

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

Algonquin Gas Transmission, LLC,
Maritimes & Northeast Pipeline, LLC

Docket No. CP16-9-000

**REQUEST OF THE TOWN OF WEYMOUTH
FOR REHEARING AND RESCISSION OF ORDER**

Pursuant to Section 717r(a) of the *Natural Gas Act* (NGA)¹ and Rule 713 of the Federal Energy Regulatory Commission (FERC or the “Commission”) Rules of Practice and Procedure,² the Town of Weymouth hereby requests rehearing, rescission, and a stay of the Commission’s January 25, 2017, Order Issuing Certificate and Authorizing Abandonment (the “Order”),³ which grants a Certificate of Public Convenience and Necessity (the “Certificate”) to Algonquin Gas Transmission, LLC (“Algonquin”) and Maritimes & Northeast Pipeline, L.L.C. (“Maritimes”) (together, the “Natural Gas Companies”) to construct and operate certain pipeline and compression facilities in New York, Connecticut, and Massachusetts (the “Atlantic Bridge Project” or the “Project”).

The Town seeks a rehearing and rescission of the Commission’s Order because it violates the *Natural Gas Act*,⁴ the *Coastal Zone Management Act*,⁵ the *National*

¹ 15 U.S.C. §717r(a).

² 18 C.F.R §385.713.

³ *Order Issuing Certificate and Authorizing Abandonment*, Docket No. CP16-9-000, 158 FERC ¶61,061 (Jan. 25, 2017) (hereinafter Order).

⁴ 15 U.S.C. §§717, *et. seq.*

⁵ 16 U.S.C. §§1451, *et. seq.*

*Environmental Protection Act*⁶ and its implementing regulations,⁷ and the *Administrative Procedure Act*.⁸ The Town also requests that the Commission not extend the time by which it must act thereon.⁹

I. STATEMENT OF RELEVANT FACTS

On January 30, 2015, the Natural Gas Companies requested, and were subsequently granted, pre-filing review of the proposed Atlantic Bridge Project, which involves the expansion of the Natural Gas Companies' existing gas pipeline network and the construction of a new gas-fired compressor station in the densely populated coastal community of North Weymouth.¹⁰

Specifically, the Natural Gas Companies propose to locate a 7,700-horsepower compressor station on a peninsula of land that juts out into the Fore River, the Fore River Estuary, and King's Cove.¹¹ The proposed site is located 500 feet from the Fore River, and within a Hurricane Inundation Zone, which will become inaccessible during and after a Category 2 hurricane, and completely submerged after a Category 4 hurricane.¹² Upon request, the Commission was unable to provide—or even identify—a map showing

⁶ 42 U.S.C. §§4321, *et. seq.*

⁷ 40 C.F.R. Parts 1500-08.

⁸ 5 U.S.C. §706(2)(A).

⁹ The Town is filing a Motion to Stay the Order contemporaneously with this request for rehearing.

¹⁰ *Request for Approval of Pre-Filing Review for Proposed Atlantic Bridge Project*, Docket No. PF15-12-000 (submittal 20150130-5311) (Jan. 30, 2015); *Approval of Pre-filing Request for the Atlantic Bridge Project*, Docket No. PF15-12-000 (submittal 20150220-3025) (Feb. 20, 2015).

¹¹ Order, 158 FERC ¶61,061, ¶5; *Atlantic Bridge Project, Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160502-4001) (May 2, 2016), p.2-66 (hereinafter "EA").

¹² *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.13-14 and Exhibit B.

whether it has sited another compressor station of this type along the coast and in a Hurricane Inundation Zone anywhere in the Country.¹³

The peninsula on which the compressor station is proposed to be sited is bisected by Bridge Street, which crosses the Fore River to the west and runs through residential neighborhoods to the east. Due to the unique geography of the peninsula, individuals would be forced, in the event of an incident requiring evacuation, either to drive over the Fore River Bridge, or through the adjacent residential community, to escape the area.

As originally proposed, the station itself would be situated on an approximately 12.9-acre parcel of land north of Bridge Street (the “North Parcel”), 4.0 acres of which would be permanently fenced off for the facility.¹⁴ The North Parcel is contaminated with high levels of coal ash, a substance known to cause cancer and other health issues in humans and animals.¹⁵ Algonquin has also found floating oil in a monitoring well and petroleum-contaminated soil on the North Parcel during geotechnical testing.¹⁶

¹³ See Email from Ivria Glass Fried, Associate Special Town Counsel to Weymouth, to Angela Washington, the Federal Energy Regulatory Commission’s Freedom of Information Act Officer (Aug. 2, 2016), attached hereto as “Exhibit 1.” The Town also contacted the Department of Energy, and was informed that neither the Office of Fossil Energy, the Office of Electricity Delivery & Energy Reliability nor the Energy Information Administration, had any maps or plans depicting permitted or operation natural gas compressor stations located within hurricane inundation zones. See Letter from Alexander C. Morris, the Department of Energy’s Freedom of Information Act Officer to Ivria Glass Fried, Associate Special Town Counsel to Weymouth (Jul. 22, 2016), attached as “Exhibit 2.” The Town also submitted this same request to the Pipeline and Hazardous Materials Safety Administration and the National Oceanic and Atmospheric Administration of July 5 and 7, 2016, respectively. These agencies are still processing these requests (NOAA Request No. DOC-NOAA_2016001403, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d280d351a7> (last visited Feb. 23, 2014); Letter from Taja Brooks, PHMSA Paralegal Specialist to Ivria Glass Fried, Associate Special Town Counsel to Weymouth (July 6, 2016), attached as “Exhibit 3.”). The Town also contacted the Environmental Protection Agency and was informed by Bill Walsh-Rogalski in Region 1 that the EPA did not have the requested information.

¹⁴ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.1-11.

¹⁵ *Id.* at p.2-67.

¹⁶ See Massachusetts Department of Environmental Protection, Release Tracking Nos. 4-26230 and 4-26243.

Across Bridge Street, directly south of the proposed compressor station site, is a 787-megawatt electric-generating power plant, owned and operated by Calpine Fore River Energy Center LLC's ("Calpine").¹⁷ When the Massachusetts Energy Facilities Siting Board (the "Siting Board") approved the construction of this facility in 2000, two perpetual conservation restrictions were granted to the Town: one over a portion of the North Parcel known as the "King's Cove Parcel," and the other over a portion of the Calpine facility site known as the "Lovell's Grove Parcel."¹⁸ The Siting Board's decision required the facility owner and the Town to "develop and coordinate plans for providing additional public access, if and where appropriate, in the area of [the North Parcel]."¹⁹ Calpine has not yet fulfilled this obligation.

The area of the proposed compressor station is currently overburdened with heavy industrial uses and polluting facilities. In addition to the Calpine power plant, one of the largest producers of greenhouse gas emissions in Massachusetts, the following facilities are within 0.85 miles of the proposed compressor station: (1) a gasoline and oil depot; (2) a fatty acids chemical manufacturing plant; (3) a second natural gas-fired power plant; (4) a sewage pump station for the metropolitan Boston area; (5) a sewage pelletizing plant; (6) a hazardous waste transfer and treatment facility; (7) small oil storage facilities and tanks; and (8) the Algonquin pipeline, one of the longest natural gas pipelines in

¹⁷ *Id.* at p.3-20.

¹⁸ King's Cove and Lovell's Grove Conservation Restriction, Norfolk County Land Court, Document No. 1,170,390-1, Certificate Nos. 159,129, 181,726, 189,837, and 194,674 (Mar. 17, 2009).

¹⁹ *In the Matter of the Petition of Sithe Edgar Development, LLC for Approval to Construct a Bulk Generating Facility in the Town of Weymouth, Massachusetts*, Final Decision, EFSB 98-7 (Feb. 11, 2000), Condition L, available at <http://www.mass.gov/eea/docs/dpu/siting/siting-files/efsb98-7.pdf>.

Massachusetts.²⁰ Adding another significant facility in this area will adversely affect the “Low Moderate Income Target Areas” in Weymouth and the environmental justice communities located in Quincy, just over the Fore River Bridge.²¹

On April 27, 2015, the Commission published its Notice of Intent to Prepare an Environmental Assessment (“EA”) for the Project.²² Shortly thereafter, the Siting Board filed notice of its intent to hold public hearings and to collect comments on the Project for submission to FERC.²³ During the initial scoping comment period, the Town, along with numerous residents, conservation groups, and elected officials, voiced opposition to siting the proposed compressor station in a densely developed coastal area, directly next to Calpine’s electric generation power plant, and with residential neighborhoods in very close proximity.²⁴ Nearly all of the comments collected by the Siting Board were in opposition to the project.²⁵

During the pre-filing scoping period, numerous commentators, including the Town, raised concerns that the Atlantic Bridge Project had been impermissibly segmented from the Algonquin Incremental Market (“AIM”) Project and the Access

²⁰ *Scoping Comments of the Town of Weymouth*, Docket No. PF15-12-000 (submittal 20150611-5216) (Jun. 11, 2015), p.2 and Exhibit C. Moreover, the portion of the pipeline which runs along the peninsula is 24” and 30” at various points. *Algonquin Gas Transmission, LLC’s Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 1, Vol. IIA, USGS Quad Excerpt (Weymouth, MA).

²¹ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-78.

²² *Notice of Intent to Prepare Environmental Assessment and Notice of Public Scoping Meetings*, Docket No. PF15-12-000 (submittal 20150427-3015) (Apr. 27, 2015).

²³ *Comments of Massachusetts Energy Facilities Siting Board*, Docket No. PF15-12-000 (submittal 20150618-5179) (Jun. 18, 2015), p.2.

²⁴ *Scoping Comments of the Town of Weymouth*, Docket No. PF15-12-000 (submittal 20150611-5216) (Jun. 11, 2015).

²⁵ All of these comments were shared with the Commission. *Comments of Massachusetts Energy Facilities Siting Board*, Docket No. PF15-12-000 (submittal 20150618-5179) (Jun. 18, 2015), pp.4-5.

Northeast (“ANE”) Project.²⁶ Notably, as part of ANE, the Natural Gas Companies intend to expand the capacity of the proposed Weymouth Compressor Station by adding a 10,915-horsepower turbine and to install 4.19 miles of additional pipeline in Weymouth and Braintree the following year.²⁷ Thus, the Atlantic Bridge and ANE Projects together involve first the construction, and then, almost immediately thereafter, more than doubling the size of the compressor station.

Thus far, however, the Commission has not reviewed the Atlantic Bridge, ANE and AIM projects in one Environmental Impact Statement (“EIS”) or given the public the opportunity to understand and comment meaningfully on the true environmental impacts of the compressor station. As detailed below, the failure to consider these “three” proposals as a single project obscures a viable alternative siting location for the compressor station in the Town of Franklin.

Over the public’s objections, the Natural Gas Companies filed their application for a Certificate of Public Convenience and Necessity for the Atlantic Bridge Project on October 22, 2015. The Town of Weymouth timely intervened in the proceeding on November 18, 2015.²⁸

²⁶ *Letter from Susan M. Kay to the Federal Energy Regulatory Commission*, Docket No. PF15-12-000 (submittal 20150730-0021s) (Jul. 30, 2015).

²⁷ *Draft Resource Reports Nos. 1 and 10*, Docket No. PF16-1-000 (submittal 20151217-5260) (December 17, 2015), pp.1-9, 1-18; *Access Northeast Project, Supplemental Project Information Filing, Attachment A*, Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016), Table 2-1.

²⁸ Order, 158 FERC ¶61,061, ¶14; *see also Motion to Intervene of Town of Weymouth Massachusetts*, Docket No. CP16-19-000 (submittal 20151118-5071) (Nov. 18, 2015).

On November 11, 2015, the Commission issued a supplemental Notice of Intent to Prepare an Environmental Assessment and requested comments on the EA's scope.²⁹ Again, the Commission received an outpouring of comments expressing widespread opposition to siting the compressor station in North Weymouth.³⁰ The Town also raised the need for an EIS, rather than a less thorough EA.³¹

On May 2, 2016, the Commission issued its EA for the Atlantic Bridge Project, requesting that the public submit comments by June 1.³² On June 1, the Town submitted its comments, incorporating its prior concerns and highlighting the numerous deficiencies in the EA's analysis and recommended Finding of No Significant Impact (FONSI).³³ The Town's comments were echoed by numerous residents, elected officials, and state agencies.³⁴

²⁹ *Supplemental Notice of Intent to Prepare an Environmental Assessment for and Requesting Comments on the Proposed Atlantic Bridge Project*, Docket No. CP16-9-000 (submittal 20151119-3085) (Nov. 19, 2015).

³⁰ *December 21, 2015 Comments of the Town of Weymouth, Massachusetts*, Docket No. CP16-9-000 (submittal 20151221-5331) (Dec. 21, 2015).

³¹ *Id.*

³² EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.4-1.

³³ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016). Due to a temporary error with the Commission's e-filing system, the Town was unable to file these comments on June 1. The Town submitted the comments on June 2, along with a motion to accept the comments as timely filed. The Commission did not rule on the motion, but aware of error, listed the entry date as June 1.

³⁴ *See, e.g. Food & Water Watch's Comments*, Docket No. CP16-9-000 (submittal 20160601-5310) (Jun. 1, 2016); *Comments of the Massachusetts Attorney General Maura Healey on the Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5066) (Jun. 1, 2016); *Comments of Rebecca Huagh, Weymouth Town Councilor*, Docket No. CP16-9-000 (submittal 20160601-5074) (Jun. 1, 2016); *Comments of Marie Shaw*, Docket No. CP16-9-000 (submittal 20160523-5026) (May 22, 2016).

On June 29, 2016, the Natural Gas Companies submitted supplemental information detailing a revised plan to acquire less than the whole North Parcel.³⁵ Specifically, Calpine would retain ownership of the King's Cove Parcel. The Natural Gas Companies also proposed to move the Project's construction staging area across Bridge Street onto Calpine's property.³⁶ Thereafter, on August 2, 2016, they submitted further supplemental information in which they asserted that Calpine would retain the obligation to comply with the Siting Board's decision regarding the provision of public access on the North Parcel.³⁷ The Natural Gas Companies did not offer any explanation as to how it would even be possible for Calpine to fulfill this obligation after it no longer owned most of the North Parcel.

On August 22, 2016, the Town filed supplemental comments asking the Commission to revise its EA to reflect the Project's new configuration, noting that the relocation of the staging area would increase the traffic, noise and air impacts associated with the facility's construction.³⁸ The Commission did not respond to this request and, instead, on January 25, 2016, issued the Order.³⁹ The Order adopted the EA's conclusion that the Project does not constitute a major federal action significantly affecting the

³⁵ *Supplemental Information, Proposed Compressor Station and Site and Workspace Changes*, Docket No. CP16-9-000 (submittal 20160629-5217) (Jun. 29, 2016), p.1.

³⁶ *Id.*

³⁷ *Id.*; *Supplemental Information, Calpine Agreement*, Docket No. CP16-9-000 (submittal 20160803-5028) (Aug. 2, 2016), p.1.

³⁸ *Town of Weymouth's Request to Revise Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160822-5199) (Aug. 22, 2016).

³⁹ Order, 158 FERC ¶61,061.

quality of the human environment, and issued the Certificate for the construction and operation of the Project.⁴⁰

II. STATEMENT OF ISSUES.

1. Issue: Whether the Commission violated the *Natural Gas Act*, 15 U.S.C. §717b(d), the *Coastal Zone Management Act* (CZMA), 16 U.S.C. §1456(c)(3)(A), and the *Administrative Procedure Act*, 5 U.S.C. §706(2)(A), by issuing the Certificate, before the Massachusetts Office of Coastal Zone Management has certified the Project's compliance with the CZMA.

Answer: Yes. The CZMA, by its plain terms, requires that a consistency determination be issued prior to the issuance of any federal licenses: "No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification..."⁴¹ Precedent: *City of Tacoma, Washington v. Fed. Energy Reg. Comm'n*, 460 F.3d 53, 67, 68 (D.C. Cir. 2006).

2. Issue: Whether the Commission violated the *National Environmental Policy Act* (NEPA), 42 U.S.C. §§4321 *et seq.*, by improperly segmenting the Atlantic Bridge Project from the Algonquin Incremental Market Project and the Access Northeast Project.

Answer: Yes. The Commission violated NEPA by segmenting these "three projects," which are connected, cumulative, and similar actions, and which must be considered in a single Environmental Impact Statement (EIS). Because this issue is pending before the D.C. Circuit (*City of Boston, et al., v. Fed. Energy Reg. Comm'n*, Consolidated Matters Nos. 16-1081, 16-1098 and 16-1103), the

⁴⁰ *Id.*

⁴¹ 16 U.S.C. §1456(c)(3)(A).

Town recognizes that the issue may be decided there before the Commission rules on the Town's request for rehearing. To the extent that this issue is not decided by the D.C. Circuit, however, the Town incorporates herein the arguments made by the intervenors in *City of Boston, et al.* Precedent (including cases cited by the intervenors in City of Boston): *Del. Riverkeeper Network v. Fed. Energy Reg. Comm'n*, 753 F.3d 1304, 1313-19 (D.C. Cir. 2014); *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987); *Envtl. Def. Fund v. Marsh*, 651 F.2d 983, 999 n.19 (5th Cir. 1981); *Named Individual Members of San Antonio Conservation Soc. v. Tex. Highway Dep't*, 446 F.2d 1013 (5th Cir. 1971); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006); *Wilderness Workshop v. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228 (10th Cir. 2008); *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005); *Fla. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1315 (S.D. Fla. 2005).

3. Issue: Whether the Commission violated NEPA by not meaningfully considering alternatives to the proposed Weymouth Compressor Station site.

Answer: Yes. The Commission's Environmental Assessment (EA), incorporated into the Commission's Order, fails to satisfy the requirements of NEPA because it does not meaningfully consider alternative sites for the proposed compressor station. Furthermore, the evidence in the record demonstrates that the siting the compressor station in the rural community of Franklin is far preferable to the densely populated Weymouth site. Precedent: *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir.1988); *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21, 414 (1976).

4. Issue: Whether the Commission violated NEPA by determining that the Atlantic Bridge Project's impacts are insignificant and that an EIS is not warranted.

Answer: Yes. The Commission violated NEPA because it improperly based its Finding of No Significant Impacts (FONSI) on an incomplete and inadequate EA. Specifically, the EA lacks critical information regarding the impacts from coal ash and noise emissions, and the public safety analysis is predicated on a safety plan that has yet to be presented. The Commission has also improperly concluded that an EIS is not warranted with considering the relevant intensity factors set forth in 40 C.F.R. §1508.27. Precedent: *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 771, 733 (1983); *EarthReports, Inc. v. Fed. Energy Reg. Comm'n*, 828 F.3d 949, 958-59 (D.C. Cir. 2016); *Sierra Club v. U.S. Dep't of Transp.*, 753 F.2d 120, 126 (D.C. Cir. 1985); *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983); *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1123 (D.C. Cir. 1971); *Limerick Ecology Action, Inc. v. U.S. Nuclear Regulatory Comm'n*, 869 F.2d 719, 729 (3rd Cir. 1989); *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm'n*, 449 F.3d 1016 (9th Cir. 2006); *Anderson v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004); *Ocean Advisors v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2004); *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 731, 736 (9th Cir. 2001); *LaFlamme v. Fed. Energy Reg. Comm'n*, 852 F.2d 389, 400, 401 (9th Cir. 1998); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1334 (9th Cir. 1992); *No*

GWEN Alliance v. Aldridge, 855 F.2d 1380 (9th Cir. 1988); *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982); *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1026 (9th Cir. 1980); *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1257 (10th Cir. 2011); *Stop the Pipeline v. White*, 233 F.Supp.2d 957, 938 (S.D. Ohio 2002).

5. Issue: Whether the Commission's erred in concluding that its cumulative impact analysis for the Atlantic Bridge Project is sufficient.

Answer: Yes. The cumulative impact analysis in the EA, which the Commission relies upon in its Order, fails to satisfy NEPA's requirements because it does not take a hard look at the cumulative impacts of the Atlantic Bridge Project, the Fore River Bridge Replacement Project and the ANE Project on (1) soil, (2) the surface water quality and aquatic resources, (3) vegetation, wildlife and habitat, and protected species, (4) land use, (5) recreational and special interest areas, (6) traffic, (7) air quality, and (8) noise levels. Precedent: *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976); *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1123 (D.C. Cir. 1971); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993-94 (9th Cir. 2004); *Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2004); *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 958 (9th Cir. 2003); *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895-96 (9th Cir. 2002); *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002); *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998).

