasons. First, Transco has not submitted sufficient information on the timing of construction and mitigation projects, and the tracking of NOx emissions and emissions reductions. Without this information, FERC cannot simply assume that Transco will be able to prevent a net increase in NOx emissions. Second, Transco's sparse submissions leave open the possibility that Transco is double-counting mitigation projects already being funded or implemented by other entities.⁵¹

- a. Transco Has Not Submitted a Construction Emission Plan or a Mitigation Emission Plan, as Required by FERC.

⁴⁸ 40 C.F.R. § 93.152, 40 C.F.R. 93.158(a)(2).

⁴⁹ 40 C.F.R. 93.158(a)(2).

⁵⁰ 40 C.F.R. 93.158(a)(2).

⁵¹ Aucott Report p. 2; December 12, 2017 Meeting Minutes, Accession # 20171222-4 003

In order to prevent a net increase of NOx emissions in New Jersey or New York, Transco must demonstrate that the company will achieve emissions reductions at mitigation projects before, or at the very least concurrently with, construction emissions.⁵² FERC has stated that Transco cannot make that demonstration without submitting a thorough Construction Emission Plan and a thorough Mitigation Emission Plan.⁵³ As FERC has stated, the Construction Emission Plan must include the company's complete construction schedule in New Jersey and New York, and the company's methods for tracking actual NOx emissions from each item on that schedule. DEIS 4-286. FERC has also required a mitigation emissions plan, with "realistic mitigation implementation schedules for each offset project", and "detailed calculations for the NOx emissions to be offset."⁵⁴ As noted by FERC, the public must be given the opportunity to review and comment on these documents. DEIS 4-286.

At this point, FERC has repeatedly asked for, and not received, these documents. Even if Transco submitted them at the eleventh hour, it would not satisfy FERC's requirement that they be submitted with time for public comment and review. FERC therefore cannot assume that Transco's mitigation projects will satisfy the General Conformity Rule's requirement of no net emissions increase.

b. Transco's Insufficient Submissions Leave Open the Possibility that the Company is Double-Counting Mitigation Projects.

At least two of Transco's proposed mitigation projects, replacement of older diesel trucks and replacement of diesel-powered cargo equipment, may overlap with projects that the Port

⁵² 40 C.F.R. 93.158(a)(2); Aucott Report p. 2.

⁵³ DEIS 4-286; May 10, 2018 Environmental Data Request, Accession # 20180510-3022; Aucott Report p. 2.

⁵⁴ May 10, 2018 Environmental Data Request, Accession # 20180510-3022.

Authority of New York and New Jersey (“PANYNJ”) has already begun implementing, or has already committed to funding: replacement of drayage trucks that use older diesel engines and replacement of older diesel-fired cargo handling equipment at the Port.⁵⁵

Transco has not provided sufficient information to be sure that these projects are not being double-counted. NJDEP has already objected and stated that Transco may not double count emissions reductions from projects receiving funding from another source: “NJDEP indicated that if a project is receiving funding from another source (e.g. DERA, CMAQ, etc. funding), then it would not be considered as a mitigation project. ... The NJDEP also expressed concern that some projects may be funded by sources that make them unavailable for use as mitigation for NESE...”⁵⁶

c. Transco’s NOx Emissions are a Threat to Human Health and a Significant Environmental Impact.

As detailed above, Transco failed to supply the documents that FERC needs to ensure complete mitigation of the Pipeline’s NOx construction emissions, and compliance with the General Conformity Rule. The Pipeline’s NOx emissions will exacerbate the ozone pollution of New York and New Jersey, which is already harmful to human health.⁵⁷ Transco’s emissions will increase chronic illnesses and premature deaths, especially among vulnerable populations like asthmatics and children. In addition, Transco’s emissions will cause environmental damage: specifically to forests and crops.⁵⁸ Until Transco submits documents demonstrating complete

⁵⁵ Aucott Report p. 2; December 12, 2017 Meeting Minutes, Accession # 20171222-4003

⁵⁶ December 12, 2017 Meeting Minutes, Accession # 20171222-4003

⁵⁷ Aucott Report p. 2

⁵⁸ Aucott Report p. 3

offset of NOx construction emissions in the Region, then the DEIS must treat these emissions as a significant health and environmental impact.