6. Issue: Whether the Commission erred in finding that the Atlantic Bridge Project will not disproportionately affect environmental justice communities.

Answer: Yes. The addition of the proposed Weymouth Compressor Station will disproportionately harm environmental justice communities already overburdened with harmful industrial facilities. Precedent: *Minn. Publ. Interest Research Group v. Butz*, 541 F.2d 1292, 1299-1300 (8th Cir. 1976); *Allen v. Nat'l Insts. of Health*, 974 F. Supp. 2d 18, 33-34 (D. Mass. 2013).

7. Issue: Whether the Commission improperly concluded that the Certificate is required by public convenience and necessity.

Answer: Yes. Predicated on its faulty EA, the Commission erred in determining that the Atlantic Bridge Project meets the standards established by the NGA and its implementing regulations for being required by public convenience and necessity. Precedent: *Minisink Residents for Env'tl. Preservation and Safety v. F.E.R.C.*, 762 F.3d 97, 101-02 (D.C. Cir. 2014); *Delaware Riverkeeper Network v. Sec'y Pa.. Dep't of Env'tl. Prot.*, 833 F.3d 360, 367 (3rd Cir. 2016); *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227.

8. Issue: Whether the Commission's staff may extend the time by which the Commission may act on this Request for Rehearing.

Answer: No. Pursuant to 15 U.S.C. §717r(a), the Commission's staff lacks the authority to extend the time by which the Commission must act on this Request for Rehearing. Precedent: *Boston Gas Co. v. Fed. Energy Reg. Comm'n*, 575 F.2d 975, 979 (1978).

III. ARGUMENT.

1. **The Commission cannot issue its Certificate before the Massachusetts Office of Coastal Zone Management has certified whether the Atlantic Bridge Project complies with the *Coastal Zone Management Act* and Massachusetts' Coastal Zone Management Policy.**

The Commission is prohibited by the *Natural Gas Act*⁴² and the *Costal Zone Management Act* (CZMA)⁴³ from approving the Natural Gas Companies' application and issuing the Certificate unless and until the Massachusetts' Office of Coastal Zone Management (OCZM) has determined that the Project is consistent with the Massachusetts coastal management program, as required by the federal CZMA.⁴⁴

Congress adopted the CZMA in 1972 to encourage the states to protect their costal resources, with an aim "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations."⁴⁵ As outlined in the CZMA, "[t]he key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority" over coastal lands and waters by adopting their own management programs.⁴⁶ Therefore, the CZMA gives states the ability to develop their own coastal management program, subject to federal approval.⁴⁷

⁴² 15 U.S.C. §717b(d).

⁴³ 16 U.S.C. §§1451, *et. seq.*

⁴⁴ The Town raised this issue in its June 1, 2016 comment letter. *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.22.

⁴⁵ 16 U.S.C. §1452(1).

⁴⁶ *Id.* at §1451(i); see also, *Secretary of the Interior v. California*, 464 U.S. 312, 316 (1984).

⁴⁷ CZMA encourages coastal states to develop "management programs" for their coastal zones, which are comprehensive statements "prepared and adopted by the state in accordance with the provisions of [the CZMA], setting forth objectives, policies, and standards to guide public and private uses of lands and

Once a state's management program receives federal approval, states must review projects receiving federal licenses and permits to ensure that they are consistent with the enforceable policies of the state's coastal zone management program (the "Consistency Determination").⁴⁸ The state's Consistency Determination must occur prior to the issuance of the federal license:

[A]ny applicant for a required [f]ederal license or permit... affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing... agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program.... No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification....⁴⁹

In 1978, the National Oceanic and Atmospheric Administration approved the Commonwealth's Coastal Zone Management Program Plan.⁵⁰ The Massachusetts Legislature subsequently passed Chapter 589 of the Acts of 1983 (*An Act Relative to the Protection of the Massachusetts Coastline*), which formally established the Commonwealth's coastal zone management program and policies. Because Massachusetts has a federally approved coastal management program, the CZMA unambiguously precludes federal agencies from issuing any permit or license for a

waters in the coastal zone." 16 U.S.C. §1453(12). These coastal zone management programs include "enforceable policies," which are "[s]tate policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a [s]tate exerts control over private and public land and water uses and natural resources in the coastal zone." 16 U.S.C. §1453(6)(a). States' coastal zone management programs must be approved by the Secretary of Commerce. 16 U.S.C. §1454.

⁴⁸ 16 U.S.C. §1456(c).

⁴⁹ 16 U.S.C. §1456(c)(3)(A) (emphasis added).

⁵⁰ Massachusetts Coastal Zone Policy Guide (Oct. 2011), at p.2.

project located within Massachusetts' coastal zone until such time as the Commonwealth has issued its Consistency Determination for the project.

While the NGA preempts many state, and local laws, its savings clause expressly preserves the state law certification requirements of the CZMA.⁵¹ Section 717b(d) provides that “nothing in this chapter affects the rights of States under...the Coastal Zone Management Act....”⁵² The statute's meaning is self-evident: The Commission must comply with the CZMA, which requires applicants to obtain a Consistency Determination before the issuance of any federal license.⁵³

In *City of Tacoma, Washington v. Fed. Energy Reg. Comm'n*⁵⁴, the D.C. Circuit Court considered the analogous situation of the Commission's issuing a certificate before the applicant obtained a *Clean Water Act* (CWA) water quality certification.⁵⁵ The Court reiterated the need for the Commission to wait until the issuance of the certificate:

[T]he decision whether to issue a section 401 certification generally turns on questions of state law. FERC's role is limited to awaiting, and then deferring to, the final decision of the state. Otherwise, the state's power to block the project would be meaningless.... FERC, in other words, may not act based on any certification the state might submit; rather, it has an obligation to determine that the specific certification required by section 401 has

⁵¹ *Del. Riverkeeper Network v. Sec'y Pa. Dep't of Env'tl. Prot.*, 833 F.3d 360, 368 (3d Cir. 2016) (“[T]he Natural Gas Act allows states to participate in environmental regulation of these facilities under three federal statutes: the Clean Air Act, the Coastal Zone Management Act, and the Clean Water Act.”).

⁵² 15 U.S.C. §717b(d).

⁵³ Congress amended both the NGA and the CZMA in 2005. *Energy Policy Act*, Pub. L. No. 109-58, §§311, 314-6, and 382, 119 Stat. 594, 685, 690-91, and 735 (2005). Congress did not create an exception in either statute for compliance with CZMA's requirements. By refraining for creating such an exemption, Congress demonstrated its choice not to reduce the power of states under the CZMA.

⁵⁴ 460 F.3d 53, 67 (D.C. Cir. 2006).

⁵⁵ The CWA, which is protected by the NGA's saving clause, states that “[n]o license or permit shall be granted until the certification required by this section has been obtained or has been waived...” 33 U.S.C. §1341(a)(1).

been obtained, and without that certification, FERC lacks authority to issue a license.⁵⁶

The same interpretation is applicable to the issuance of the CZMA Consistency Determination, which is based on state policies and programs.

On February 23, 2015, the Natural Gas Companies submitted their Consistency Determination application for the Atlantic Bridge Project to the OCZM.⁵⁷ On August 3, 2016, the OCZM stated, in a letter to the Natural Gas Companies, that it “cannot complete its review and issue a decision until all applicable [state] licenses, permits, certifications and other authorizations have been issued.”⁵⁸ The Natural Gas Companies therefore agreed to a one-year stay of the review period beginning on August 3, 2016, “with [OCZM]’s review re-starting on August 3, 2017, and completed by August 23, 2017.”⁵⁹ The OCZM stated that, “[i]f the additional information necessary for [it] to issue a [Consistency D]etermination is provided... earlier than August 3, 2017, [it] may contact [the Natural Gas Companies] to amend the end date of the stay to allow for an earlier determination.”⁶⁰ To the Town’s knowledge, OCZM has not contacted the Natural Gas Companies to amend the stay. Therefore, at the time that the Commission issued the

⁵⁶ *City of Tacoma*, 460 F.3d at 68 (citation omitted).

⁵⁷ *Correspondence of the Massachusetts Office of Coastal Zone Management to Algonquin Gas Transmission, LLC*, Docket No. CP16-9-000 (submittal 20160805-4003) (Aug. 5, 2016), p. 1.

⁵⁸ *Id.* at

⁵⁹ Letter from Robert Boeri, Project Review Coordinator, Office of Coastal Zone Management to Mike Tyrrell, Algonquin Gas Transmission, LLC (Aug. 3, 2016), attached as “Exhibit 4.”

⁶⁰ *Correspondence of the Massachusetts Office of Coastal Zone Management to Algonquin Gas Transmission, LLC*, Docket No. CP16-9-000 (submittal 20160805-4003) (Aug. 5, 2016), p. 1.

Certificate, OCZM was not planning to make its Consistency Determination until after August 3, 2017.⁶¹

The Commission is certainly aware of the fact that OCZM has not issued a Consistency Determination for the Project and that the Natural Gas Companies have therefore not yet satisfied the CZMA's required prerequisite for issuance of the Order. Nevertheless, its Order apparently tries to circumvent a clear statutory mandate: Condition 16 of the Order's Environmental Conditions (Appendix B) requires the Natural Gas Companies to submit a copy of the OCZM's Consistency Determination prior to construction of the compressor station.⁶² But this Condition is not a valid substitute for actual compliance with the plain language of the CZMA: The OCZM's Consistency Determination is required before a federal license or permit is issued for the project.

As the Commission correctly notes, the "NGA vests the Commission with broad power to attach to any certificate of public convenience and necessity it issues 'such reasonable terms and conditions' as it deems proper."⁶³ However, that broad power is not unlimited: The Commission cannot simply circumvent its statutorily mandated obligations. The Commission's Order is therefore beyond its powers and inconsistent

⁶¹ As the Town expressed in its comments to the OCZM, the limited information that has been provided by the Natural Gas Companies undermines the application's conclusory assertions of compliance with the enforceable policies of Massachusetts' approved coastal zone management plan. See *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), Exhibit A (*Federal Consistency Review – Town of Weymouth's Comments* (Mar. 30, 2016)). Specifically, the Project does not comply with Coastal Hazard Policy #1 because the location of the proposed compressor station would be rendered inaccessible by a Category 2 hurricane and completely submerged by a Category 4 hurricane. The Project also conflicts with Energy Policy #1, which requires applicants to "propose, evaluate, and compare at least one inland site," for non-coastally dependent facilities. Massachusetts Coastal Zone Management Policy Guide (Oct. 2011). As described in detail in Section III.3, the Natural Gas Companies have failed to propose an alternative inland site. Furthermore, dedicating land within the Fore River Designated Port Area for use as a compressor station directly violates Ports and Harbors Policies #3, #4, and #5. The Project also fails to satisfy Public Access Policy #1 because the Natural Gas Companies will provide no additional public access.

⁶² Order, 158 FERC ¶61,061.

⁶³ Order, 158 FERC ¶61,061, ¶60.

with the limitations of the NGA and the CZMA, and arbitrary and capricious in violation of the *Administrative Procedure Act*.⁶⁴ The Commission should now rescind the Certificate and defer further action until such time as the OCZM makes its Consistency Determination.

2. The Commission has improperly segmented the Atlantic Bridge Project from the Algonquin Incremental Market Project and the Access Northeast Project.

- a. *The question of whether the Atlantic Bridge Project was improperly segmented from the AIM and Access Northeast Projects is currently pending before the D.C. Circuit.*

The Council on Environmental Quality (CEQ) regulations implementing NEPA require that an EIS include analysis of: (1) connected actions, including those that are “interdependent parts of a larger action and depend on the larger action for their justification;” (2) cumulative actions, “which when viewed with other proposed actions have cumulatively significant impacts;” and (3) similar actions, “which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” 40 C.F.R. §1508.25(a).

An agency “impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate pieces under consideration.” *Del. Riverkeeper Network v. Fed. Energy Reg. Comm’n*, 753 F.3d 1304, 1315 (D.C. Cir. 2014) (“the agency’s determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a)”).

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

⁶⁴ 5 U.S.C. §706(2)(A).

environmental impact, but which collectively have a substantial impact.”⁶⁵ In other words, the anti-segmentation rule prevents applicants and agencies from thwarting their NEPA obligations by splitting projects into smaller components in order to avoid considering their collective impact and to “conceal the environmental significance of the project or projects.”⁶⁶

On August 4, 2016, intervenors in *City of Boston, et al., v. Fed. Energy Reg. Comm’n*, Consolidated Matters Nos. 16-1081, 16-1098 and 16-1103, appealed a Certificate Order and Rehearing Order issued by the Commission, arguing, in part, that the AIM, Atlantic Bridge, and ANE Projects have been improperly segmented by the Commission.⁶⁷ The intervenors in that case argued that these three projects were conceived, designed, marketed and engineered as a single infrastructure project and, consequently, constitute connected, cumulative and similar actions that require consideration as a unified whole for purposes of NEPA review.⁶⁸ Briefs and reply briefs have been filed by the intervenors and the Commission, and this issue is currently pending before the D.C. Circuit Court of Appeals.

⁶⁵ *Wilderness Workshop v. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228 (10th Cir. 2008); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006).

⁶⁶ *Hammond v. Norton*, 370 F Supp.2d 226 (D.D.C. 2005) (“*Hammond*”); see also *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987) (“‘Piecemealing’ or ‘Segmentation’ allows an agency to avoid the NEPA requirement that an EIS be prepared for all major federal actions with significant environmental impacts by dividing an overall plan into component parts, each involving action with less significant environmental effects.”).

⁶⁷ See Joint Initial Brief of Petitioners Town of Dedham, Massachusetts, and Riverkeeper, Inc., et al., (“Joint Initial Brief of Petitioners”) pp.10-37, attached hereto as “Exhibit 5.”

⁶⁸ *Id.*

For all of the reasons discussed in the Joint Initial Brief of Petitioners in *City of Boston, et al., v. Fed. Energy Reg. Comm'n*,⁶⁹ as well as the reasons outlined in the Town's own comment letter on the EA,⁷⁰ the AIM, Atlantic Bridge and ANE Projects have been improperly segmented. Because this issue is pending before the D.C. Circuit, the Town recognizes that the issue may be decided there before the Commission rules on the Town's request for rehearing. To the extent that this issue is not decided by the D.C. Circuit, however, the Town incorporates herein the arguments made by the intervenors in *City of Boston, et al. v. FERC*.

- b. *The proposed expansion of the Weymouth compressor station further demonstrates that the Atlantic Bridge and Access Northeast Projects have been improperly segmented.*

As described above, the Natural Gas Companies have proposed construction of a compressor station in the Town of Weymouth as part of the Atlantic Bridge project, followed by an expansion of that same station as part of the ANE Project.⁷¹ This overlap

⁶⁹ Cases relied upon by the intervenors, and incorporated herein, include the following: *Del. Riverkeeper Network*, 753 F.3d at 1313-19; *Taxpayers Watchdog, Inc.*, 819 F.2d at 298; *Env'tl. Def. Fund v. Marsh*, 651 F.2d 983, 999 n.19 (5th Cir. 1981); *Named Individual Members of San Antonio Conservation Soc. v. Texas Highway Dep't*, 446 F.2d 1013 (5th Cir. 1971); *Great Basin Mine Watch*, 456 F.3d at 969; *Wilderness Workshop*, 531 F.3d at 1228; *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005); *Fla. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1315 (S.D. Fla. 2005).

⁷⁰ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.2-6.

⁷¹ Due to the Massachusetts Supreme Judicial Court's ruling in *ENGIE Gas & LNG LLC v. Dep't of Pub. Utils.*, 56 N.E.3d 740 (Mass. 2016), holding that the Massachusetts Department of Public Utilities lacks authority to approve electric distribution companies' long-term contracts for natural gas capacity, it is the Town's understanding that the ANE project is currently being reconfigured. The Companies have issued public statements to the effect that they are evaluating their options, but intend to move ahead with ANE. *December 16, 2016, Monthly Process Report*, Docket No. PF16-1-000 (submittal 20161219-5067) (Dec. 19, 2016), p.1 ("Algonquin anticipates filing draft Resource Reports by mid-2017 followed by the FERC Application in late 2017."). Because the SJC's ruling was limited to the authority to approve contracts, the Town expects that the Companies will proceed with a proposal that is not substantially different with respect to proposed infrastructure improvements. As such, any new proposal is expected to look very similar, if not identical, to the existing ANE proposal and still deserves to be considered in combination with the Atlantic Bridge and AIM projects. For now, however, it is sufficient to note that the Companies have not withdrawn any of their filings in the ANE Proceeding (Docket No. PF16-1-000), and so the Commission must assume that they intend to proceed with that Project as filed.

of facilities demonstrates a physical and operational connection of these projects and establishes that the projects, when considered together, will have significant cumulative impacts. For the same reasons set forth in the Joint Initial Brief of Petitioners in *City of Boston, et al., v. FERC*, the overlapping facilities and impacts created by the expansion of the Weymouth Compressor Station in both the Atlantic Bridge and ANE Projects further demonstrates that the Atlantic Bridge, AIM and ANE Projects are connected, cumulative and similar actions that should be considered together, rather than segmented for the purpose of environmental review.

3. The Commission has not adequately considered alternative sites for the compressor station.

As the Town stated in its comment letters to the Commission,⁷² the alternatives analysis contained in the EA and adopted into the Order⁷³ does not satisfy the requirements of NEPA⁷⁴ because it does not meaningfully consider alternative sites for the proposed compressor station. To the contrary, the evidence in the record demonstrates that siting the compressor station in the rural community of Franklin is far preferable to

Furthermore, Boston Gas Company, d/b/a National Grid filed its Long-Range Resource and Requirements Plan with the Massachusetts Department of Public Utilities on November 1, 2016. See D.P.U. 16-181. In its Initial Filing, National Grid identifies ANE as a one possible alternative which National Grid may use for future capacity additions to its portfolio. National Grid's filing demonstrates that ANE remains a viable project.

⁷² *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.6-10; *December 21, 2015 Comments of the Town of Weymouth*, Docket No. CP16-9-000 (submittal 20151221-5331) (December 21, 2015), pp.9-10; *Comments of the Town of Weymouth*, Docket No. PF15-12-000 (submittal 20150611-5216) (Jun. 11, 2015), pp.6-7.

⁷³ Order, 158 FERC ¶¶61,061, ¶¶239-251.

⁷⁴ 42 U.S.C. §§4332 *et. seq.*

the proposed coastal site in the densely populated and already overburdened Town of Weymouth.

NEPA requires federal agencies to consider “alternatives to the proposed action.”⁷⁵ Under NEPA, “all agencies of the Federal Government shall study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”⁷⁶ The requirement is critical to NEPA’s implementation and is often referred to as the “heart” of the NEPA review process.⁷⁷ Courts have said that the alternatives analysis should:

...present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.⁷⁸

Pursuant to this mandate, an agency must “[r]igorously explore and objectively evaluate all reasonable alternatives” that it is required to consider by regulation.⁷⁹

In this proceeding, however, the Commission appears to have merely accepted the Natural Gas Companies’ tunnel-vision presentation of alternatives, which relied on only those facts that support the siting of the compressor station in Weymouth, while omitting, obscuring or even misrepresenting those facts that do not support this result. This

⁷⁵ *Id.* at §4332(2)(C)(iii).

⁷⁶ *Id.* at §4332(2)(E).

⁷⁷ See 40 C.F.R. §1502.14.

⁷⁸ *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir.1988).

⁷⁹ 40 C.F.R. §1502.14.

unquestioning acceptance resulted in a premature and inappropriate dismissal of the Franklin and Holbrook sites.

First, the Commission based its assessment of the Franklin site on inaccurate data. The Commission states that the Franklin Site would require “about 30.8 miles of 30-inch-diameter discharge pipeline...to connect the compressor station to the I-10 system.”⁸⁰ However, “all but about 5.7 miles of the pipeline required for the Franklin Site is part of the [the Natural Gas Companies’] planned [Access Northeast Project].”⁸¹ Thus, as the Town recognized in its June 1 comment letter, many of the environmental impacts that seem to have driven the choice of Weymouth over Franklin will occur regardless of which of the two sites is selected for the compressor station.⁸²

While the Commission’s Order⁸³ recognizes the overlap between the Atlantic Bridge and ANE Projects, the Commission did not revise the EA to review the environmental impacts of constructing only the 5 additional miles of pipeline that would be needed to site the compressor station in Franklin.⁸⁴ But this analysis is crucial: Siting the compressor station in Weymouth as part of the Atlantic Bridge Project would essentially guarantee that the compressor station would double in size as part of the ANE Project. The Commission’s Order therefore is basically green-lighting both the construction and the expansion of the compressor station in Weymouth without ever

⁸⁰ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.3-20.

⁸¹ *Id.* at p.3-20, n.34.

⁸² *Id.* at Table 3.5.1-1 (depicting the impacts based on construction of approximately 30 miles of pipeline).

⁸³ Order, 158 FERC ¶61,061, ¶¶246-47.

⁸⁴ See, e.g. EA, Docket No. CP16-9-000 (submittal 20160502-4001), Table 3.5.1-1.

having to consider the environmental impacts of siting the expanded compressor elsewhere.

The Commission has recognized that, “with respect to residences and schools, the Franklin site is preferable to the proposed site in Weymouth.”⁸⁵ Despite this, the Order and the EA clearly indicate that the Natural Gas Companies selected the Weymouth site over the Franklin site mainly due to perceived wetland and land use impacts. The Commission cannot rely upon wetland and land use concerns for rejecting the Franklin site, without accurately comparing these impacts for the two locations. The Commission will not have taken a “hard look”⁸⁶ at the environmental impacts of siting the compressor station in Franklin until it actually studies what those impacts will be.

Notably, the segmentation of the Atlantic Bridge Project from the Access Northeast Project permits the Natural Gas Companies to create the inaccurate perception that siting the facility in Franklin will significantly harm the environment and that such harm is avoided by siting the facility in Weymouth. However, as part of the ANE Project, the Natural Gas Companies propose to fill those same wetlands, cross those same water bodies, deforest those same lands, impact those same residences, and cross those same streets and rail lines. The Natural Gas Companies cannot piecemeal review these two projects in order to avoid a full and complete alternatives analysis.

Second, the EA failed to compare the human impacts of siting the compressor station in the three communities. Table 3.5.1-1 of the EA, which compares the various proposed compressor station sites, indicates that there are 587 “Residential Structures

⁸⁵ Order, 158 FERC ¶61,061, ¶246.

⁸⁶ *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976) (“The only role for a court is to insure that the agency has taken a ‘hard look’ at environmental consequences.”).

within ½ Mile of the Station” in Weymouth, as opposed to 131 and 22 within the same radius in Franklin and Holbrook, respectively.⁸⁷ Furthermore, there is no analysis of the number of commercial businesses within the area or other areas where people frequently congregate.⁸⁸

Third, the EA did not consider the inherent safety risks associated with siting the facility in Weymouth as opposed to Franklin or Holbrook. As noted, the Weymouth site has only two evacuation routes, one of which is over a bridge, and the other is through back “detour” roads.⁸⁹ An abutting property contains a large electric generating facility with significant amounts of oil reserves on the premises.⁹⁰ The proposed facility is also located in a Hurricane Inundation Zone and would be inaccessible during a Category 2 hurricane.⁹¹ The EA did not meaningfully compare these safety risks to those of the Franklin and Holbrook alternatives.⁹² If the Commission had performed such a public safety analysis, it would have recognized immediately that the safety issues presented in Weymouth are not present to nearly the same extent in Franklin or Holbrook.

⁸⁷ EA, Docket No. CP16-9-000 (submittal 20160502-4001), Table 3.5.1-1; see also *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.9 (challenging Table 3.5.1-1); Order, 158 FERC ¶61,061, ¶165 (“multi-family structures are included in the count; however, the number of units within each structure are not counted separately.”).

⁸⁸ As the Town highlighted in its comment letter, Weymouth is a densely populated community, with many multifamily residences and large apartment buildings and complexes within the area of the proposed station. *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.9.

⁸⁹ Order, 158 FERC ¶61,061, ¶183.

⁹⁰ See e.g. *In the Matter of the Petition of Sithe Edgar Development, LLC for Approval to Construct a Bulk Generating Facility in the Town of Weymouth, Massachusetts*, Final Decision, EFSB 98-7 (Feb. 11, 2000), Condition G; *Scoping Comments of the Town of Weymouth*, Docket No. PF15-12-000 (submittal 20150611-5216) (Jun. 11, 2015), p.5.

⁹¹ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.13-14 and Exhibit B.

⁹² Order, 158 FERC ¶61,061, ¶246.

Fourth, the EA did not take a hard look at the acquisition issues associated with siting the compressor station in Weymouth, and the Order does not meaningfully consider the matter further.⁹³ Instead, the Commission appears to have erroneously assumed that the Weymouth site would be free of any conveyance issues. Specifically, the Town’s Host Community Agreement (HCA)⁹⁴ for the Calpine facility requires Calpine to work cooperatively with the Town to develop a mutually agreeable plan for the future development of the proposed North Parcel.⁹⁵ The transfer of the property from Calpine to Algonquin was in violation of that agreement because it was not part of any mutually agreeable plan with the Town.⁹⁶ The Commission has not considered the validity of this transfer despite the Town having brought it to the Commission’s attention, with notice that it “intends to insist upon strict compliance with Calpine’s obligations under this agreement.”⁹⁷

In addition to violating the HCA, Calpine’s transfer runs counter to the Condition L of the Final Decision of the Siting Board authorizing the construction of the Calpine

⁹³ *Id.*

⁹⁴ Host Community Agreement between Sithe Edgar Development and the Town of Weymouth (Jul. 27, 1999) (without attachments), attached as “Exhibit 6.”

⁹⁵ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.8; *see also In the Matter of the Petition of Sithe Edgar Development, LLC for Approval to Construct a Bulk Generating Facility in the Town of Weymouth, Massachusetts*, Final Decision, EFSB 98-7 (Feb. 11, 2000), Condition L.

⁹⁶ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.8. In addition, the transfer is currently the subject of a lawsuit because of Calpine’s failure to obtain the endorsement of the Weymouth Planning Board for the creation of the lots purported to be conveyed to Algonquin. *See Robert L. Hedlund, as Mayor of the Town of Weymouth on Behalf of the Planning Board of the Town of Weymouth v. Calpine Fore River Energy Center LLC et al.*, Norfolk County Superior Court, Docket No. 1682-CV-01611 (Dec. 23, 2016), attached as “Exhibit 7”.

⁹⁷ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.8.

facility in the first place.⁹⁸ The decision requires that Calpine, in addition to providing access to the King's Cove Parcel, work collaboratively with the Town to provide additional public access on the North Parcel.⁹⁹ Calpine is also obligated to maintain the area after public access is established.¹⁰⁰ Compliance with this provision is now impossible, because Calpine has supposedly retained the obligation to comply with the Siting Board's decision, but has no ownership interest in the North Parcel outside the King's Cove Parcel.¹⁰¹ Despite the fact that both the Town and the Siting Board¹⁰² raised concerns over Calpine's ability to transfer the parcel in compliance with the Siting Board's decision, the Commission has thus far failed to take a hard look at the issue or even acknowledged that it exists.

The EA's alternatives analysis, which the Commission incorporated into its Order, is therefore deficient because it does not consider the true environmental and human impacts of siting the facility in Franklin and Holbrook, the safety risks to nearby

⁹⁸ Massachusetts Energy Facility Siting Board Docket 98-7 (Feb. 11, 2000).

⁹⁹ *Id.* Condition L states:

In order to minimize land use impacts, the Siting Board requires [Calpine] to work with Weymouth, [other environmental groups] and appropriate state agencies to develop and coordinate plans for providing additional public access, if and where appropriate, in the area of the northern portion of the site that [Calpine] will improve as conditioned in Section III.F.2., and in other parts of the site as may be agreed.

¹⁰⁰ *Id.*

¹⁰¹ *Supplemental Information, Calpine Agreement*, Docket No. CP16-9-000 (submittal 20160803-5028) (Aug. 2, 2016), p.1; Deed from Calpine to Algonquin, Norfolk County Land Court, Document No. 129,036, Certificate Nos. 194,674, and Norfolk Country Registry of Deeds Book 34726, Pg. 482 (Dec. 02, 2016).

¹⁰² *Comment of Massachusetts Energy Facilities Siting Board*, Docket No. CP16-9-000 (submittal 20151222-5035) (Dec. 21, 2015), pp.5-6 ("The Siting Board's approval of the energy facility on that site included two conditions (that remain in effect) and are still awaiting compliance because of the lengthy construction time for the Fore River Bridge.").

residents in Weymouth, and the issues involved with the unlawful transfer of the proposed compressor station site. Especially in light of the significant public safety and human impacts associated with siting the compressor station in Weymouth, the rural Franklin site is clearly preferable and should have been selected for the compressor station.

4. The Commission should have determined that the Atlantic Bridge Project’s impacts are significant and warrant an Environmental Impact Statement.

NEPA requires federal agencies to prepare an EIS for “every...major Federal [action] significantly affecting the quality of the human environment.”¹⁰³ “No matter how thorough, an [Environmental Assessment] can never substitute for preparation of an EIS, if the proposed action could significantly affect the environment.”¹⁰⁴

The Court in *Sierra Club v. U.S. Dep’t of Transp.*, laid out the standard for review of an agency’s finding of no significant impact:

First, the agency [has] accurately identified the relevant environmental concern. Second, once the agency has identified the problem it must have taken a ‘hard look’ at the problem in preparing the EA. Third, if a finding of no significant impact is made, the agency must be able to make a convincing case for its finding....¹⁰⁵

By adopting the EA’s FONSI in its Order, the Commission neglected to consider that the relevant context and intensity factors set forth in 40 C.F.R. §1508.27 warrant the preparation of an EIS for the Atlantic Bridge Project.¹⁰⁶ The decision to proceed without

¹⁰³ 42 U.S.C. §4332(2)(C); see also *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (“If any ‘significant’ environmental impacts might result from the proposed agency action then an EIS must be prepared *before* agency action is taken.” (emphasis in original)).

¹⁰⁴ *Anderson v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004).

¹⁰⁵ 753 F.2d 120, 126 (D.C. Cir. 1985).

an EIS was therefore predicated on the Commission’s failure to take a “hard look” at the various environmental impacts of the Project and to collect the requisite data from the Natural Gas Companies.¹⁰⁷

a. The Commission’s EA is based on incomplete and inadequate information.

As the Town noted in its June 1 comments,¹⁰⁸ the Commission based its EA on incomplete and inadequate information—thereby undermining its decision to proceed without an EIS. Specifically, the public has highlighted three principal areas of deficiency: (1) the coal ash impacts analysis; (2) the noise analysis; (3) the public safety analysis; and (4) the traffic analysis. The Commission still needs to address these concerns if it intends to take the requisite hard look at the Project’s impacts.

1. The coal ash analysis.

The EA acknowledges that coal ash was used as a fill material at the Weymouth Compressor Station site and that this was flagged as a “Recognized Environmental Condition” in the Phase I Site Assessment submitted by the Natural Gas Companies.¹⁰⁹ Specifically, the EA states that the site investigation “showed that the fill materials exceed some Massachusetts environmental standards including arsenic.”¹¹⁰ The levels are “attributed to the presence of coal ash from historic use of the site as an oil terminal and coal storage facility.”¹¹¹

¹⁰⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (NEPA mandates that federal agencies “take a ‘hard look’ at environmental consequences” and “provide for broad dissemination of relevant environmental information.”) (internal citations omitted).

¹⁰⁸ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.10-14.

¹⁰⁹ EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-8.

¹¹⁰ EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-67.

¹¹¹ *Id.*

The EA, however, is silent about the risks of disturbing coal ash fill during construction activities and the harm that would result from a release of coal ash. The EA contains no analysis of the health and environmental impacts of a coal ash release at the site, and instead states only what the Natural Gas Companies will do if soil contamination is encountered: “If contaminated soil or groundwater (*e.g.*, stained soil, oil, drums, debris, etc.) is encountered during construction, all on-site personnel would stop work, evacuate the area, and implement the Applicants’ *Unexpected Contamination Encounter Procedure*.”¹¹² The Order relies on the EA and additional vague and noncommittal statements by the Natural Gas Companies for its finding that the safety risks associated with construction in coal ash fill have been adequately addressed.¹¹³

In *Metro. Edison Co. v. People Against Nuclear Energy*, the Court stated:

To determine whether [NEPA] Section 102 requires consideration of a particular effect, we must look to the relationship between that effect and the change in physical environment caused by the major federal action at issue, [looking for] a reasonably close causal relationship...like the familiar doctrine of proximate cause from tort law.¹¹⁴

Obviously, there is a “reasonably close causal relationship” between the construction of a compressor station on a contaminated site and the release of coal ash. Unlike the harm resulting from a potential terrorist attack¹¹⁵ or the likelihood of starting a war,¹¹⁶ the release of coal ash is not a “remote” possibility or “highly speculative.”¹¹⁷

¹¹² *Id.* at p.2-8.

¹¹³ Order, 158 FERC ¶¶61,061, ¶¶128-129.

¹¹⁴ 460 U.S. 766, 733 (1983).

¹¹⁵ *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm’n*, 449 F.3d 1016 (9th Cir. 2006).

¹¹⁶ *No GWEN Alliance v. Aldridge*, 855 F.2d 1380 (9th Cir. 1988).

In its comments on the EA, the Town noted that a release of coal ash can cause cancer and neurological damage in humans, as well as harm to fish and other water-dwelling species.¹¹⁸ The report referenced in the Town's comments describes the various ways in which coal ash used as fill can be released into the environment, particularly during construction. Dr. Curtis Nordgaard, in his comments on the EA, laid out a number of possible routes by which nearby residents and wildlife could be exposed to coal ash as a result of construction of the Compressor Station, and provided scientific references on the toxicity of coal ash constituents.¹¹⁹ He also pointed out the inappropriateness of relying on the Natural Gas Companies' *Unexpected Contamination Encounter*

Procedure:

The procedure actually allows for its implementation once a potential hazard is suspected for reasons that include 'historic use' as outlined in the EA. There is no need to wait for workers to encounter oil drums or other visible contaminants at the site to develop a response plan.

Furthermore, as acknowledged in the attached public health statement on arsenic from ATSDR, arsenic is unlikely to be visibly detectable. Common sense would similarly dictate that many heavy metals and persistent organic pollutants could be present at significant levels in coal ash fill or petroleum spills and not visible to the naked eye.

Again, the applicant does not need to wait until starting construction to develop a plan for managing toxic and carcinogenic waste at the site since it is already known to be present.

¹¹⁷ *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1026 (9th Cir. 1980).

¹¹⁸ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.10 (citing Gottlieb, B., Gillbert S. and Gollin Evans, L., *Coal Ash; The toxic threat to our health and environment* (Sept. 2010), available at <http://www.psr.org/assets/pdfs/coal-ash.pdf>).

¹¹⁹ *Comments of Dr. Curtis Nordgaard*, Docket No. CP16-9-000 (submittal 20160520-5152) (May 20, 2016).

However, the Commission’s Order simply notes Algonquin’s statements (contained in its Response to Comments on the Environmental Assessment) that “it will construct the project ‘in accordance with a soil and groundwater management plan that describes the procedures and protocols developed to assist in soil and groundwater reuse, recycling, and disposal’” and that “a Licensed Site Professional will oversee soil and groundwater management activities at the Weymouth site during construction for compliance with the applicable provisions of the Massachusetts Contingency Plan and related Massachusetts Department of Environmental Protection (Massachusetts DEP) guidance.” The Order concludes its brief discussion by stating, “[w]e find the Applicants’ efforts to identify and manage any contamination sufficient to address concerns associated with the safety risks of disturbing contaminated soils at the Weymouth Compressor Station site.”¹²⁰

This does not begin to satisfy the Commission’s NEPA obligations. Neither the Commission nor the Natural Gas Companies have provided any analysis of the routes by which coal ash fill at the site could be released into the environment during construction and operation of the compressor station, or any specific description of how such releases will be prevented. The Natural Gas Companies’ statement that they will construct the project in accordance with a soil and groundwater plan that has not been provided to the Commission is meaningless. The further statement that a Licensed Site Professional will monitor “compliance with the applicable provisions” of the Massachusetts Contingency Plan (MCP) is also meaningless, for two reasons: First, the Natural Gas Companies are free later to take the position that none of the provisions of the MCP are “applicable”

¹²⁰ Order, 158 FERC ¶61,061, ¶¶128-29.

because they are preempted by the *Natural Gas Act*. Second, coal ash is essentially exempt from the requirements of the MCP.¹²¹

Moreover, the Natural Gas Companies' actions after significant amounts of petroleum were discovered at the compressor station site raise concerns as to whether construction of the compressor station will, in fact, be undertaken in compliance with the MCP. On July 29, 2016, Calpine notified the Massachusetts DEP that two "Reportable Conditions" under the MCP had been identified at the site during geotechnical testing carried out by Algonquin: floating oil in a monitoring well and petroleum-contaminated soil. Each of these conditions was assigned a Release Tracking Number (RTN) by MassDEP (4-26230 and 4-26243). Algonquin is currently conducting an Immediate Response Action under the MCP to address the oil in groundwater (RTN 4-26243).¹²² It has not submitted any sampling or remediation plan for the petroleum-contaminated soil (RTN 4-26230).¹²³

MassDEP's Bureau of Waste Site Cleanup guidance states that construction at sites where contamination has been found in reportable amounts and has not yet been fully addressed must be conducted under one of the five remedial action alternatives specified in the MCP.¹²⁴ Algonquin has filed no plan for carrying out construction at the

¹²¹ 310 CMR 40.0006 (definitions of Anthropogenic Background and Historic Fill); 310 CMR 40.0317(9) (coal ash exemption from reporting requirement).

¹²² Submittals under this RTN are available at <http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=4-0026243>.

¹²³ Submittals under this RTN are available at <http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=4-0026230>.

¹²⁴ These are: Limited Removal Actions, Immediate Response Actions, Release Abatement Measures, Utility-related Abatement Measures, and Comprehensive Response Actions. Massachusetts Department of Environmental Protection, *Construction of Buildings in Contaminated Areas*, Policy #WSC-00-425 (January 2000), available at <http://www.mass.gov/eea/docs/dep/cleanup/laws/00-425.pdf>.

compressor station site under any of the available approaches, a fact that raises the question of whether the Natural Gas Companies actually intend to carry out construction in compliance with the MCP.

Additionally, the Natural Gas Companies' repeated failure to comply with local and state laws during the permitting process provides further evidence that the Commission's reliance on the Companies' promises of compliance (in place of analyzing the potential effects of noncompliance) is misplaced. For example, the Weymouth Conservation Commission had to reject the Natural Gas Companies' Notice of Intent (the permit application under the Weymouth Wetlands Ordinance and the Massachusetts Wetlands Protection Act) for the compressor station project twice, for failure to comply with the simple requirement to include the signature of the landowner (Calpine Fore River Energy Center LLC). The first version of the signature page omitted the landowner's signature altogether; the second version provided the signature of an individual not listed with the Secretary of the Commonwealth as an agent authorized to sign documents concerning interests in real property on behalf of Calpine Fore River Energy Center LLC.

Similarly, when the Natural Gas Companies filed an "Approval Not Required" (ANR) Plan with the Weymouth Planning Board showing a division of the Calpine-owned property, the Planning Board could not endorse the Plan because it included non-buildable lots not properly labeled as such and included proposed new parcels in the City of Quincy (over which the Weymouth Planning Board has no jurisdiction).¹²⁵ Nonetheless, the Natural Gas Companies, in contravention of state law, recorded the

¹²⁵ See, *supra*, note 101.

unapproved plan with the Norfolk County Registry of Deeds.¹²⁶ The Natural Gas Companies then presented a second version of the ANR Plan to the Planning Board. This revised version still did not properly label all non-buildable lots. If the Natural Gas Companies are unable to follow laws that are routinely complied with by developers and homeowners, the Commission has no basis to substitute the Companies' assurances of compliance with various laws and procedures for actual analysis of potential impacts.