2. The HAP Emissions from Compressor Station 206 Exceed State Reporting Thresholds, and Therefore the HAP Impact to Human Health and the Environment Must Be Revisited.

The DEIS recognizes that HAP emissions can cause serious health problems and environmental impacts. DEIS 4-292. This finding dovetails with NJDEP's rule amendment in February 2018, which significantly lowered the reporting thresholds for HAPs, based on the most recent science on the health impacts of HAPs.⁵⁹ Compressor Station 206's HAP emissions significantly exceed these new thresholds. Consequently Compressor Station 206 warrants a health impact assessment.

The DEIS acknowledges the health impacts of the HAPs emitted by Compressor Station 206, but relies on compliance with New Jersey regulations to conclude that no health impact assessment is necessary:

Hazardous air pollutants (HAPs), also known as toxic air pollutants or air toxics, are those pollutants that are known or suspected to cause cancer (carcinogens) or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. . . . their emissions are limited through permit thresholds and technology standards. New Jersey maintains regulations limiting emissions of HAPs.

DEIS ES-6, 4-278.

The HAP reporting thresholds that Transco's submissions rely on were repealed in February 2018, and replaced with far more restrictive thresholds.⁶⁰ Compressor Station 206's emissions exceed those thresholds for six different HAPs.⁶¹

⁵⁹ Aucott Report p. 6

⁶⁰ 50 N.J.R. 454(a)

⁶¹ Aucott Report p. 6

State air pollution experts opined that the old thresholds relied upon by Transco were "for the most part, much too high and fail[ed] to protect public health."⁶² Commenters pointed out that the previous thresholds, "lacking quantitative health information for many of the HAPs," instead "inserted placeholder de minimis values. New values have since been developed for many more of the HAPs but this new information had not been incorporated into the reporting thresholds..."⁶³ The new thresholds incorporate the most recent science: "more realistic source characteristics (such as distance to property line); using the latest dispersion models; using the latest health benchmarks..."⁶⁴ NJDEP "used the latest published toxicity data available to calculate each HAP reporting threshold. The Department reviewed the most recent list of reference concentrations issued by IRIS, CalEPA, and ATSDR."⁶⁵

Commenters reviewing the new thresholds concluded that "[s]ignificantly more air permit applications will be subject to health risk assessment with these proposed changes."⁶⁶ In line with that conclusion, Compressor Station 206 must undergo a health impact assessment, because its emissions of six different HAPs grossly exceed the new thresholds. For example, Compressor Station 206's two turbines will jointly spew 668 pounds of formaldehyde into the surrounding residential area every year; this is nearly two hundred times the new HAP reporting threshold of 3.5 pounds per year.⁶⁷ As determined by NJDEP, the most recent science raises concerns about that level of human exposure to formaldehyde and other HAPs; FERC should therefore require a health impact assessment.

⁶² 50 N.J.R. 454(a)

⁶³ Id.

⁶⁴ 50 N.J.R. 454(a)

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Aucott Report p. 6

D. The DEIS Fails To Take a Hard Look at How the Old & New Pipeline May Expose the Public to Risk of Rupture and Tragedy

With respect to safety, we make three arguments that the DEIS should be withdrawn: (1) the lack of data precludes the DEIS from supporting the conclusion that the Project will be safe; (2) Our expert report⁶⁸ contains compelling evidence that significant risks exist; and, (3) the DEIS's reliance on non-public Critical Energy/Electric Infrastructure Information ("CEII") violates NEPA's public participation requirements.

Transco is adding approximately 37 miles of new pipe looping (paralleling) and connecting to existing older gas transmission pipelines while adding significantly new power in two places: the existing Compressor Station 200 in East Whiteland Township, Pennsylvania and a new Compressor Station 206, with two gas-fired turbines, in Franklin Township, New Jersey. Our expert has identified a significant safety risk from exposure of the old existing pipelines to the new pressure. The DEIS is silent on this risk; the pipeline safety precautions identified in the DEIS are applicable only to the new Pipeline segments. DEIS at 4-305. FERC must conduct a more thorough analysis of the risk from connecting the old pipelines to new pressure, regardless of any grandfather clauses in the rules.⁶⁹

Turning to the new pipeline segments: the DEIS's safety precautions are lacking because they depend solely on Transco's secret data and calculations. DEIS at 4-305.⁷⁰ As discussed below, the data and calculations to independently verify Transco's work are not available to the public because Transco has classified the material as Critical Energy Infrastructure Information

⁶⁸ Letter Report from Richard B. Kuprewicz, Accufacts Inc., to EELC, May 9, 2018. Attached as Exhibit D, (hereinafter "Accufacts"). Intervenors hereby incorporate the Accufacts Report in its entirety into these comments.

⁶⁹ Id.

⁷⁰ Accufacts

(CEII).⁷¹ It is impossible for the public to determine safety characteristics if Transco continues to keep the data secret.⁷²

FERC is required to consider all of the effects of its certification decisions, which include the Project's severity of impact on public health and safety.⁷³ Here it has failed to do so.

1. The Old Pipeline

The DEIS is silent about the older, existing pipeline connecting to the new Pipeline and facilities. The DEIS fails to take any look at the greatest safety risk of the entire Project, which is “the possibility of pipeline rupture associated with the existing pipeline, especially ... in proximity to the proposed modified and new Compressor Stations 200 and 206.” The data from strength tests that were conducted on the existing pipelines decades ago may well be meaningless: and some of these pipelines may never have been tested at all. Pipeline cracks, welds and corrosion on pipelines can be stressed and destabilized to the point of failure. FERC must take a hard look at the integrity of the old pipeline because the risk of rupture and tragedy will increase due to the new gas operating pressure and pressure cycling from the new compressor station and other new additions. No other agency will do so until the Pipeline is operational, which will be too late, and even then the safety risk of the old pipeline may never be identified.

Contrary to FERC's consistent representations that the Pipeline safety is in the hands of the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA), PHMSA has likely not examined the safety risk in the old existing

⁷¹ Id.: Aaron Kleinbaum has requested release of Critical Energy Infrastructure Information

⁷² Id..

⁷³ 40 C.F.R. § 1508.27(b)2.

pipelines for decades and it only has jurisdiction for the new Project once the new Pipeline is operational. The DEIS is silent about PHMSA's plans to examine the safety of the old pipelines because PHMSA rarely revisits the safety of old pipelines even after operational changes, such as in this Project.⁷⁴

2. The New Pipeline

There is an absence of evidence to support FERC's assertion that Transco will design, construct, operate and maintain the new Pipeline in accordance with DOT standards. Transco has not disclosed critical information (CEII) to the public so that an independent assessment of pipeline safety can be made.⁷⁵

The DEIS claims that the PHMSA "ensures" the safety of new pipelines. DEIS at 4-304. The DEIS's assignment of responsibility to PHMSA is meaningless because PHMSA "does not have jurisdiction until the Project [is] operational."⁷⁶ FERC and Transco may be able to address some of the above referenced deficiencies in the DEIS by prompt and complete disclosure of the facility design and location information (CEII) that has been requested by EELC and Accufacts Inc.⁷⁷

E. FERC Failed To Take a Hard Look at System Alternatives

The DEIS fails to support its assertion that the NESE Project would serve National Grid's residential and commercial customers in the New York City area and in doing so would provide environmental benefits by improving air quality and would improve system reliability. DEIS at ES-1.

⁷⁴ DEIS § 4.01 and Accufacts.

⁷⁵ Accufacts

⁷⁶ Id. at 5.

⁷⁷ See FN 69.

It is impossible to determine whether other system alternatives, including alternatives to the new Compressor Station 206, are viable without “system process parameters” that have been withheld from the public. Compressor Station 206 will be located approximately 10 miles from Compressor Station 205 that recently underwent a major modification that added significant power. Siting the new Compressor Station 206 so close to a recently upgraded station raises questions about the hydraulic modeling and other assumptions for the NESE Project including whether so much power is needed to serve “National Grid’s residential and commercial customers in the NYC area.” DEIS at ES-1. However, no data has been provided to independently evaluate the modeling or other assumptions.⁷⁸

This is particularly troubling because the NESE Project is delivering more than twice as much additional natural gas to New York City than it needs, even it achieves the unlikely goal of converting all of its residential and commercial buildings’ oil use to natural gas.⁷⁹

FERC’s failure to adequately study the Project alternatives infects the entire DEIS, but particularly whether Compressor Station 206 is needed at all to serve the proposed action.