2. The noise impact analysis.

The Commission's noise impact analysis (1) does not accurately establish a baseline, (2) does not include the King's Cove and Lovell's Grove Parcels as noise sensitive areas (NSAs), (3) mischaracterizes the impacts to these conservation parcels, and (4) neglects to consider evidence regarding the frequency of blowdowns, all essential data for an informed decision.¹²⁷

First, no matter how detailed and thorough, analyzing projected increases in sound levels with an inappropriate baseline ambient sound level cannot satisfy NEPA's hard look requirement. Here, the Commission used a noise analysis that is based on inaccurate sound monitoring results, sound measurements that do not conform to standard methodologies or practice, and an oversimplification of background sound level reporting around the site. The measurement positions shown in Figure 2.8.3-4,¹²⁸ and used in the Ambient Sound Survey, were placed next to major roadways and are not representative of

¹²⁶ Quitclaim Deed from Calpine to Algonquin, Norfolk Registry of Deeds, Bk.34726, Pg.482 (Dec. 2, 2016).

¹²⁷ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.11-12.

¹²⁸ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-108, Fig. 2.8.3-4.

the majority of sensitive receptors in the area.¹²⁹ Most residences in the area are located on secondary streets in the community, but Measurement Positions 1 and 5 are located within approximately 50 feet of Bridge Street, the main thoroughfare.¹³⁰ Similarly, Measurement Position 4 is located on Monatiquot Street, the first street adjacent to the power plant.¹³¹ These measurement positions are not representative of the residential or recreational areas near the proposed compressor station site. The Commission should have insisted upon standard monitoring practices and required collection of sound data in the yards of homes on the secondary streets, where most of the residences are located.

The sound data also misrepresents the true baseline, because most of the homes are set back from Bridge Street and Monatiquot Street by 200 to 800 feet, not by 50 feet.¹³² Using roadside monitoring points skews the baseline sound levels upward and therefore improperly masks the true noise impacts from the compressor station.

Furthermore, the existing background sound levels used in the noise analysis—both the ambient day-night level (Ldn) and the Lowest Ambient Nighttime Level (L90)—are based on short-term measurements that were sampled for just three minutes at each location.¹³³ This is not an adequate methodology; nor does it represent standard practice in the field of acoustics.¹³⁴ Long-term monitoring over the course of at least one to two

¹²⁹ *Id.* at p.2-104, Table 2.8.3-1

¹³⁰ *Id.* at p.2-108, Fig. 2.8.3-4.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Algonquin Gas Transmission, LLC's Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 9, Appendix 9G, H&K Report No. 3316, §9, Table F (Oct. 5, 2015) (“H&K Report No. 3316”); and H&K Report No. 3316 at Appendix, Tables 3-6, pp.19-22.

¹³⁴ ANSI/ASA S12.9-1992/Part 2, *Quantities and Procedures for Description and Measurement of Environmental Sound. Part 2: Measurement of long-term, wide area-sound*, R2013.

weeks is necessary in order to capture the range of environmental and anthropogenic conditions that may occur at a site in order to provide an estimate of the Ldn or L90 for a given site.¹³⁵ Even the authors of the noise assessment recognize this clear limitation in the analysis:

In our opinion, the measured ambient sound data adequately quantifies and is representative of the existing ambient environment at the identified receptors/NSAs for the meteorological conditions that occurred during the sound survey.¹³⁶

In other words, the measurement results are representative only of the conditions that occurred over the short period during which the monitoring was conducted (three minutes on August 14, 2015).¹³⁷

Second, the Commission should have included the King’s Cove and Lovell’s Grove Parcels as NSAs.¹³⁸ Federal regulations require that “[t]he noise attributable to any new compressor station...must not exceed a day-night sound level...of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).”¹³⁹ While NSA is not a defined term, the clear intent is for areas where people congregate and seek quiet – such as conservation lands – to be protected.¹⁴⁰ Outdoor recreational areas, such

¹³⁵ *Id.*

¹³⁶ H&K Report No. 3316 at p.6 (emphasis added).

¹³⁷ H&K Report No. 3316 at Appendix, Tables 3-6, pp.19-22.

¹³⁸ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.11.

¹³⁹ 18 C.F.R. §380.12(k)(4)(v)(A); see also 18 C.F.R. §157.206(5)(i).

¹⁴⁰ The Federal Aviation Administration, no stranger to managing noise impacts, also uses NSA as a regulatory benchmark and states that the term may include residential neighborhoods, education, health, religious sites and structures, cultural, historical and outdoor recreational areas. *Runway 27 Coal., Inc. v. Engen*, 679 F. Supp. 95, 99 (D. Mass. 1987) (citing FAA Order 1050.1B, App. 3, ¶5(f), which was intended

as the King’s Cove and Lovell’s Grove Parcels, cannot be fully enjoyed if noise levels that are unacceptable at schools, hospitals, or residences, are exceeded. As such, the Commission’s analysis is legally deficient due to its failure to conduct noise monitoring at these two conservation sites.

Third, the Commission has attempted to gloss over the fact that it failed to list the two conservation parcels as NSAs by asserting in the Order that the impacts to the King’s Cove Parcel will be “up to 2 dBA noise increase, which is not perceptible.”¹⁴¹ However, this calculation is predicated on incorrect and unsubstantiated assertions. For example, the Commission states that “the area is characterized by recorded ambient noise levels of 70.4 dBA Ldn.”¹⁴² But this is just one data point (Measurement Position 1) located 610 feet south-southeast of the proposed compressor station along Bridge Street.¹⁴³

The King’s Cove Parcel extends approximately 1,000 feet north of Bridge Street and is immediately adjacent to the Project.¹⁴⁴ In fact, the northern extent of the King’s Cove Parcel is almost as close to Measurement Position 2 as it is to Measurement Position 1. To contrast the two, there is a 15.5 dB difference in the reported existing Ldn

to give preference to certain departure and arrival routes that were not routed over noise sensitive areas) (emphasis added).

¹⁴¹ Order, 158 FERC ¶61,061, ¶220.

¹⁴² *Id.* at ¶220; see also EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-104, Table 2.8.3-1.

¹⁴³ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-104, Table 2.8.3-1. The Town could not have raised a challenge to the 2dBA increase figure at the King’s Cove Parcel in its comments on the EA because that figure first appeared in the Order.

¹⁴⁴ King’s Cove and Lovell’s Grove Conservation Restriction, Norfolk County Land Court, Document No. 1,170,390-1, Certificate Nos. 159,129, 181,726, 189,837, and 194,674 (Mar. 17, 2009).

between Measurement Position 1 (70.4 dBA) and Measurement Position 2 (54.9 dBA).¹⁴⁵

Given the proximity of areas of the King's Cove Parcel to the proposed compressor station, and the incomplete background sound level data in the area, the potential change in noise level attributable to the project at the King's Cove Parcel appears to be much greater than what is contemplated in Paragraph 220 of the Order.

Based on calculations of the background sound levels at the King's Cove Parcel closest to the proposed equipment, the compressor station may result in an increase in sound level of 10 to 20 dBA, depending on the actual background sound level, which would be perceived as a double to quadrupling of loudness. This stands in stark contrast to FERC's asserted 2dBA increase to a noise receptor 70 feet away from the proposed compressor station.¹⁴⁶

Moreover, the Commission based its 2 dBA calculation on the fact that the King's Cove Parcel is "80 to 90 feet away from the noise producing equipment."¹⁴⁷ However, the Commission has not provided any information depicting the location of the noise producing equipment. It is unclear whether this calculation is to the property boundary or to the walking path. As individuals are permitted to leave the walking path and sit on the grass, measuring from the "noise producing equipment" to the walking path would not capture the true impacts of the compressor station. The Commission has not met its

¹⁴⁵ *Algonquin Gas Transmission, LLC's Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 9, p.9-51; see also Affidavit of Edward Duncan (Feb. 24, 2017), ¶10 attached as "Exhibit 8."

¹⁴⁶ Order, 158 FERC ¶61,061, ¶220; see also, Affidavit of Edward Duncan (Feb. 24, 2017), ¶10.

¹⁴⁷ Order, 158 FERC ¶61,061, ¶220.

NEPA obligation to demonstrate to the public that it has truly considered environmental concerns in its decision-making process.¹⁴⁸

Fourth, the Commission did not consider the impacts of a blowdown, asserting only that the blowdowns are infrequent and that the events will be at or below 60 dBA at a distance of 300 feet.¹⁴⁹ But this cannot form the basis for a FONSI, especially with respect to those individuals visiting and engaged in recreation on the King's Cove Parcel. Assuming that the King's Cove parcel is 80 to 90 feet from the noise producing equipment, the cited noise level corresponds to 71 dBA, assuming a 6 dB addition per halving of the distance, accounting for geometric spreading.¹⁵⁰

Moreover, while both the EA and the Order state that blowdowns are infrequent,¹⁵¹ the Commission has presented no data to support such an assertion. Given the large number of compressor stations currently in operation,¹⁵² information on the frequency of blowdowns is available and should have been presented and considered.

3. The public safety analysis.

The EA effectively ignores the numerous public comments, including those of Massachusetts Attorney General Maura Healey and the Town, that raise concerns about

¹⁴⁸ *Kleppe*, 427 U.S. at 410 n.21.

¹⁴⁹ *Id.* at ¶223.

¹⁵⁰ See also Affidavit of Edward Duncan (Feb. 23, 2017), ¶11.

¹⁵¹ *Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160502-4001) (May 2, 2016), p.2-111; Order, 158 FERC ¶61,061, ¶223.

¹⁵² U.S. Energy Information Administration, Office of Oil and Natural Gas, *Natural Gas Compressor Stations on the Interstate Pipeline Network: Developments since 1996*, 1, (Nov. 2007) available at https://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngcompressor/ngcompressor.pdf (stating that there were over 1,200 natural gas compressor stations operating nationwide as of 2006).

the ability of the public to evacuate the area of the proposed Weymouth Compressor Station safely and for emergency vehicles to respond to an event.¹⁵³

First, the EA does not present any response or evacuation plan for public review and instead relies upon the fact that the Natural Gas Companies must submit an Emergency Response Plan in the future to the Pipeline and Hazardous Materials Safety Administration (PHMSA).¹⁵⁴ The EA does describe what types of information will form the plan,¹⁵⁵ but this falls far short of providing a meaningful explanation of critical evacuation routes or response measures.¹⁵⁶

The Commission cannot merely defer to standards administered by other agencies without independently assessing the anticipated impacts.¹⁵⁷ The Court in *Limerick Ecology Action, Inc. v. U.S. Nuclear Regulatory Comm'n*,¹⁵⁸ held that the fact that an issue will be considered by another agency is no substitute for consideration under NEPA. The Commission must still independently assess all impacts, including those

¹⁵³ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.12-13; *Comments of Massachusetts Attorney General Maura Healey on the Environmental Assessment for Algonquin's Atlantic Bridge Project*, Docket No. CP16-9-000 (submittal 20160602-5006) (Jun. 2, 2016), p.4.,

¹⁵⁴ EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-120.

¹⁵⁵ Order, 158 FERC ¶61,061, ¶183.

¹⁵⁶ Furthermore, as stated above in Section III.4.a.1, it is unreasonable to rely on the Natural Gas Companies' assertion that they will comply with any plan or program.

¹⁵⁷ See e.g. *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1123 (D.C. Cir. 1971) (agency's deferral to standards of other agencies neglected NEPA's "mandated balancing analysis.").

¹⁵⁸ 869 F.2d 719, 729 (3rd Cir. 1989); compare *Stop the Pipeline v. White*, 233 F.Supp.2d 957, 938 (S.D. Ohio 2002) ("Plaintiffs' position that the Corps must conduct its own independent evaluation or otherwise independently verify all data goes beyond the well-settled prohibition against an agency reflexively rubber stamping a third-party report.").

regulated under other statutes or programs.¹⁵⁹ Compliance with these requirements therefore does not demonstrate that a project will have no significant impact under NEPA.

The Commission has conceded that the public's ability to evacuate the area would be compromised in certain situations. Specifically, the Commission has acknowledged that, if "access to the Fore River Bridge were impeded during an evacuation," the public would be forced to take an indirect route to safety: "[T]hese roads are detours and not as direct a route as 3A [i.e., taking the Fore River Bridge]." ¹⁶⁰ The Commission should have explored the safety risks associated with a compromised evacuation plan.

Second, the Commission has not considered the human health impacts from an incident at the proposed compressor station, and instead has focused, for some unknown reason, on the impacts to the structural integrity of the Fore River Bridge from an explosion.¹⁶¹ Despite clear comments by the Town that the EA lacked any analysis of the human health impacts of such an event,¹⁶² the Order does not provide any further analysis.

Third, the Order inappropriately compares the proposed compressor station to Transcontinental Gas Pipeline Company's Compressor Station 303 in an attempt to rebut the Town's position that a "compressor station has never been built in such a densely

¹⁵⁹ *Calvert Cliffs' Coordinating Comm.*, 449 F.2d at 1125.

¹⁶⁰ Order, 158 FERC ¶61,061, ¶183.

¹⁶¹ *Metro. Edison Co.*, 460 U.S. at 771 ("human health can be cognizable under NEPA.").

¹⁶² Numerous homes fall within the 768-foot impact radius. *December 21, 2015 Comments of the Town of Weymouth, Massachusetts*, Docket No. CP16-9-000 (submittal 20151221-5331) (Dec. 21, 2015), Exhibit B – Impact Map.

populated area.”¹⁶³ However, Compressor Station 303, constructed in Roseland, NJ, is not situated in an urban or densely populated environment.¹⁶⁴ The EA states that the site is 60 percent wooded with 40 percent mapped as wetlands, and that the “[n]earest residence is approximately 550 feet (existing home on-site acquired by Transco[ntinental Gas]).”¹⁶⁵ Notably, this residence was slated to be demolished.¹⁶⁶ Aerial depictions of the site demonstrate that it is located in an undeveloped area abutting a golf course and other open space; there is no analysis of the number of homes within a quarter mile radius of the facility.¹⁶⁷ Unlike the situation presented in *EarthReports, Inc. v. Fed. Energy Reg. Comm’n*,¹⁶⁸ where an applicant proposed to site a facility on a 131-acre area within an approximately 1,017-acre parcel owned by the applicant, the Commission should have presented support for its assertion that siting the compressor station in a densely populated coastal area will not significantly affect the quality of the human environment.

Fourth, the facility is located within a Hurricane Inundation Zone and will become completely inaccessible during a Category 2 storm.¹⁶⁹ The Commission inappropriately claims that this concern is unwarranted because the proposed station’s

¹⁶³ Order, 158 FERC ¶61,061, ¶229.

¹⁶⁴ FERC Docket No. CP12-30-000.

¹⁶⁵ *Environmental Assessment for the Northeast Supply Link Project*, Docket No. CP12-30-000 (submittal No. 20120801-4001) (Aug. 1, 2012), p.3-14.

¹⁶⁶ *Id.* at p.1-27,

¹⁶⁷ *Id.* at 2-80.

¹⁶⁸ 828 F.3d 949, 958-59 (D.C. Cir. 2016).

¹⁶⁹ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.13-14 and Exhibit B.

“courtyard area will be raised to an elevation of about 19 feet above sea level.”¹⁷⁰ Even assuming that the station would not be submerged during a critical event, the Commission has not addressed how emergency responders could access the facility during a storm when all the surrounding access roads would be completely submerged.

4. The traffic analysis.

The traffic analysis is based on old and outdated information and cannot form the basis for the Commission’s FONSI. On June 29, 2016, the Natural Gas Companies informed the Commission that they have moved their proposed staging area across Bridge Street to the Calpine property.¹⁷¹ Relocating the staging area across an extremely busy street will have different and significant traffic impacts, which the Town brought to the Commission’s attention in its request for a revised EA.¹⁷² Not only did the Commission ignore this request, but its Order does not even acknowledge the change to the Project. The Commission should therefore rescind the Order until it prepares a revised traffic analysis. Continued reliance on this outdated and inaccurate traffic analysis violates NEPA.

Notably, when there are “substantial changes in the proposed action that are relevant to environmental concerns,” the agency must prepare a revised EIS. See 40 C.F.R. §1502.9(c). Given that the intent of NEPA is to ensure informed decision making,

¹⁷⁰ Order, 158 FERC ¶61,061, ¶125.

¹⁷¹ *Supplemental Information for the Atlantic Bridge Project*, Docket No. CP16-9-000 (submittal 20160629-5217) (Jun. 29, 2016), p.1.

¹⁷² *June 29 and August 3, 2016, Supplemental Filings*, Docket No. CP16-9-000 (submittal 20160822-5199) (Aug. 22, 2016), p.3.

this provision should also apply to environmental assessments.¹⁷³ Where, as here, the Project has changed substantially to significantly affect the traffic patterns, a revised EA must be produced.

b. *The Commission has no basis to conclude that the impacts of the Atlantic Bridge Project are not significant.*

The Commission has improperly concluded that the Atlantic Bridge Project's impacts are not significant and do not warrant an EIS. "In determining whether a federal action requires an EIS because it significantly affects the quality of the human environment, an agency must consider what 'significantly' means."¹⁷⁴ Determining whether an action "significantly" affects the environment "requires consideration of both context and intensity."¹⁷⁵ Context refers to the general setting of the project.¹⁷⁶ Intensity means "the severity of the impact."¹⁷⁷

When considering the severity of the impacts, the reviewing agency may consider up to 10 factors that help inform the "significance" of a project, including:

- Intensity Factor 2: "The degree to which the proposed action affects public health or safety;"
- Intensity Factor 3: "Unique characteristics of the geographic area such as proximity to...park lands, ...wetlands, wild and scenic rivers, or ecologically critical areas;"
- Intensity Factor 4: "The degree to which the effects on the quality of the human environment are likely to be highly controversial;"

¹⁷³ See, e.g. *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1257 (10th Cir. 2011) ("The duty to prepare a supplemental EIS is based on the need to facilitate informed decisionmaking.").

¹⁷⁴ *Ocean Advisors v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2004).

¹⁷⁵ 40 C.F.R. §1508.27.

¹⁷⁶ *Id.* at §1508.27(a).

¹⁷⁷ *Id.* at §1508.27(b).

- Intensity Factor 5: “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks;” and
- Intensity Factor 7: “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.”¹⁷⁸

Courts have held that even one of these facts may be sufficient to require preparation of an EIS.¹⁷⁹

In the Town’s December 21, 2015 comments, incorporated into its June 1, 2016 comments in full, the Town detailed how each of the above intensity factors justify the preparation of an EIS.¹⁸⁰ The FONSI, in contrast, offers no explanation at all as to how these intensity factors have influenced the Commission’s conclusion.¹⁸¹

1. Intensity Factor 2: Public Safety.

With respect to Intensity Factor 2, the proposed Weymouth Compressor Station threatens public safety by placing a fire and explosion hazard in close proximity to residential areas, a major thoroughfare, a regional sewer pump station, bulk amounts of hazardous materials, and the Fore River Bridge.¹⁸² As described above, public safety risks are further exacerbated by the fact that the public’s ability to evacuate the area in the case of an emergency is compromised by the unusual geography of the area and the road

¹⁷⁸ *Id.*

¹⁷⁹ *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

¹⁸⁰ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p. 2, n.5; *December 21, 2015 Comments of the Town of Weymouth*, Docket No. CP16-9-000 (submittal 20151221-5331) (Dec. 21, 2015), pp.3-6.

¹⁸¹ Order 158 FERC ¶¶61,061, ¶¶67-70.

¹⁸² *December 21, 2015 Comments of the Town of Weymouth*, Docket No. CP16-9-000 (submittal 20151221-5331) (Dec. 21, 2015), Exhibit C.

configuration. The Commission’s answer to these concerns—that a yet-to-be-created plan approved by another federal agency will adequately mitigate any harm—is unavailing and inconsistent with NEPA.¹⁸³

Yet, even if the Natural Gas Companies adopted a PHMSA-approved emergency response plan, such a plan would not change the basic facts that the facility itself presents a significant risk to public safety and that evacuation from the area would be very difficult.¹⁸⁴ Specifically, as noted, the facility is located within a Hurricane Inundation Zone and will become inaccessible during a Category 2 storm.¹⁸⁵ As stated above, if the area becomes inaccessible during a storm, the risks to public safety would be significant.

2. Intensity Factor 3: Unique Geography.

Intensity Factor 3 further demonstrates the need to prepare an EIS. Specifically, the Natural Gas Companies propose to construct the Weymouth Compressor Station on coastal land directly abutting two conservation parcels on a peninsula surrounded by the Fore River, the Fore River Estuary, and King’s Cove.¹⁸⁶ Both of these conservation parcels are subject to conservation restrictions¹⁸⁷ providing for perpetual public access to the waterfront. Although the Project will not physically disturb the land subject to these conservation restrictions, they will significantly impact the public’s desire to use these

¹⁸³ See also Order, 158 FERC ¶61,061, ¶70 (reliance on the mitigation plans in finding that impacts will be insignificant). As stated above in Section III.4.a.1, reliance on the Natural Gas Companies’ ability to comply with federal and state law or policies adopted pursuant thereto, is misplaced.