F. Economic Benefits Asserted in the DEIS Are Exaggerated, and the Economic Harms Are Unfairly Minimized.

The DEIS utterly failed to adequately measure the economic benefits of the Pipeline, for four reasons. First, the DEIS relies in part on the Rutgers Report⁸⁰ that substantially overstates construction jobs resulting from the Pipeline. Second, even if the Rutgers Report construction employment estimates are realistic, they are tiny in the context of the tri-state area. Third, the

⁷⁸ Accufacts

⁷⁹ Aucott Report at 4.

⁸⁰ Economic Impacts of the Proposed Northeast Supply Enhancement in New Jersey, Pennsylvania and New York, prepared for the Transcontinental Gas Pipe Line Company, LLC by Michael Lahr and Will Irving, Rutgers University Bloustein School.

Rutgers Report failed to examine the critical issue of ongoing employment from ongoing operations, which would only total two jobs! Fourth, ongoing benefits such as property taxes and other state and local fees would be so meager that they are unlikely to offset the costs, risks and other adverse impacts that the DEIS did not quantitatively measure.⁸¹

While providing exaggerated and false claims of benefit, the DEIS ignores or minimizes the economic harms inflicted by construction and operation of the Pipeline. Among its many deficiencies, the DEIS analysis does not consider the adverse impacts to recreation and ecotourism so vitally important to the impacted Raritan Bay. Nor does it measure the impacts to the multimillion dollar fishing industry because the DEIS accepts, without any quantitative analysis, Transco's self-serving conclusion that the impacts will be minor and temporary. DEIS at 450. Nevertheless, even Transco admits that the multi-million dollar annual value of commercial fishing⁸² is well above the short-term value of the inflated economic benefit measured by the Rutgers Report: and certainly far greater than the longer term benefits of the Pipeline (if any), which the Rutgers Report does not examine.

“Only when the [public] benefits of the proposal outweigh the adverse effects on other economic interests will the [FERC] proceed to complete the environmental analysis where other interests are considered.”⁸³

The DEIS consideration of economic benefits and harms is so misleading, inaccurate and deficient as to be a meaningless element of the DEIS, and certainly cannot be said to fulfill the

⁸¹ Exhibit D, Expert Report on the NESE Project, Economic Impact Analysis for New Jersey, New York and Pennsylvania by Ian Goodman and Brigid Rowan, the Goodman Group, May 14, 2018 (hereinafter, “TGG Report”). Intervenors hereby incorporate the TGG Report in its entirety into these comments.

⁸² DEIS Table 4.8.6-1

⁸³ AES Ocean Express, LLC, 103 FERC ¶ 61030, 61141 (F.E.R.C. Apr. 10, 2003), amended sub nom. AES Ocean Express LLC, 103 FERC ¶ 61326 (F.E.R.C. June 11, 2003)

mandates of NEPA or FERC's Policy Statement to fully and fairly consider the economic issues involved with this proposed project.

The DEIS relies on the Rutgers Report and the Transco Construction Workforce data, without trying to reconcile the large discrepancies between the two. The DEIS uses both sources to determine that:

- 1) based on the Transco Workforces data, the project will not result in boom and bust because there will only be a very small number of on-site workers, most of whom will not be local;
- 2) based on the Rutgers Report, the project has benefits (substantial positive economic impacts); and
- 3) based on Rutgers and the DEIS findings that the Project has downsides that are quantitatively measured, the DEIS concludes that the Project has benefits that more than offset any downsides.

While the first DEIS finding above is true, the other DEIS findings are problematic in multiple ways. The expert report by The Goodman Group explains various ways that the Rutgers Report significantly exaggerates the Pipeline's benefits. The DEIS findings of positive net benefits is not supported by the information in the DEIS and is further undercut by the discrepancies with the Transco Workforce data and other problems with the Rutgers Study.