¹⁸⁴ See, *supra*, Section III.4.a.3.

¹⁸⁵ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.13-14 and Exhibit B.

¹⁸⁶ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-65.

¹⁸⁷ King’s Cove and Lovell’s Grove Conservation Restriction, Norfolk County Land Court, Document No. 1,170,390-1, Certificate Nos. 159,129, 181,726, 189,837, and 194,674 (Mar. 17, 2009).

scenic spaces. The Commission’s limited view of what constitutes an impact (i.e., only those that physically disturb the land) is, in this case, inappropriate.¹⁸⁸

Moreover, as noted, these conservation restrictions were conveyed to the Town as mitigation for the construction and operation of the Calpine power plant.¹⁸⁹ But the siting and operation of the proposed compressor station immediately adjacent to the King’s Cove and Lovell’s Grove Parcels will deprive the Town of benefit of this mandated mitigation, a significant impact on both existing and future conservation and recreation sites along the scenic Fore River.

3. Intensity Factor 4: Highly Controversial Impacts.

The Commission must prepare an EIS because the Project will have highly controversial effects. A federal action is controversial if “a substantial dispute exists as to its size, nature, or effect.”¹⁹⁰ “A substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI, ... casts serious doubt upon the reasonableness of an agency’s conclusions.”¹⁹¹ NEPA then places the burden on the agency to come forward with a “well-reasoned explanation” demonstrating why those responses disputing the EA’s conclusions “do not suffice to create a public controversy based on potential environmental consequences.”¹⁹²

Here, before the publication of the EA, numerous individuals raised concerns that cast “serious doubt upon the reasonableness” of the Commission’s conclusions.¹⁹³

¹⁸⁸ EA, Docket No. CP16-9-000 (submittal 20160502-4001), p.2-66.

¹⁹⁰ *LaFlamme v. Fed. Energy Reg. Comm’n*, 852 F.2d 389, 400 (9th Cir. 1998).

¹⁹¹ *Nat’l Parks & Conservation Ass’n*, 241 F.3d at 736 ((citation omitted).

¹⁹² *LaFlamme*, 852 F.2d at 401 (citing *Jones v. Gordon*, 792 F.2d 821, 829 (1986)).

¹⁹³ *Nat’l Parks & Conservation Ass’n*, 241 F.3d at 736 (9th Cir. 2001).

Specifically, in pre-filing alone, more than 137 distinct commenters submitted written comments to the Siting Board in opposition to the project, including state and local officials.¹⁹⁴

The Commission also received a large number of comment letters in response to the publication of the EA, the vast majority of which were in opposition to the Project and cast doubt on the sufficiency of the analysis.¹⁹⁵ In addition to comments from the general public, federal and state agencies challenged the Commission's findings and analysis, including the Environmental Protection Agency and the Siting Board.¹⁹⁶ Given the Commission's own guidance that an EIS should be prepared where a project involves a new above-ground facility and the "outpouring"¹⁹⁷ of opposition, Intensity Factor 4 supports the preparation of an EIS.

4. Intensity Factor 5: Unique or Unknown Risks.

The Commission must prepare an EIS because the environmental effects of the Project are highly uncertain.¹⁹⁸ "Preparation of an EIS is mandated where uncertainty

¹⁹⁴ *Comments of Massachusetts Energy Facilities Siting Board*, Docket No. PF15-12-000 (submittal 20150618-5179) (Jun. 18, 2015), p.4.

¹⁹⁵ *Nat'l Parks & Conservation Ass'n*, 241 F.3d at 736 (finding there was more than sufficient evidence to demonstrate an outpouring of public protest where approximately 85% of the 450 comments received were in opposition).

¹⁹⁶ *Found. For N. Am. Wild Sheep v. U.S. Dep't of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982) (holding that disagreement by other agencies, together with "responses from conservationists, biologists, and other knowledgeable individuals, all highly critical of the EA and all disputing the EA's conclusion" is "precisely the type of 'controversial' action for which an EIS must be prepared.").

¹⁹⁷ *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1334 (9th Cir. 1992).

¹⁹⁸ *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998) ("significant environmental impact" mandating preparation of EIS where "effects are 'highly uncertain or involve unique or unknown risks'").

may be resolved by further collection of data...or where the collection of such data may prevent speculation on potential...effects.”¹⁹⁹

The location of the proposed compressor station greatly increases the risks posed by an emergency event at the facility, as compared to the typical compressor station location (*i.e.*, a rural setting on a large parcel of land). As argued above, the Commission has not reviewed an emergency response and evacuation plan for the facility. It is therefore unknown what impacts an explosion at the facility would have on nearby residents. Furthermore, the proposed facility is located next to an electric generation facility. If an incident were to occur, it is unknown whether the adjacent facility would be impacted.

5. Intensity Factor 7: Cumulatively Significant Impacts.

The need for an EIS based on Intensity Factor 7 is explained in more detail in Section III.5.

In sum, the Commission’s Order and EA both lack analysis of the NEPA context and intensity factors that are supposed to be the basis for choosing to prepare an EIS. This is especially inexplicable in light of the fact that the Commission’s *Suggested Best Practices for Industry Outreach Programs to Stakeholders* states that projects for which an EIS should be prepared include those “with new aboveground facilities near population centers.”²⁰⁰ Despite this guidance, the Commission has stated that an EIS is not warranted because the Project primarily involves “take-up and re-lay and modifications to existing facilities” and the “EA concludes that the impacts associated

¹⁹⁹ *Nat’l Parks & Conservation Ass’n*, 241 F.3d at 732 (citations and quotations omitted).

²⁰⁰ Federal Energy Regulatory Commission, Office of Energy Projects, *Suggested Best Practices for Industry Outreach Programs to Stakeholders* (July 2015), p.11, available at <https://www.ferc.gov/industries/gas/enviro/guidelines/stakeholder-brochure.pdf>.

with this project can be mitigated to support a finding of no significant impact.”²⁰¹ While the Town recognizes that the guidance document does not necessarily control the Commission’s decision-making in all instances, there should, at least, be some sort of rationale if the Commission intends to diverge from it so dramatically. Moreover, an independent review of the intensity factors clearly demonstrates that an EIS is needed. The Commission should therefore rescind the Certificate and prepare the EIS.

5. The Commission’s cumulative impact analysis does not satisfy the requirements of NEPA.

The cumulative impact analysis in the EA, which the Commission relies upon in its Order, fails to satisfy NEPA’s requirements because it did not take a hard look at the impacts from the Fore River Bridge Replacement Project and the Access Northeast Project.²⁰² Furthermore, the cumulative environmental impacts described below, as they relate to Intensity Factor 7,²⁰³ indicate that an EIS is needed.

NEPA mandates consideration of a range of environmental impacts, “whether direct, indirect, or cumulative.”²⁰⁴ “An EA may be deficient if it fails to include a cumulative impact analysis or to tier to an EIS that reflects such an analysis.”²⁰⁵

Cumulative impacts are defined as:

...impact[s] on the environment which [result] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency

²⁰¹ Order, 158 FERC ¶61,061, ¶70.

²⁰² *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.14-22.

²⁰³ 40 C.F.R. §1508.27.

²⁰⁴ *Id.* at §1508.8(b).

²⁰⁵ *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 895–96 (9th Cir. 2002).

(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.²⁰⁶

Conclusory statements about “possible effects” or “some risk” do not satisfy the “hard look” required under NEPA.²⁰⁷ The Commission has not considered adequately the cumulative impacts from past, present, and future projects on the following resources:

a. Geology and Soil.

The EA has not considered the cumulative impacts of the Atlantic Bridge Project, ANE, and the Fore River Bridge Replacement Project as they pertain to a release of coal ash at the proposed site of the Weymouth Compressor station.²⁰⁸ Specifically, the EA has not considered how these three projects, with overlapping and continuous excavation and construction schedules will increase the likelihood of a release of hazardous materials.²⁰⁹

The EA’s assertion that “[s]hould hazardous materials or contaminated soils and/or sediments be encountered during construction, they would be disposed of at fully licensed and permitted disposal facilities” does not begin to address the cumulative impacts from multiple projects.²¹⁰ The Commission will not have taken a hard look at the cumulative impacts until it first considers whether the projects increase the risk for a potential coal ash release.

²⁰⁶ 40 C.F.R. §1508.7

²⁰⁷ *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993-94 (9th Cir. 2004); see also *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998); *Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2004).

²⁰⁸ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.14.

²⁰⁹ EA, Docket No. CP16-9-000 (submittal 2016502-4001) p.2-131 (“The construction of some of the projects listed in table 2.10-1, such as the Fore River Bridge Replacement Project could coincide with the schedule proposed for the Atlantic Bridge Project.”).

²¹⁰ *Id.* at p.2-123.

b. Waterbodies, Groundwater and Aquatic Resources.

As noted in the Town's comments,²¹¹ the EA has not meaningfully addressed the cumulative impacts on surface water quality and aquatic resources, and instead has provided only boilerplate language that cursorily addresses the potential impacts.

With respect to surface water, the Commission concedes that sediment loading will occur, but states that the "level of impact would depend on precipitation events, sediment loads, stream area/velocity, channel integrity, bed material, and the proposed construction method."²¹² This is plainly insufficient to meet the Commission's NEPA obligation to take a hard look at the potential cumulative impacts.

Similarly, the EA states that the "[c]onstruction of the Atlantic Bridge Project and other projects listed in table 2.10-1...could result in cumulative impacts on aquatic resources," including "sedimentation and turbidity, destruction of stream cover, introduction of water pollutants, interruption of fish migration and spawning, and entrainment of fish."²¹³ The EA then concludes, however, that the *Erosion and Sediment Control Plan* (E&SCP), the *Spill Prevention, Control and Countermeasure Plan/Preparedness, Prevention and Contingency Plan* (SPCC), and compliance with other federal regulatory programs will avoid or mitigate these issues.²¹⁴ But this general boilerplate language does not satisfy the Commission's NEPA mandate. The EA says

²¹¹ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun 2, 2016), p.15.

²¹² EA, Docket No. CP16-9-000 (submittal 20160502-4001) pp.2-131-32.

²¹³ *Id.* at 2-132.

²¹⁴ *Id.* Again, as stated in Section III.4.a.1, the Commission cannot rely on the Natural Gas Companies' ability to comply with such plans.

nothing about the degree to which each factor will be impacted and how the project design will reduce or eliminate the identified impacts.

The ANE Project proposes to construct pipeline under the Fore River using horizontal directional drill technology.²¹⁵ The impacts of this construction will be significant and must be fully considered in combination with the impacts from the bridge replacement project and the Atlantic Bridge Project. Again, as stated above, reliance on other federal programs' regulatory review cannot replace the Commission's own analysis.²¹⁶

c. *Vegetation, Wildlife and Habitat, and Protected Species.*

The Commission incorrectly asserts that there is not enough information about the ANE Project to assess its impacts on vegetation, wildlife and habitat, and protected species.²¹⁷ Specifically, the EA states that the “exact acres of vegetation disturbance are unknown” for the ANE Project.²¹⁸ However, on April 1, 2016, Algonquin filed a series of maps depicting the exact location for the ANE pipeline and associated facilities.²¹⁹ Moreover, even if the location of the ANE pipelines will change marginally between now and when Algonquin files its application, the location of the additional compressor unit proposed as part of the ANE Project will not change and therefore, must be analyzed.

²¹⁵ *Draft Resource Reports Nos. 1 and 10*, Docket No. PF-16-1-000 (submittal 20151217-5260) (Dec. 17, 2015), pp.1-15.

²¹⁶ *Calvert Cliffs' Coordinating Comm.*, 449 F.2d at 1123.

²¹⁷ EA, Docket No. CP16-9-000 (submittal 20160502-4001) pp.2-133.

²¹⁸ *Id.*

²¹⁹ *Access Northeast Supplemental Project Information Filing*, Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016), Attachment B, Set 7.

The Commission also ignored a clear statement in the Natural Gas Companies Resource Report 1 that states that “direct mortality to smaller mammals and birds that are less mobile could occur during clearing and grading operations associated with the construction of the facility, ...[and that] similar mortality could occur at nearby Fore River Bridge Project.”²²⁰ The EA and the Order both lack any analysis of the cumulative impacts on slow moving birds and mammals.

d. Land Use.

The Commission also has not analyzed the significant cumulative land use impacts from the Atlantic Bridge Project and the ANE Project.²²¹ Notably, the EA inexplicably lacks any analysis of the cumulative land use impacts from expanding the Weymouth Compressor Station under the ANE Project.

As noted above, the ANE Project proposes to double (at least) the size of the Weymouth Compressor Station.²²² However, the entirety of the EA’s analysis of the land use impacts from the ANE Project is contained in only a few lines:

The ANE Project would affect about 1,863 acres of land during construction and require about 494 acres of new permanent easement outside of Algonquin’s current operating footprint. However, the overwhelming majority of this land (affected by the ANE project) would be outside of the area of potential cumulative impact (i.e., the region of influence) for the Atlantic Bridge Project, and thus would not contribute to cumulative impacts. Additionally, like the Atlantic Bridge Project, most of the land use impacts associated with the AIM and ANE projects would be

²²⁰ *Algonquin Gas Transmission, LLC’s Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 1-57.

²²¹ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.16.

²²² *Access Northeast Project, Supplemental Project Information Filing*, Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016), Table 2-1.

temporary and most land would revert to its prior uses following construction.²²³

This analysis wholly misleads the public as it pertains to Weymouth. Notably, the expansion of the Weymouth Compressor Station under ANE will have cumulative impacts within the Atlantic Bridge Project area and such impacts will not be temporary. Describing these as “some additional cumulative impacts”²²⁴ is insufficient to meet the Commission’s NEPA obligations.²²⁵

e. *Recreational and Special Interest Area.*

Despite numerous comments from the Town,²²⁶ The EA did not consider the significant impacts of constructing the Atlantic Bridge Project and ANE Project on the King’s Cove and Lovell’s Grove conservation parcels.²²⁷

First, the EA does not contain any analysis of the cumulative impacts on the Lovell’s Grove conservation area, which is approximately 110 feet southwest of the proposed compressor station boundary.²²⁸ However, despite the Town’s concerns that

²²³ EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-135.

²²⁴ *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993-94 (“A proper consideration of the cumulative impacts of a project requires some quantified or detailed information; ... general statements about possible effects and some risk does not constitute a hard look absent a justification why more definitive information could not be provided.”).

²²⁵ *Neighbors of Cuddy Mountain*, 137 F.3d at 1379.

²²⁶ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), pp.16-18.

²²⁷ The Town also wishes to highlight the fact that Table 2.4.4-1 in the EA, which lists “Public Land and Designated Recreational or Scenic Areas,” deceptively states that the “King Cove” and “Lovells Grove CR” are privately owned. EA, Docket No. CP16-9-000 (submittal 20160502-4001) (May 5, 2016) Table 2.4.4-1. While the King Cove parcel is privately owned, the conservation restriction is held by the Town. King’s Cove and Lovell’s Grove Conservation Restriction, Norfolk County Land Court, Document No. 1,170,390-1, Certificate Nos. 159,129, 181,726, 189,837, and 194,674 (Mar. 17, 2009). Additionally, the Lovell’s Grove CR is not privately owned, but likewise held by the Town. *Id.* Portraying these parcels as privately conservation areas minimizes the impacts to the public’s ability to recreate near the waterfront.

²²⁸ EA, Docket No. CP16-9-000 (submittal 20160502-4001) (May 5, 2016) Table 2.4.4-1..

both the Atlantic Bridge Project and ANE Project will significantly impact Lovell's Grove, these impacts are not considered.

The "identification of the geographic area" within which a project's cumulative impact on environmental resources may occur "is a task assigned to the special competency of the appropriate agencies."²²⁹ Nevertheless, "the choice of analysis scale must represent a reasoned decision and cannot be arbitrary."²³⁰ Agencies may base their choice on "the scope of the project considered, the features of the land, and the types of species in the area."²³¹ The Commission has established a range of 0.25 miles for its cumulative land-related impacts analysis.²³² Lovell's Grove falls squarely within this range.²³³ Thus, excluding it from the analysis is completely without justification.

Second, while the Commission recognizes that "noise, visual, dust and other construction impacts at the Kings Cove parcel could be prolonged if both [Atlantic Bridge and ANE] projects are approved," it has not provided any meaningful scrutiny of those impacts.²³⁴ Instead, the Commission asserts that the *Erosion and Sediment Control Plan* (E&SCP) could minimize disturbances and that coordination with the Town could address operational issues.²³⁵ Even assuming that the E&SCP could mitigate the dust and

²²⁹ *Kleppe*, 427 U.S. at 414.

²³⁰ *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

²³¹ *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 958 (9th Cir. 2003).

²³² EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-124.

²³³ *Id.* at Table 2.4.4-1 (including Lovell's Grove CR in the list of land within 0.25 miles of the Atlantic Bridge Project).

²³⁴ *Id.* at p.2-135.

²³⁵ *Id.*

construction impacts and that the Natural Gas Companies would comply with such plan, it would obviously not address the cumulative noise impacts. Additionally, reliance on future “coordinat[ion] with the Town of Weymouth”²³⁶ to address the remainder of the impacts is especially misplaced. A future agreement that may never even be realized and that will not be subject to NEPA review amounts to tiering an environmental assessment to a non-reviewed document, in violation of NEPA.²³⁷

Third, the cumulative impact analysis does not consider the impact of the Fore River Bridge, the Atlantic Bridge, and the ANE Projects on the public’s ability to utilize the King’s Cove parcel. The area will essentially be under continuous construction for at least three years.²³⁸ Even after construction of the Fore River Bridge and the pipeline projects are complete, the operation of the expanded compressor facility will reduce the public’s desire to walk along the waterfront.

The North Parcel has been reserved for a mutually agreeable purpose. This purpose would have fostered or enhanced the public’s use of the King’s Cove walking path, and thus provide a necessary mitigation for the impacts of the Calpine facility. A compressor station will emit high levels of pollutants, including noise, and present a safety risk to those individuals in the vicinity. It will not encourage public use of the conservation land. The Commission should not ignore the overwhelming evidence in the

²³⁶ *Id.* In light of recent events, the Natural Gas Companies’ ability and willingness to coordinate with the Town cannot be presumed. See, supra, Section III.4.a.1.

²³⁷ 40 C.F.R. §1502.02; see also *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002) (“tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA.”).

²³⁸ *Town of Weymouth’s Comments on the Atlantic Bridge Project’s Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.19 (explaining the extended nature of the proposed construction schedule)..

record that the cumulative impacts on the King's Cove parcel will not be mitigated. As directed by Intensity Factor 7, an EIS must be created.

f. *Traffic.*

The Commission's cumulative traffic analysis is wholly insufficient, an issue raised by both the Environmental Protection Agency and the Town in their comments.²³⁹

First, as stated above, the analysis is based on old and outdated information. Continued reliance on this outdated and inaccurate traffic analysis violates NEPA.

Second, the Commission's analysis is tainted by its assumption that cumulative impacts will not occur unless the construction schedules for the Fore River Bridge Replacement Project, the Atlantic Bridge Project, and the Access Northeast Project, overlap: "Construction of the proposed Project would have a temporary impact on road traffic in some areas and could contribute to cumulative traffic, parking, and transit impacts if other projects are scheduled to take place at the same time and in the same area as the Atlantic Bridge Project."²⁴⁰ This assumption is false: Living through year after year of continuous construction related impacts is itself a cumulative impact.

The currently expected end date for the Fore River Bridge Replacement Project is "November 2017-June 2018."²⁴¹ Construction on the Atlantic Bridge Project is anticipated to commence in August 2017, and end no sooner than May 31, 2018.²⁴² The

²³⁹ *Id.* at pp.18-20; Order, 158 FERC ¶61,061, ¶179.

²⁴⁰ EA, Docket No. CP16-9-000 (submittal 20160502-4001) (May 2, 2016), p.2-137.

²⁴¹ *Town of Weymouth's Comments on the Atlantic Bridge Project's Environmental Assessment*, Docket No. CP16-9-000 (submittal 20160602-5143) (Jun. 2, 2016), p.19 (citing MassDOT, *Fore River Bridge Replacement Project Timeline Overview*, available at http://www.massdotprojectsforriverbridge.info/timeline_overview.html).

²⁴² *Initial Implementation Plan*, Docket No. CP16-9-000 (submittal 20170203-5266) (Feb. 3, 2017), Appendix C6H.

expansion of the compressor station is proposed to start in May 2018 under the ANE Project.²⁴³ The cumulative impacts of living through three years of construction-related traffic and congestion have not been explored meaningfully in the EA. Even the Siting Board recognized that, because of the “rather brief” time separating the projects’ construction periods, the projects could be “perceived as essentially continuous.”²⁴⁴ While each individual project’s traffic impacts may be temporary, the impacts are neither temporary nor insignificant when viewed as a whole.²⁴⁵

Third, the Commission has not adequately considered the fact that the Fore River Bridge Replacement Project is now well behind schedule²⁴⁶ and that the construction of the bridge is now likely to overlap, not only with all of the Atlantic Bridge Project scheduled, but also with the Access Northeast Project. Instead of taking a hard look at the cumulative impacts of the overlapping construction schedules, the EA merely relies upon the Weymouth Compressor Station Traffic Management Plan to provide mitigation of the cumulative impacts of these projects²⁴⁷ However, that Plan assumes normal bridge operation, and therefore does not address the combined impacts from the two projects.

²⁴³ *Draft Resource Reports No. 1 and 10 – Public and Agency Participation Plan*, Docket PF16-1-000 (submittal 20151217-5260) (Dec. 17, 2015), p.12.

²⁴⁴ *Comments of the Massachusetts Energy Facilities Siting Board*, CP16-9-000 (submittal 20151222-5035) (Dec. 21, 2015), p.3.

²⁴⁵ For example, the Order states that the Natural Gas Companies “will typically deliver materials and equipment to the job site during the early morning and evening hours to minimize disruptions of traffic on local roads.” Order, 158 FERC ¶61,061, ¶180. These are the hours that nearby residents will be home. They will have to experience years of truck traffic noise while these projects are ongoing.

²⁴⁶ See MassDOT, Fore River Bridge Replacement Project, Frequently Asked Question (Aug. 2013), available at http://www.massdotprojectsforriverbridge.info/IMAGES_JPEG/Fact%20Sheet/ForeRiver_FactSheet_8-2013.pdf (stating that Phase 3 will be completed between the fall of 2015 and the fall of 2016).

²⁴⁷ *Algonquin Gas Transmission, LLC’s Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 5, Appendix 5B; see also Order, 158 FERC ¶61,061, ¶181.

The EA also asserts that communication with the “Town of Weymouth, property owners in the affected neighbors, and representatives of other construction projects planned in the area...will ensure coordination of construction schedules between various projects to maintain safe and efficient traffic flows in the area.”²⁴⁸ However, reliance upon future communications and coordination is an even less justifiable form of tiering an environmental assessment to a non-reviewed document, and another clear violation of NEPA.²⁴⁹

Fourth, the cumulative analysis is deficient because it fails to address parking-related impacts, which the Natural Gas Companies highlighted in their Resource Reports as a potential impact on the surrounding community.²⁵⁰ In the Order, the Commission states that parking impacts will be mitigated because, “in some cases, construction contractors may provide buses to move workers from a common parking area to the construction work area.”²⁵¹ This is not part of the Weymouth Traffic Mitigation Plan, however, and therefore is not much more than speculation.

²⁴⁸ Order, 158 FERC ¶61,061, ¶181.

²⁴⁹ 40 C.F.R. §1502.02; see also *Kern*, 284 F.3d at 1073 (“tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA.”).

²⁵⁰ *Algonquin Gas Transmission, LLC’s Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 1-61.

²⁵¹ Order, 158 FERC ¶61,061, ¶180.

g. *Air*.

The Commission's air quality impact analysis ignores the reasonably foreseeable air quality impacts from the full build out of the proposed Weymouth Compressor Station site.²⁵²

First, on a general level, the Commission's EA does not demonstrate that the ANE Project's addition of another turbine to the proposed compressor station will not result in a violation of National Ambient Air Quality Standards (NAAQS) or Massachusetts Ambient Allowable Levels (AALs).²⁵³ As noted, the ANE Project calls for an expansion of the Weymouth Compressor Station to include a 10,915-horsepower gas turbine in addition to the 7,700-horsepower gas turbine proposed as part of the Atlantic Bridge Project.²⁵⁴ The ANE gas turbine's emissions were not included in the air quality modeling study for the Atlantic Bridge Project. There will also likely be other emissions from ANE related facility equipment, such as emergency generators,²⁵⁵ but the Commission did not include the projected impacts from these emissions either.

It is clear that the expansion of the facility will result in significant impacts. Notably, a number of the air toxics evaluated for the Atlantic Bridge Project are on

²⁵² EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-140 (stating that the preliminary compression amount required for the Weymouth compressor station as part of the ANE Project was used as input for the air emissions modeling of the ANE expansion of the Weymouth compressor station, based on its current design, and citing to Section 2.7 as evidence that this modeling of ANE's cumulative impacts was conducted); but cf. id. at Table 2.7.4-3, Table 2.7.4-6, pp.2-95, 2-97 (omitting any modeling for the ANE Project's expansion of the Atlantic Bridge Project compressor station).

²⁵³ See 40 C.F.R. Part 50.

²⁵⁴ *Access Northeast Project, Supplemental Project Information Filing, Attachment A*, Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016).

²⁵⁵ Algonquin Gas Transmission, LLC Weymouth Compressor Station and M&R Station Atlantic Bridge Project, *Air Dispersion Modeling Report*, Sept. 2016, Section 4, pp.4-13-19 (hereinafter "MassDEP Air Dispersion Modeling Report") (submitted to MassDEP in support of the Natural Gas Company's Non-Major Comprehensive Plan Applications).

EPA's list of Hazardous Air Pollutants (HAPs).²⁵⁶ The estimated ambient concentrations for at least three of the air toxics modeled from just the Atlantic Bridge Project's emissions (acrolein, benzene, and formaldehyde) were greater than 50% of either their 24-hour or their annual standards.²⁵⁷ The total emissions of acrolein, benzene, and formaldehyde at the Weymouth Compressor Station will increase roughly proportionally to the additional horsepower of the ANE turbine. The ratio of the ANE Project's turbine (10,915 HP) to the AB Project's turbine (7,700 HP) is 1.42.²⁵⁸ This means that the ANE turbine represents an additional 142% of emissions that were not accounted for in any air quality analysis for the Atlantic Bridge Project.

Air pollutant emission rates and ambient concentrations are approximately linearly related.²⁵⁹ Therefore, a 142% increase in emissions would correlate to approximately a 142% increase in ambient concentrations. Hence, it is reasonable to conclude that the Atlantic Bridge Project's air quality modeling results for all air pollutants (criteria pollutants and toxic pollutants) can be scaled upward by 142% to account for the ANE Project.

²⁵⁶ 40 C.F.R. §63; see also, Environmental Protection Agency, *List of Hazardous Air Pollutants with Modifications*, available at <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications>.

²⁵⁷ MassDEP Air Dispersion Modeling Report at pp.4-13-19 (Tables 4-19 through 4-23 show the dispersion modeling results for air toxics pollutants relative to Mass DEP TEL and AAL standards. The results of each modeled scenario show only minor differences in ambient concentrations for each pollutant, suggesting that each operating scenario would have a similar impact on ambient air quality).

²⁵⁸ *Access Northeast Project, Supplemental Project Information Filing, Attachment A*, Table 2-1, Item 1 Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016) (Item 1 lists the proposed HP rating of a Taurus 70 gas turbine at 10,915 HP. This HP rating is 1.42 times the HP rating of 7,700 HP for the Taurus 60-7802 currently proposed for the AB Project).

²⁵⁹ U.S. EPA. *AERMOD: Description of Model Formulation*. Report No.: EPA-454/R-03-004, September 2004, at Equation 51, p.44, available at https://www3.epa.gov/scram001/7thconf/aermod/aermod_mfd.pdf.

As mentioned, the Commission modeled acrolein, benzene, and formaldehyde at 50% or more of either their 24-hour or their annual standards: Acrolein was modeled at 52.4% of its 24-hour standard; benzene was modeled at 66% of its 24-hour standard; and formaldehyde was modeled 86.5% of its annual standard.²⁶⁰ Scaling up these results proportionally to account for the planned ANE Project's turbine (by 142%) would increase acrolein to 126.7% of its 24-hour standard, benzene to 159.6% of its 24-hour standard, and formaldehyde to 209.1% of its annual standard. Therefore, all three standards would be exceeded.

Additionally, the modeling results presented do not reflect startup and shutdown emissions, when there will likely be more emissions per unit time of operation.²⁶¹

Much of the Town of Weymouth is downwind from the proposed compressor station site, as well as from many other significant emission sources (including the Calpine facility, the Braintree Electric facility, and the Twin Rivers Technologies facility).²⁶² According to the meteorological data used for the air quality modeling for the Atlantic Bridge project, the wind blows from a westerly direction approximately 61% of the time.²⁶³ Therefore, much of the Town would be downwind of existing and proposed air toxics emissions for more than half of the hours in a year.

²⁶⁰ MassDEP Air Dispersion Modeling Report at pp.4-13-19 (Tables 4-19 through 4-23 show the dispersion modeling results for air toxics pollutants relative to Mass DEP TEL and AAL standards.).

²⁶¹ *Id.* at p.3-8 (modeling six scenarios at maximum hourly rates at normal, low temperature, and high temperature, with three of the models at 100% load and three at 50% load, but omitting any modeling of startup or shutdown emissions); Algonquin Gas Transmission, LLC Weymouth Compressor Station Atlantic Bridge Project, *Non-Major Comprehensive Plan Approval Permit Application – Transmittal No. X266786 (Revised September 2016)*, Section 3, p.5.

²⁶² RSG, *Weymouth KBOS Windrose*, attached hereto as “Exhibit 9.”

²⁶³ National Oceanic and Atmospheric Association (“NOAA”), *Land Based Station Data*, Surface meteorological data from Logan International Airport (KBOS, Station No. 14739) 2009-2013, *available at*

Ambient concentrations of air toxics are monitored at the Harrison Avenue monitoring station in Boston, which is the same monitoring station that Algonquin used for its analysis.²⁶⁴ This station measures concentrations of acrolein, benzene, and formaldehyde, among other air toxics. The EPA Monitor Values website provides the concentrations of these air toxics for the same time period used in the Atlantic Bridge Project’s modeling analysis (2014-2016).²⁶⁵ The average acrolein, benzene, and formaldehyde concentrations for that time period were approximately 40.4, 4.6, and 5.8 times above their respective AALs.

The Order states that federal HAP emissions from the proposed Atlantic Bridge Project compressor station will not be significant because annual levels are significantly below “Major Source” thresholds.²⁶⁶ The Major Source Threshold is 10 tons/year for an individual HAP (such as acrolein) and 25 tons/year for all HAPs combined.²⁶⁷ Adding the ANE Project’s emissions to the Atlantic Bridge Project’s emissions will not cause emissions to exceed HAP Major Source Thresholds. However, as explained above, adding the ANE Project’s emissions to the analysis is likely to cause at least three AALs to be violated. Furthermore, existing levels of the numerous air toxics exceed their respective AAL’s. Therefore, it does not necessarily mean that there is no potential for significant air quality impacts to occur if emissions are below the Major Source

<https://www.ncdc.noaa.gov/data-access/land-based-station-data> (web resource providing access to surface meteorological data from airport weather stations).

²⁶⁴ *Algonquin Gas Transmission, LLC’s Abbreviated Application*, Docket No. CP16-9-000 (submittal 20151022-5282) (Oct. 22, 2015), at Resource Report 9, pp.9-17, 18.

²⁶⁵ U.S. EPA, *Monitor Values Report – Hazardous Air Pollutants*, available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report-hazardous-air-pollutants>.

²⁶⁶ Order, 158 FERC ¶¶61,061, ¶206.

²⁶⁷ 42 U.S.C. §7412(a)(1).

Threshold. FERC's dismissal of the modeled emissions as not triggering the NESHAP threshold emission level and its ultimate conclusion that those emissions are therefore not significant simply do not pass muster.²⁶⁸

Evaluating the Atlantic Bridge and ANE Projects' emissions together also has potentially significant Greenhouse Gas ramifications. The Atlantic Bridge Project's Greenhouse Gas emissions were estimated at 59,334 tons/year.²⁶⁹ Scaling this number up by the ANE Project (142%) would result in approximately 110,082 tons/year. The Major Source Threshold for Greenhouse Gases is 100,000 tons/year.²⁷⁰ The Atlantic Bridge Project's design could be affected if the Atlantic Bridge and ANE Projects were collectively determined to be a Major Source of Greenhouse Gases. Both projects would have to be considered with a Best Available Control Technology (BACT) study for minimizing Greenhouse Gas emissions.²⁷¹ The study findings could warrant changes to the Atlantic Bridge Project's design to improve efficiency and reduce emissions.

The Commission's air quality impact analysis ignores the reasonably foreseeable air quality impacts from the full build out of the compressor station, which includes the additional turbine proposed as part of the ANE Project. The failure to include a

²⁶⁸ Order, 158 FERC ¶61,061, ¶¶ 205-06 (stating in Paragraph 205 that many commenters expressed concern about the human health impacts from HAPs and purportedly addressing those concerns by citing to the federal classification of Major Sources of HAPs in Paragraph 206, while simultaneously ignoring the possibility that the MassDEP AALs, which are designed to protect human health, could in fact be violated without meeting the federal Major Source threshold of 10 tons per year of any single HAP or 25 tons per year of any combination of HAPs).

²⁶⁹ Algonquin Gas Transmission, LLC Weymouth Compressor Station Atlantic Bridge Project, *Non-Major Comprehensive Plan Approval Permit Application – Transmittal No. X266786 (Revised September 2016)*, Section 3, p.22, Table 3-16 (Table 3-16 shows the total potential facility-wide emissions for all major pollutants including carbon dioxide).

²⁷⁰ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Rule 75 Fed. Reg. 31514-01, 31516 (June 3, 2010).

²⁷¹ *Id.* at 31526 (stating that guidance for best available control technology determinations applicable to GHG emissions will be developed under a separate effort that will involve stakeholder input).

meaningful cumulative impacts analysis of the Atlantic Bridge and ANE Projects obscures the potential combined emissions of acrolein, benzene, and formaldehyde, which are HAPs under federal law and air toxics under state law. That those three chemicals will not trigger a Major Source Threshold under the *Clean Air Act* does not mean that those levels of emissions will not have significant air impacts on the adjacent properties and Weymouth center, which is downwind from the proposed Compressor Station site. In addition, the Greenhouse Gas emissions from the reasonably foreseeable ANE Project were not properly factored into the analysis in the EA. The failure to perform a cumulative impacts analysis for the Atlantic Bridge and ANE Project is impermissible and merits supplemental analysis in order to comply with NEPA.

h. *Noise*.

The Commission did not consider the cumulative impacts of the Atlantic Bridge Project, Access Northeast, and the Fore River Bridge Replacement Project with respect to noise.²⁷² In turn, the Commission's Order fails to address the accumulated, or total, incremental impacts of the reasonably foreseeable sources of noise and the impacts on the nearby NSAs.²⁷³ The Access Northeast Project proposes to modify the proposed Weymouth Compressor Station to include an additional compressor unit in a building extension on the east side of the proposed station.²⁷⁴ The expansion will also include

²⁷² EA, Docket No. CP16-9-000 (submittal 20160502-4001) p.2-141 (asserting without support that the ANE Project would result in noise impacts similar to the Atlantic Bridge Project and that because the Commission would conduct a noise assessment of the ANE Project as part of its comprehensive evaluation and require mitigation measures to keep the total noise below the 55 dBA threshold).

²⁷³ Order, 158 FERC ¶114 (parroting the EA's conclusory statement that because the ANE Project will be required to comply independently with the 55 dBA standard that there will be no significant noise impacts from the two projects).

²⁷⁴ *Access Northeast Project, Supplemental Project Information Filing, Attachment A*, Table 2-1, Docket No. PF16-1-000 (submittal 20160401-5462) (Apr. 1, 2016).

additional coolers, piping, and conditioning equipment.²⁷⁵ All of these will be located in close proximity to the King’s Cove parcel and all have the potential to increase the sound level beyond what was considered in the EA. The Commission should have considered these cumulative noise impacts to determine the projected Ldn at the King’s Cove Parcel and the potential change in sound level over the existing ambient sound levels.

The Commission’s concession that “[i]t is possible that [the ANE noise assessment] could identify the potential for the ANE Project to increase the noise levels at some NSAs near compressor stations above what is predicted if on the Atlantic Bridge Project is constructed...”²⁷⁶ is not a meaningful cumulative impacts analysis.²⁷⁷ Rather, the Commission’s mere nod to a possible increase in noise levels stemming from the ANE Project treats the Atlantic Bridge noise impacts in a vacuum, not a proper cumulative impacts analysis under NEPA. The failure to provide a meaningful cumulative noise impacts analysis makes it impossible to give credence to the Commission’s statement that there will be no anticipated significant noise impacts associated with the Atlantic Bridge Project,²⁷⁸ which again does not satisfy NEPA.²⁷⁹

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ “[A] meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.” *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345 (D.C. Cir. 2002), *as amended* (Aug. 27, 2002); *id.* at 342 (paraphrasing cases that held that agencies have a duty to consider impacts in a context that realistically includes other pending projects and that NEPA requires a full assessment of the possible environmental consequences of activities that have the potential for disturbing the environment).

²⁷⁸ EA Docket No. CP16-9-000 (submittal 20160502-4001) p.2-141.

²⁷⁹ *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 347 (D.C. Cir. 2002), *as amended* (Aug. 27, 2002) (dismissing the environmental assessment’s finding that the project will not adversely affect the current

Each of these projects have the potential to cause incremental increases in the background sound level, with some areas already above 55 dBA Ldn becoming even louder and some areas that are not above 55 dBA Ldn potentially crossing the threshold.

6. The Commission erred in concluding that the Project will not adversely affect environmental justice communities disproportionately.

The Order recognizes that the proposed Weymouth Compressor Station site is surrounded by low-income and minority populations and environmental justice communities.²⁸⁰ These communities are already disproportionately overburdened, with significant industrial facilities within 0.85 miles, as listed above.²⁸¹

Weymouth already suffers – more so than almost every other Massachusetts community – from a great many of the consequences of the region’s reliance on natural gas. The Town already has some of the largest natural gas pipelines in Massachusetts. It already has one of the largest natural gas-fired electrical generating facilities in Massachusetts. It has a metering and regulating station within a few hundred feet of the proposed compressor station location. Indeed, if the proposed compressor station is allowed to be built, Weymouth would be the only Massachusetts community with a pipeline, a natural gas-fired generating facility, a metering station, and a compressor station. Each of these facilities carries a much more than negligible risk of environmental harm. Collectively, they demonstrate that environmental injustice is already borne by the communities. The addition of the proposed compressor station would exacerbate the

noise levels because of the lack of cumulative noise impacts analysis against which the additional noise impacts from the project could be measured and holding that it therefore did not comply with NEPA).

²⁸⁰ Order, 158 FERC ¶¶61,061, ¶¶65-66.

²⁸¹ *Scoping Comments of the Town of Weymouth*, Docket No. PF15-12-000 (submittal 20150611-5216) (Jun. 11, 2015), p.2 and Exhibit C.

injustice, in conflict with state and federal policies to mitigate the disproportionate effects of environmental harm.

On January 31, 2017, the Massachusetts Secretary of Energy and Environmental Affairs issued the Commonwealth's updated Environmental Justice Policy, effective immediately.²⁸² The Policy was deemed necessary because established, densely populated, lower income communities such as Weymouth are often burdened with industrial areas that can pose significant risks to public health and the environment. Historically these communities have not been given a voice in the decision to host these industries and have not been made aware of the nature of the risks they now bear.²⁸³ Large industrial facilities such as those already in Weymouth cause the community to suffer an unequal exposure to serious environmental and related public health problems.²⁸⁴

The Commission's analysis, however, inappropriately relies upon the fact that the facility is consistent with local zoning.²⁸⁵ However, consistency with local zoning cannot form the basis for a FONSI, especially given that the Siting Board has ordered Calpine to work cooperatively with the Town to determine a use for the North Parcel.²⁸⁶ Moreover, the whole point of the environmental justice analysis is to ensure that one community is

²⁸² Massachusetts Secretary for Energy and Environmental Affairs, 2017 Environmental Justice Policy (Jan. 31, 2017), *available at* <http://www.mass.gov/eea/docs/eea/ej/2017-environmental-justice-policy.pdf>.