The DEIS provides an incomplete economic analysis, ignores problems with Rutgers Study, and then presents a boilerplate conclusion of positive net benefits for the Project. This boilerplate conclusion is neither well supported nor well explained.

In short, the DEIS:

- Contains discrepancies regarding the number of onsite construction jobs provided separately by Transco and the Rutgers Report, that FERC tried to resolve but didn't, with its information requests;

- Overestimates short-term impacts due to inherent issues with the models used and the above referenced inconsistencies with Transco's employment data.

- Overstates relevant broader job "creation" and other longer-term benefits.

In sum, the Goodman Group's evaluation demonstrates that the PennEast Analysis significantly overstates the Total Jobs.

G. The DEIS Fails to Demonstrate That the Pipeline's Greenhouse Gas Emissions Are Not a Significant Environmental Impact.

All parties agree that "emissions from the NESE Project would increase the atmospheric concentration of GHGs... and contribute incrementally to future climate change impacts." DES 4-366. FERC's brief analysis of these emissions relies on outdated information and is missing required information in its review of greenhouse gas emissions.

First, FERC relies on an assertion, based on the now-outdated 2011 PlaNYC, that New York City wishes to use natural gas as a bridge fuel from fuel oil. 4-366. New York City has since explicitly rejected that position; in a September 2017 filing, NYC stated that the City wished to "...**avoid** the need for new upstream pipeline capacity", "**lower** its gas peak demand", and explore **alternatives** to "new pipeline projects."⁸⁴

The GHG emissions from the Pipeline also conflict with NYC's goal of lowering GHG emissions by eighty percent by 2050, in three ways. First, even in the extremely unlikely

⁸⁴ Aucott Report p. 5, emphasis added.

possibility that the City replaced **all** of its remaining fuel oil use with natural gas, that would only reduce the City's GHG emissions by three percent.⁸⁵ This is a drop in the bucket towards the City's much more aggressive reduction goal of eighty percent: which is why the City has rejected natural gas as a bridge fuel, instead preferring to transition directly from fuel oil to renewables.⁸⁶ Second, that unlikely conversion would account for less than half of the 190,000 dekatherms a day delivered by the Pipeline: the remaining natural gas will create additional GHG emissions, which the DEIS fails to account for. Id. Finally, the flood of new natural gas supply may well act as a disincentive to long-term efforts to rid the City of fossil fuels. Id.

Moreover, FERC has failed to include GHG emissions information that is required to be a part of the DEIS. First, "FERC must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so."⁸⁷ The DEIS does not include an estimate of the project's downstream carbon emissions. Second, "FERC should explain in the EIS, as an aid to the relevant decision makers, whether the position on the Social Cost of Carbon that the agency took in [EarthReports Inc. v. FERC, 828 F.3d 949 (D.C.Cir. 2017)] still holds, and why." Id. This DEIS merely restates FERC's position from EarthReports⁸⁸, but does not provide any further explanation as to **why** that position still holds. FERC's silence on this topic does not provide the required aid to the relevant decision makers.

⁸⁵ Aucott Report pp. 5-6.

⁸⁶ Aucott Report pp. 5-6.

⁸⁷ Sierra Club v. FERC, 867 F.3d 1357, 1375 (D.C.Cir. 2017)

⁸⁸ "...there is no widely accepted standard, per international, federal, or state policy, or as a matter of physical science, to determine the significance of the Project's GHG emissions for purposes of meaningfully informing the Commission decision in this proceeding." DEIS 4-366.

In sum, FERC has failed to take a “hard look” at the Pipeline’s GHG emissions.

CONCLUSION

In order to adhere to NEPA’s requirements, FERC must withdraw the DEIS because substantive data and analyses that are missing or incorrect.

Respectfully submitted,

/s Aaron Kleinbaum

Aaron Kleinbaum, Esq.

Raghu Murthy, Esq.

Eastern Environmental Law Center

*Attorneys for Intervenors NY/NJ Baykeeper,
Food & Water Watch, Central Jersey Safe
Energy Coalition, and the Princeton Manor
Homeowners Association*

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Exhibits A (Princeton Hydro Report), B (Michael Aucott Report), C (Accufacts Inc. Report), and D (The Goodman Group, Ltd. Report), Attached hereto.