²⁸³ *Id.*

²⁸⁴ Dr. Daniel Farber & Dr. Eric Krieg, *Unequal Exposure to Ecological Hazards: Environmental Injustices in the Commonwealth of Massachusetts*, Northeastern University Environmental Justice Research Project (October 12, 2005), *available at* <http://www.northeastern.edu/ejresearchnetwork/wp-content/uploads/2014/10/Final-Unequal-Exposure-Report-2005-10-12-05.pdf>.

²⁸⁵ EA Docket No. CP16-9-000 (submittal 20160502-4001) p.2-79.

²⁸⁶ *In the Matter of the Petition of Sithe Edgar Development, LLC for Approval to Construct a Bulk Generating Facility in the Town of Weymouth, Massachusetts*, Final Decision, EFSB 98-7 (Feb. 11, 2000), Condition L.

not overburdened with highly polluting and dangerous facilities. The Commission has essentially concluded that because the North Parcel is surrounded by other industrial facilities, siting the compressor station there would be appropriate.

Far from Weymouth's being an acceptable location due to the pre-existing industries, the Policy, NEPA, and DEQ regulations compel the conclusion that the compressor station is highly inappropriate for the proposed location. NEPA requires that federal agencies "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities"²⁸⁷ To fulfill that purpose, FERC is required to evaluate independently the environmental information submitted by the applicant.²⁸⁸ The evaluation must include a detailed statement of the potential environmental impacts of the proposed station and their effect on the local human environment.²⁸⁹

The Order provides no such independent evaluation. Rather, it summarily notes that "the EA concludes that the Atlantic Bridge Project will not result in any disproportionately high or adverse environmental or human health impacts on minority or low-income communities."²⁹⁰ The statement provides no good-faith effort by the Commission to consider the values NEPA seeks to protect, no explanation of the analysis

²⁸⁷ 42 U.S.C. §4331.

²⁸⁸ 40 C.F.R. §1506.5.

²⁸⁹ 42 U.S.C. §4332.

²⁹⁰ Order, 158 FERC ¶61,061, ¶66.

and reasoning that led the Commission to adopt the EA's conclusions, and no disclosure of the environmental costs involved in the project.²⁹¹

FERC must fulfill its regulatory mandate and complete an objective, independent assessment of the increased burden imposed disproportionately on its surrounding low-income and minority populations and economic justice communities. Doing so will establish that adding the proposed compressor station to the community is incompatible with NEPA and its implementing regulations, and the Massachusetts Environmental Justice Policy requirements.

The alternative sites, such as Franklin and Holbrook, represent a better sharing of the burden that natural gas facilities impose. Both the Franklin and Holbrook alternatives are located in heavily-forested areas.²⁹² Neither alternative has anywhere near the residential density of the Weymouth site.²⁹³ Franklin's environmental justice population is solely income-based, unlike Weymouth's, and Weymouth's percentage of its population in environmental justice BlockGroups is approximately 64% higher than Franklin's.²⁹⁴ Not only does Weymouth itself represent a more heavily-burdened environmental justice community, but the proposed compressor site is just across the

²⁹¹ See e.g. *Minn. Pub. Interest Research Group v. Butz*, 541 F.2d 1292, 1299-1300 (8th Cir. 1976) (detailed statement requirement of Section 102(2)(C) serves at least three purposes); *contrast Allen v. National Institutes of Health*, 974 F. Supp. 2d 18, 33-34 (D. Mass. 2013) (Environmental justice analysis analyzed percentage of low-income and minority populations within a certain radius and effect of proposed biolab on those populations).

²⁹² EA Docket No. CP16-9-000 (submittal 20160502-4001) pp.3-20 to 3-21 and Figures 3.5.1-2 and 3.5.1-3 in Appendix I.

²⁹³ As noted, the EA counts 587 residential structures within on-half mile of the station site for Weymouth, but only 131 in Franklin and 22 in Holbrook. EA Docket No. CP16-9-000 (submittal 20160502-4001) p.3-19, Table 3.5.1-1.

²⁹⁴ MA Executive Office of Energy and Environmental Affairs 2010 Environmental Justice Populations, available at <http://www.mass.gov/anf/research-and-tech/it-serv-and-support/application-serv/office-of-geographic-information-massgis/datalayers/cen2010ej.html>.

Fore River from Quincy, with 74% of its population in environmental justice BlockGroups.²⁹⁵ This community comprises the trifecta of disadvantaged populations – minority, low income, and English isolation.²⁹⁶ These are the very populations to which FERC owes special regard, something FERC’s cursory environmental justice analysis utterly fails to deliver.

7. The Commission’s determination that the Project is required by the public convenience and necessity is in error.

The Commission erred in determining that the Project meets the public convenience and necessity standards established by the NGA and its implementing regulations. Specifically, the Order asserts that the Project complies with the Certificate Policy Statement’s guidance on evaluating proposals,²⁹⁷ which provides that, in conducting the balancing test of public benefits versus impacts, the Commission must consider “avoidance of unnecessary disruption of the environment” as one factor.²⁹⁸

As explained in detail above, the Commission has concluded that the Project will not have significant environmental impacts. This determination was based on inadequate, incomplete, and missing data. The Commission therefore made its finding of public convenience and necessity without an accurate understanding of the environmental impacts of the Project.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ Order, 158 FECR ¶61,061, ¶25 (citing, *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227 (1999); *order on clarification*, 90 FERC ¶61,128 (2000); *order on clarification*, 92 FERC ¶61,094 (2000)); *see also*, *Minisink Residents for Environmental Preservation and Safety v. F.E.R.C.*, 762 F.3d 97, 101-02 (D.C. Cir. 2014); *Delaware Riverkeeper Network v. Sec’y Pa. Dep’t of Env’t. Protection*, 833 F.3d 360, 367 (3rd Cir. 2016).

²⁹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227, p.1.

The evidence in the record of this proceeding does not support a finding that the public need is outweighed by the environmental harm that would result. The Commission should therefore grant a rehearing and rescission of the Order to determine, based on a comprehensive Environmental Impact Statement with the full range of alternatives explored, whether the Commission can properly issue a Certificate of Public Convenience and Necessity for the Project.

8. Delaying consideration of this request for rehearing and rescission would violate the *Natural Gas Act*.

The *Natural Gas Act* states that “[a] party may apply for a rehearing within thirty days after the issuance of such order.”²⁹⁹ When filed late, the Commission lacks the authority to waive this requirement.³⁰⁰ The statute also places strict requirements on the Commission to respond within 30 days to a request for rehearing.³⁰¹ Requests for rehearing are deemed constructively denied if the Commission fails to act within this proscribed deadline.³⁰²

In *Boston Gas Co. v. Fed. Energy Reg. Comm’n*, the Court discussed the purpose of imposing the deadline for the parties to file rehearing requests:

[W]e do not think that the purpose of the statute is purely one of administrative exhaustion.... The fact that a 30 day limit is included in the statute clearly indicates that the Act requires not only administrative exhaustion but immediate action on the part of

²⁹⁹ 15 U.S.C. §717r(a).

³⁰⁰ *Boston Gas Co. v. Fed. Energy Reg. Comm’n*, 575 F.2d 975, 979 (1978) (Declining to strike the 30-day time limit from the statute or give the Commission the authority to extend the time limit); see also *AES Sparrows Point LNG, LLC Mid-Atlantic Express, LLC*, 129 FERC ¶61245, ¶15 (2009) (“The statute does not give the Commission the discretion to waive this requirement.”).

³⁰¹ 15 U.S.C. §717r(a) (“Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied.”).

³⁰² *Id.*; see also *Boston Gas Co. v. Federal Energy Regulatory Commission*, 575 F.2d 975, 979 (1978) (statute requires exhaustion of administrative remedies).

those aggrieved. All the parties to a proceeding before the Commission, as well as the Commission itself, have the statutory right to be free from prolonged uncertainty resulting from delayed efforts to resolve an issue. A formal time limit assures all participants that their claims will be settled expeditiously.... Petitioner's argument would require us to strike the 30 day time limit from the statute or give the Commission the authority to extend the time limit whenever it sees fit to do so. We decline to do either.³⁰³

While the court was clearly principally addressing the obligation to file a Request for Rehearing within 30 days, its rationale is equally applicable to the Commission's obligation to act within 30 days to avoid "prolonged uncertainty" as to the parties' rights.

However, history demonstrates that the Commission has often granted itself an indefinite extension of time to avoid the 30-day deadline to act.³⁰⁴ This makes the case against the Commission not ripe, and renders otherwise available remedies, such as further appeals to court, unavailable. The Commission should refrain from impermissibly granting itself an extension in this case.

Furthermore, at the time of this filing, the Commission lacks a quorum, and therefore cannot legally grant an extension even if it wishes to do so.³⁰⁵ The Commission has delegated additional powers to staff, including the ability to extend the time for action on matters "where such extension of time is permitted by statute."³⁰⁶ However, because extensions of time to act on Request for Rehearing are not provided for by statute, the

³⁰³ *Boston Gas Co.*, 575 F.2d at 979 (1978).

³⁰⁴ See, e.g. Order Granting Rehearing for Further Reconsideration, Docket No. CP11-161-001 (submittal 20120709-3002) (Jul. 9, 2012). Final order was issued six months later, on January 11, 2013. See Order on Rehearing, Clarification, and Stay, 142 FERC ¶61,025 (Jan. 11, 2013).

³⁰⁵ See also Comment Letter from Edward J. Markey and Elizabeth Warren, Docket No. CP16-9-000 (submittal 20170201-0010) (Feb. 1, 2017).

³⁰⁶ *Commission Delegates Authority to Staff in Absence of Quorum*, 158 FERC ¶61,135, AD17-10-000.

Commission's staff lacks the authority to extend the time to act on this request until such time as the Commission establishes a quorum.³⁰⁷

Notably, the Natural Gas Companies are already moving forward under the Commission's Order. The Natural Gas Companies have filed notice with the Massachusetts Department of Environmental Protection that the Town's local wetlands ordinance is preempted due to the issuance of this Order. The Natural Gas Companies have also filed their Initial Implementation Plan, pursuant to Condition 6 of the Order, which proposes measures that the Natural Gas Companies will take to comply with the environmental conditions conditioned in the Order.³⁰⁸

IV. COMMUNICATIONS

Communications and correspondences regarding this proceeding should be served upon the following individuals:

Joseph Callanan
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³⁰⁷ See 15 U.S.C. §717r(a) (does not specifically allow for an extension of time) and §7170 (does not permit an extension of time prescribed by statute).

³⁰⁸ *Initial Implementation Plan*, Docket No. CP16-9-000 (submittal 20170203-5266) (Feb. 3, 2017).

V. CONCLUSION

For the foregoing reasons, the Town of Weymouth respectfully requests that the Commission, within the 30 days provided by law, grant this request for rehearing and rescission of the Order.



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CERTIFICATE OF SERVICE


I, Ivria Glass Fried, hereby certify that I have on this day served the foregoing document and exhibits thereto upon each person designed on the official service list compiled by the Secretary in this proceeding.

Dated at this 24 day of February, 2017.



Ivria Glass Fried

EXHIBIT 1

From: Ivria Glass Fried ifried@miyares-harrington.com 
Subject: Re: Hello,
Date: August 3, 2016 at 4:37 PM
To: Angela Washington Angela.Washington@ferc.gov
Cc: J. Raymond Miyares ray@miyares-harrington.com, Rebekah Lacey rlacey@miyares-harrington.com



Hello Angela:

I just wanted to follow up on our conversation from today, in which you shared that FERC does not have any maps depicting the location of compressor stations in the United States. You also relayed that FERC does not have a document or spreadsheet listing all of the compressor stations currently permitted or operational. While the eLibrary includes all of the documents filed with FERC, FERC itself does not maintain such a map or list for reference. You explained that FERC is a depository for information and suggested that I contact EIA and Pennwell Publishing. If you think I misrepresented this conversation, please let me know.

Again, I really appreciate you taking the time to explain FERC's filing system to me and following up on the FOIA request. I hope you have a great rest of your week.

Best,
Ivria

On Aug 3, 2016, at 4:06 PM, Angela Washington <Angela.Washington@ferc.gov> wrote:

202-502-8016

Ivria G. Fried
MIYARES AND HARRINGTON LLP
40 Grove Street • Suite 190 • Wellesley, MA 02482
Tel 617-489-1600 Ext. 427 • Fax 617-489-1630
www.miyares-harrington.com

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EXHIBIT 2



Department of Energy
Washington, DC 20585

July 22, 2016

Ms. Ivria Fried
Associate Special Town Counsel
Town of Weymouth
40 Grove Street, Suite 190
Wellesley, MA 02482

Via email to: ifried@miyares-harrington.com

Re: HQ-2016-01126-F

Dear Ms. Fried:

This is in final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. §552. You requested the following:

- (1) All maps or plans depicting permitted or operation and natural gas compressor stations located at the point of natural gas production and within the "V Zones" on the Federal Emergency Management Agency's Flood Insurance Rate Maps, including, Zone V, Zone V1-30, Zone VE, and Zone VO (44 CFR § 64.3) (collectively, hereinafter referred to as "Coastal High Hazard Area").
- (2) All maps or plans depicting permitted or operational natural gas compressor stations located along the natural gas transmission pipeline network within the Coastal High Hazard Area.
- (3) All maps or plans depicting permitted or operational natural gas compressor stations located at the point of natural gas production and within a hurricane surge inundation zone, as developed by the National Oceanic and Atmospheric Administration's National Hurricane Center using the PV2 basin Sea Lake and Overland Surge from Hurricanes model data (hereinafter referred to as "Hurricane Surge Inundation Zone").
- (4) All maps or plans depicting permitted or operational natural gas compressor stations located along the natural gas transmission pipeline network and within a Hurricane Surge Inundation Zone.
- (5) Any and all documents and communications, including, but not limited to, email correspondences, reports, PowerPoint presentations, and studies, related to the risks and safety issues associated with a siting natural gas compressor station in a Coastal High Hazard Area or a Hurricane Surge Inundation Zone.

The following offices were queried to determine if they had documents responsive to your request:



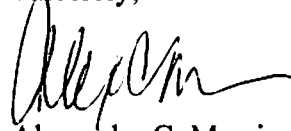
- Office of Fossil Energy
- Office of Electricity Delivery & Energy Reliability
- Energy Information Administration

These offices have reviewed your request and determined that it does not fall within DOE's jurisdiction. The program offices suggested that this information may be available from the National Oceanic Atmospheric Administration (NOAA) or the Federal Emergency Management Agency (FEMA). As such, we recommend that you contact NOAA or FEMA for your request.

This is the final response that you will receive about your request from this office. You may contact me at (202) 586-5955 with any questions about this letter.

I appreciate the opportunity to assist you.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex C. Morris", with a long horizontal flourish extending to the right.

Alexander C. Morris
FOIA Officer
Office of Information Resources

EXHIBIT 3



U.S. Department
of Transportation

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

**Pipeline and Hazardous
Materials Safety Administration**

7/6/2016

FOIA Control Number: 2016-0137

Transmitted via Electronic Mail to ifried@miyares-harrington.com – Read Receipt Requested

Ivria Fried

Miyares and Harrington LLP

40 Grove Street, Suite 190

Wellesley, MA - 02482

Dear Ms. Fried:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request dated 7/5/2016 and received in the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) FOIA Office on 7/5/2016. You requested:

1. All maps or plans depicting permitted or operational natural gas compressor stations located at the point of natural gas production and within the “V Zones” on the Federal Emergency Management Agency’s Flood Insurance Rate Maps, including, Zone V, Zone V1-30, Zone VE, and Zone VO (44 CRR §64.3) (collectively, hereinafter referred to as “Coastal High Hazard Area”).
2. All maps or plans depicting permitted or operational natural gas compressor stations located along the natural gas transmission pipeline network and within the Coastal High Hazard Area.
3. All maps or plans depicting permitted or operational natural gas compressor stations located at the point of natural gas production and within a hurricane surge inundation zone, as developed by the National Oceanic and Atmospheric Administration’s National Hurricane Center using the PV2 basin Sea Lake and Overland Surge from Hurricanes model data (hereinafter referred to as Hurricane Surge Inundation Zone”).
4. All maps or plans depicting permitted or operational natural gas compressor stations located along the natural gas transmissions pipeline network and a Hurricane Surge Inundation Zone.
5. Any and all documents and communications, including, but not limited to, reports, studies, memorandum, email correspondences, PHMSA F 7000 forms, and voluntary self-disclosure forms, describing an accident or incident at a natural gas compressor station located in a Coastal High Hazard Area or a Hurricane Surge Inundation Zone, and any

all documents and communications related to the repair or resolution of such accidents or incidents.

6. Any and all documents and communications, including, but not limited to, reports, studies, memorandum, email correspondences, PHMSA F forms, and voluntary self-disclosure forms, describing an unintentional or intentional release of natural gas from a compressor station located in a Coastal High Hazard Area or a Hurricane Surge Inundation Zone.
7. Any and all documents and communications, including, but not limited to, reports, studies, email correspondences, advisory bulletins, interpretations, and opinions, related to the risks and safety issues associated with siting a natural gas compressor station in a Coastal High Hazard Area or a Hurricane Surge Inundation Zone.
8. Any and all documents related to enforcement actions, including, but not limited to, settlement agreements and consent decrees, against an operator of a natural gas compressor station in a Coastal High Hazard Area or a Hurricane Surge Inundation Zone for failure to comply with the PHMSA regulations.

We have assigned your request with control number **2016-0137**. Please identify all communications concerning your request with this control number.

Because of the need to search for and collect the requested records from an establishment separate from the office processing your request, which is our FOIA Office in Headquarters, “unusual circumstances” applies and we are extending the time limit to respond to your request by 10 workdays. *See* 49 C.F.R. § 7.34(a)(1). Your request was assigned to our simple processing track. On average, requests assigned to our simple processing track are processed within approximately 43 workdays, but our processing time ranges from 0 days to longer than one year. However, we currently are experiencing a backlog of FOIA requests and are required to respond to your request in the order received. Please be assured that we will make every effort to respond to your request on the soonest date possible.

In an effort to reduce our response time, you may wish to narrow the scope of your request, which would limit the number of potentially responsive records, or agree to an alternative time frame for processing (*e.g.*, by prioritizing portions of your request). Please contact me at any time should you wish to discuss the variety of options available to you that would allow us to respond to your request more quickly.

For the purposes of assessing fees, we have placed you in the “All Other” requester category. *See* Department of Transportation’s FOIA regulations, § 7.42(g)(4), (j). As a requester in this fee category, you pay a fee for all search time beyond two hours, but you do not pay any fee for review. Because you have not provided us with the maximum amount of fees that you are willing to pay, as required by the Department’s FOIA regulations, it is possible that a fee issue may arise that will delay the processing of your request. *See id.* § 7.24(b)(3). To prevent any delay, you may wish to inform us of the maximum amount of fees that you are willing to pay to process your request. It is assumed that you

are willing to pay up to the minimum charged by the agency, which is \$25.00. *Id.* Refer to 49 C.F.R. § 7.42 for further explanation of the Department's fee schedule and fee categories.

We will notify you of our determination on your fee waiver request only if we determine that processing fees will be assessed.

If you have any questions regarding your request, please feel free to contact Madeline Van Nostrand, FOIA Officer, at 202-366-0273, madeline.vannostrand@dot.gov, or PHMSA.FOIA@dot.gov.

Sincerely,

TAJA A BROOKS

Paralegal Specialist
Pipeline and Hazardous Materials Safety Administration (PHMSA)

Digitally signed by TAJA A BROOKS
DN: c=US, o=U.S. Government,
ou=PHMSAHQ, ou=DOT Headquarters,
cn=TAJA A BROOKS
Date: 2016.07.06 11:35:59 -04'00'

EXHIBIT 4



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

August 3, 2016

Mike Tyrrell
Algonquin Gas Transmission, LLC
Environmental Lead
249 Vanderbilt
Suite 100
Norwood, MA 02062

Re: CZM Federal Consistency Review of Atlantic Bridge Project-Weymouth
Compressor Station: Weymouth.

Dear Mr. Tyrrell:

The Massachusetts Office of Coastal Zone Management (CZM) is currently reviewing the proposed project involving Algonquin's construction of a new natural gas compressor station in the Town of Weymouth at a site located at 6 & 50 Bridge Street, to ensure consistency with CZM enforceable program policies. CZM received your completed federal consistency certification package on February 23, 2016 and a consistency determination would ordinarily be issued no later than August 23, 2016. However, as per the Coastal Zone Management Act Federal Consistency Regulations at 15 CFR 930.60(b) and 310 CMR 20.04(2)(c)(d), CZM cannot complete its review and issue a decision until all applicable licenses, permits, certifications and other authorizations have been issued. Our records indicated that the Massachusetts Department of Environmental Protection Chapter 91 license for the proposed project had not yet been issued.

As discussed, the Coastal Zone Management Act Federal Consistency Regulations at 15 CFR 930.60(b) allow for a stay in the six month review period, if mutually agreed upon by both the applicant and the state agency. The rules also hold that the stay shall only be for a defined period, and the agreement must state the specific date on which the stay will end. In order to facilitate the required license, we propose a one year stay of the review period beginning on August 3, 2016, with CZM's review re-starting on August 3, 2017, and completed by August 23, 2017. CZM will need all the necessary information prior to the expiration of the stay period. If the additional information necessary for CZM to issue a determination is provided to us earlier than August 3, 2017, CZM may contact you to amend the end date of the stay to allow for an earlier determination. In the event that all the necessary information has not been received within the review schedule noted above, CZM may contact you to issue an additional stay with dates to be determined. Please indicate your agreement to this schedule by signing below and returning this letter to my attention.



If you have questions about the federal consistency review process, please contact me at the above address or (617) 626-1050.

Sincerely,



Robert Boeri
Project Review Coordinator

RLB/pb
CZM #16105

Agreed to by Applicant



Mike Tyrrell
Algonquin Gas Transmission, LLC

cc: Maggie Suter, Environmental Engineer,
Office of Energy Projects, Federal Energy Regulatory Commission
Ben Lynch, Program Chief,
Waterways Regulation, Massachusetts DEP
Ralph Child, Member,
Mintz, Levin, Cohn, Ferris, Glovky and Popeo, P.C.
Lisa Berry Engler,
CZM Boston Harbor Regional Coordinator

EXHIBIT 5

ORAL ARGUMENT HAS NOT BEEN SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 16-1081

CITY OF BOSTON DELEGATION, *et al.*,
Petitioners,
v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**Consolidated Matters
Nos. 16-1098 and 16-1103**

**JOINT INITIAL BRIEF OF PETITIONERS
TOWN OF DEDHAM, MASSACHUSETTS,
AND RIVERKEEPER, INC., *et al.***

Carolyn Elefant,
Alexander English
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Counsel to Riverkeeper, Inc. and
Environmental & Community Petitioners
July 29, 2016

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rzachas@bck.com
Attorneys for Town of
Dedham, Massachusetts

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>		
CITY OF BOSTON)	
DELEGATION,)	
and)	
TOWN OF DEDHAM,)	
MASSACHUSETTS)	DOCKET NO. 16-1081
and)	consolidated with
RIVERKEEPER, INC., <i>et al.</i>)	16-1098, 16-1103
<i>Petitioners</i>)	
v.)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
<i>Respondent</i>)	
<hr/>		

**PETITIONERS’ CERTIFICATE AS TO PARTIES, RULINGS AND
RELATED CASES**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1), Petitioner Town of Dedham, Massachusetts and Riverkeeper, Inc. (“Riverkeeper”), et al., submit this joint Certificate as to Parties, Rulings and Related Cases.

A. Parties, Intervenors, and *Amici*

1. Petitioners

Petitioners are the City of Boston Delegation (Docket No. 16-1081); the Town of Dedham, Massachusetts (Docket No. 16-1098); and Riverkeeper, Inc., along with numerous other individual and organizational Environmental and Community Petitioners* (Docket No. 16-1103).

2. Respondent

The Respondent is the Federal Energy Regulatory Commission (“Commission”).

3. Intervenors

The following entities have intervened in the above-captioned proceeding in support of the Respondent Commission: Algonquin Gas Transmission LLC (“Algonquin”); Boston Gas Company d/b/a/ National Grid; Brooklyn Union Gas Company d/b/a/ National Grid NY; Colonial Gas Company d/b/a/ National Grid; Key Span Gas East Corporation d/b/a/ National Grid; Narragansett Electric Company; and National Grid, Niagara Mohawk Corporation d/b/a/ National Grid.

* These joint petitioners are: Reynolds Hill, Inc.; Sierra Club, Lower Hudson Chapter; Food & Water Watch; Stop the Algonquin Pipeline Expansion (SAPE); Better Future Project; Charles River Spring Valley Neighborhood Association; West Roxbury Saves Energy; Capitalism vs. the Climate; Fossil Free Rhode Island; Jessica Porter; Pramilla Malick; Paul Dunn; Alexandra Shumway; Jan White; Virginia Hickey; Mary McMahan; Audrey Brait; William and Robine Cullinane; Linder Sweeney; and Rickie Harvey.

4. *Amici*

At present, no entities have moved for leave to participate as *amici curiae*.

B. **Rulings Under Review**

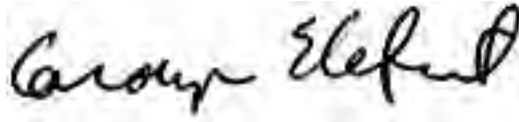
The Town of Dedham and Riverkeeper and the joint Environmental and Community Petitioners seek review of the following orders of Respondent, the Commission: (1) *Algonquin Gas Transmission, LLC*, Order Denying Rehearing and Dismissing Stay Request, Docket No. CP14-96001, 154 FERC ¶ 61,048 (Jan. 28, 2016); and (2) *Algonquin Gas Transmission, LLC*, Order Issuing Certificate and Approving Abandonment, Docket No. CP1496-000, 150 FERC ¶ 61,163 (Mar. 3, 2015).

C. **Related Cases**

The case on review has not previously been before this Court or any other court, within the meaning of D.C. Circuit Rule 28(a)(1)(C).

On March 31, 2016, this Court entered an Order consolidating into this matter three petitions for review: Town of Dedham, Massachusetts (16-1098); City of Boston Delegation (16-1081); and Riverkeeper, *et al.* (16-1103). At this time, undersigned counsel is not aware of any other cases related to this case within the meaning of D.C. Circuit Rule 28(a)(1)(C).

Respectfully submitted,



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Alexander J. E. English
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*Counsel to Environmental and Community
Petitioners (Coalition)*

Date: July 29, 2016

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>)	
CITY OF BOSTON)	
DELEGATION,)	
and)	
)	
TOWN OF DEDHAM,)	
MASSACHUSETTS)	DOCKET NO. 16-1081
and)	consolidated with
)	16-1098, 16-1103
RIVERKEEPER, INC., <i>et al.</i>)	
<i>Petitioners</i>)	
v.)	
)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
<i>Respondent</i>)	
<hr/>)	

RULE 26.1 CORPORATE DISCLOSURE

Pursuant to Local Rule 15 of the D.C. Circuit Rules and Federal Rule of Appellate Procedure 26.1, Petitioners submit this Corporate Disclosure Statement with respect to the petitioners that are corporations or organizational entities.

Riverkeeper, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, is a member-supported watchdog organization dedicated to protecting the environmental, recreational, and commercial integrity of the Hudson River and its tributaries, and to safeguarding the drinking water supply of nine million New York City and Hudson Valley residents. Riverkeeper, Inc. has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in Riverkeeper, Inc.

Reynolds Hill, Inc., is a non-profit membership community located in Peekskill and Cortlandt, New York and is directly impacted by the AIM Project. Reynolds Hill is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in Reynolds Hill Inc.

Sierra Club Lower Hudson Chapter is a non-profit organization founded in 1892 with approximately four thousand (4,000) members in Westchester, Putnam and Rockland Counties. Sierra Club Lower Hudson Chapter is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in Sierra Club Lower Hudson Chapter.

Food & Water Watch is a DC-based nonprofit with close to sixty thousand (60,000) supporters in impacted counties. Food & Water Watch is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in Food & Water Watch

Stop the Algonquin Pipeline Expansion (SAPE) is a grassroots, unincorporated affiliation of approximately thirty (30) members in Rockland, Putnam, and Westchester Counties. SAPE is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in SAPE.

Better Future Project is a Cambridge, Massachusetts based nonprofit with 7000 members. Better Project Future is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in Better Future Project.

Charles River Spring Valley Neighborhood Association (CRSV) is an unincorporated association of several hundred homeowners and residents who directly abut, or reside in close proximity to, the West Roxbury Lateral Component of the AIM Project. CRSV is not publicly traded, has no parent companies, and

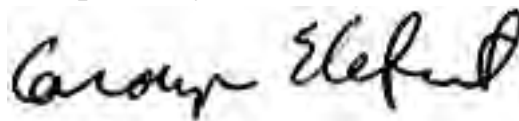
there are no publicly held companies that have a ten percent (10%) or greater ownership interest in CRSV.

West Roxbury Saves Energy (WRSE) is an unincorporated association comprised of abutters to the West Roxbury portion of the AIM project. WRSE is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in WRSE.

Capitalism vs. the Climate (CvC) is a Connecticut-based unincorporated association with seventeen (17) members impacted by the AIM Project. CvC is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in CvC.

Fossil Free Rhode Island (FFRI) is a thirty (30)-member Rhode Island-based unincorporated association seeking to redress environmental burdens of extreme energy projects. FFRI is not publicly traded, has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in FFRI.

Respectfully submitted,



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Date: July 29, 2016

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GLOSSARY

<u>Term/Abbreviation</u>	<u>Definitions</u>
Access Northeast	Access Northeast Project
Access Northeast Announcement	Riverkeeper Rehearing Petition, Exh. 4, R.1880, JA_____.
AIM	Algonquin Incremental Market
Algonquin	Algonquin Gas Transmission, LLC, a subsidiary of Spectra Energy Corporation
Atlantic Bridge Announcement	Spectra Open Season Announcement for Atlantic Bridge Project (February 5, 2014), online at http://www.spectraenergy.com/content/documents/Projects/Atlantic-Bridge-Open-Season.pdf , R._____, JA_____.
Atlantic Bridge	Atlantic Bridge Project
CEQ	Council on Environmental Quality
Certificate Order	Algonquin Gas Transmission, LLC, CP14-96-000, <i>Order Issuing Certificate and Approving Abandonment</i> , 150 FERC ¶ 61,163 (March 3, 2015), R. 1847, JA_____.
Certificate	Certificate of Convenience and Public Necessity
<i>Coalition on Sensible Transportation</i>	<i>Coal. on Sensible Transp., Inc. v. Dole</i> , 826 F.2d 60, 69 (D.C. Cir. 1987)

Commission	Federal Energy Regulatory Commission
Cortlandt Comments	Town of Cortlandt, New York, Comments (November 21, 2014), R. 1633, JA_____.
CRSV	Charles River Spring Valley Neighborhood Association is an unincorporated association of several hundred homeowners and residents of West Roxbury, Massachusetts.
Dedham Comments	Corrected Dedham DEIS Comments (September 30, 2014), R. 1348, JA_____.
DEIS	Draft Environmental Impact Statement, CP14-96-000 (August 6, 2014), R. 865, JA_____.
<i>Delaware Riverkeeper</i>	<i>Delaware Riverkeeper Network v. FERC</i> , 753 F.3d 1304, 1315 (D.C. Cir. 2014)
Dth/day	dekatherms per day
EIS	Environmental Impact Statement
<i>EMR Network</i>	<i>EMR Network v. FCC</i> , 391 F.3d 269 (D.C. Cir. 2004)
Entergy	Entergy Nuclear Operations, Inc.
EPA	U.S. Environmental Protection Agency
FCC	Federal Communication Commission
FEIS	Final Environmental Impact Statement, CP14-96-000 (January 23, 2015), R. 1768, JA_____.
FERC	Federal Energy Regulatory Commission

FWW	Food and Water Watch is a non-profit with approximately 320 members who reside in Peekskill and Cortlandt, New York, and Dedham and West Roxbury, Massachusetts.
<i>Grand Canyon Trust</i>	<i>Grand Canyon Trust v. FAA</i> , 290 F.3d 339, 345 (D.C. Cir. 2002)
<i>Hammond</i>	<i>Hammond v. Norton</i> , 370 F. Supp. 2d 226 (D.D.C. 2005)
HDD	horizontal direct drill
<i>Hodel</i>	<i>National Wildlife Fed'n v. Hodel</i> , 839 F.2d 694, 707 (D.C. Cir. 1988)
Indian Point	Indian Point Energy Center
Kuprewicz Report	Report dated November 3, 2014, by pipeline engineering and safety expert Richard Kuprewicz
LNG	liquefied natural gas
<i>Lujan</i>	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).
Maine PUC	Maine Public Utilities Commission
Maine PUC Proposal	Spectra Proposal submitted to Maine Public Utilities Commission (September 29, 2014), online at http://www.spectraenergy.com/content/documents/Projects/NewEngland/Maine_Public_Uilities_Commission_Proposal_FINAL.pdf
Maritimes & Northeast Project	Maritimes & Northeast pipeline owned by Spectra subsidiary Maritimes & Northeast Pipeline, LLC

<i>Marsh</i>	<i>Envtl. Def. Fund v. Marsh</i> , 651 F.2d 983, 999 n.19 (5th Cir. 1981).
<i>Moreau</i>	<i>Moreau v. FERC</i> , 982, F.2d 556, 565 (D.C. Cir. 1993).
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 <i>et seq.</i>
NESCOE	New England States Committee on Electricity
NESCOE Letter	Spectra Letter to NESCOE (June 27, 2014), online at http://www.nescoe.com/uploads/Spectra_EnhancingElectricReliabilityinNE_27Jun2014.pdf .
NGA	Natural Gas Act, 15 U.S.C. § 717f
NRC	Nuclear Regulatory Commission
NRG	National Resource Group
OCI	Organizational Conflict of Interest Statement
PennEast	PennEast LLC, a major pipeline consortium of which Spectra is a member
Policy Statement	Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶61,227 (Sept. 15, 1999); Order Clarifying Statement of Policy, 90 FERC ¶61,128 (Feb. 9, 2000); Order Further Clarifying Statement of Policy, 92 FERC ¶61,094 (July 28, 2000).

Rehearing Order	Algonquin Gas Transmission, LLC, CP14-96-001, <i>Order Denying Rehearing and Dismissing Stay Request</i> , 154 FERC ¶ 61,048 (January 28, 2016), R. 2181, JA____.
SAPE	Stop the Algonquin Pipeline
Spectra	Spectra Energy Partners, LP, a Houston-based master limited partnership, formed by Spectra Energy Corp.
Town	Town of Dedham, Massachusetts
Town's Rehearing Request	The Town's Request for Rehearing of the Certificate Order with FERC dated April 2, 2015, R. 1883, JA____.
Yardley Interview	<i>Platt's Online</i> (August 3, 2014), online at http://www.plattstv.com/video/new-england-seeks-more-gas-supplies-august3/3706671906001 (interview with Spectra's President of Transmission and Storage, William Yardley), R.____, JA_____.

PRELIMINARY STATEMENTS

The Environmental and Community Petitioners and the Town of Dedham, Massachusetts (the “Town”) (altogether the “Petitioners”), join in the jurisdictional statement, statement of the case, standard of review and addendum of statutes and regulations in the Brief of the City of Boston Delegation.

STATEMENT OF ISSUES

1. Was the Federal Energy Regulatory Commission’s (the “Commission” or “FERC”) acceptance of the segmentation of the Algonquin Incremental Market (“AIM”) Project (“AIM Project”) from the Atlantic Bridge Project (“Atlantic Bridge”) and Access Northeast Project (“Access Northeast”), which are geographically, temporally and operationally part of a single pipeline stretching from the Mid-Atlantic region to Canada, and its failure to meaningfully analyze the cumulative impacts associated with all three reasonably foreseeable segments arbitrary, capricious and in violation of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”) and the Natural Gas Act, 15 U.S.C. § 717f (“NGA”)?
2. Was the Commission’s reliance on conclusions by Entergy Nuclear Operations, Inc. (“Entergy”), and the Nuclear Regulatory Commission (“NRC”) related to pipeline safety, a matter exclusively within the

Commission's purview and its finding that the project does not jeopardize public safety given its proximity to the Indian Point Energy Center ("Indian Point") arbitrary, capricious and unsupported by substantial evidence?

3. Did the Commission's reliance on a third-party contractor with a financial interest in construction of the AIM Project violate its own regulations, give rise to potential bias requiring a remand of the Certificate of Convenience and Public Necessity ("Certificate")¹, or at the very least, justify a less deferential standard of review?

SUMMARY OF ARGUMENT

The Commission's Certificate Order and Rehearing Order granting a Certificate to Algonquin for the AIM Project violate the NGA and NEPA, and are arbitrary, capricious and unsupported by substantial evidence in four fundamental ways. First, the Commission improperly segmented the AIM Project by dividing it into three actions, each of which individually may have an insignificant environmental impact, but which collectively have a substantial impact. Pursuant

¹ Algonquin Gas Transmission, LLC, CP14-96-000, *Order Issuing Certificate and Approving Abandonment*, 150 FERC ¶ 61,163 (March 3, 2015) ("Certificate Order"), R. 1847, JA___; Algonquin Gas Transmission, LLC, CP14-96-001, *Order Denying Rehearing and Dismissing Stay Request*, 154 FERC ¶ 61,048 (January 28, 2016) ("Rehearing Order"), R. 2181, JA___.

to NEPA, 40 C.F.R. § 1508.25(a) and *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014) (“*Delaware Riverkeeper*”), the Petitioners’ analysis clearly demonstrates that the three projects are connected, cumulative and similar actions, and that they have logical termini and substantial independent utility. The timing of the three projects offers further evidence that the three projects are in fact a single expansion project by Algonquin that the Commission should have evaluated in a single environmental impact statement (“EIS”).

Second, the Commission failed to take a hard look at and meaningfully analyze the cumulative impacts of the three reasonably foreseeable projects pursuant to NEPA. The record clearly demonstrates that the Commission was well aware of the overall expansion project, but abrogated its duty to develop a complete record and offered only summary conclusions rather than actual analysis of the three projects’ cumulative impacts. Further, the Commission allowed Algonquin to time the regulatory review of the three segments to circumvent a meaningful cumulative impacts review by the Commission.

Third, the Commission erroneously relied on findings by Entergy and the NRC that concluded that the AIM Project would not impact safety at Indian Point. Pipeline safety is a matter exclusively within the Commission’s purview, and the Commission’s failure to conduct independent analysis was arbitrary and capricious.

Fourth, the Commission violated its own regulations by relying on a third-party contractor which had a financial interest in the construction of the AIM Project. Such conflict gives rise to potential bias requiring a remand of the Certificate, or, at the very least, justifies a less deferential standard of review of the Commission's Certificate Order and Rehearing Order. For all of these reasons, the Commission's Certificate Order and Rehearing Order granting Algonquin's Certificate should be vacated and the certificate denied or, in the alternative, remanded for further proceedings consistent with the Court's order.

STATEMENT OF STANDING

I. Environmental and Community Petitioners

Riverkeeper Inc. ("Riverkeeper") and the other Environmental and Community Petitioners² filed timely motions to intervene and rehearing requests of the Commission's Certificate Order³ and thus, satisfy the jurisdictional requirements of the NGA, 15 U.S.C. § 717r(b).

² A Coalition of Environmental and Community Organizations, Impacted Landowners and Municipalities filed a Request for Rehearing in Docket No. CP14-96-000 on April 2, 2015, with Attachment 1 to that filing listing the names of members of that coalition ("Coalition").

³ Riverkeeper Rehearing Request, R. 1880, JA____; Riverkeeper Motion to Intervene, R. 389, JA____; Appendix A to Certificate Order (listing intervenors), R. 1847, JA____.

When a petitioner is “an object of the action (or forgone action) at issue” there should be “little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Sierra Club v. EPA*, 292 F.3d 895, 899 (D.C. Cir. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (“*Lujan*”).

Harm to property owners’ aesthetic and environmental well-being constitutes “aggrievement” for purposes of standing under the NGA, even where landowners’ property is not directly crossed by the pipeline. *Moreau v. FERC*, 982, F.2d 556, 565 (D.C. Cir. 1993) (“*Moreau*”) (finding landowners adjacent to property with pipeline have standing under NEPA and NGA). Applying this standard, individual petitioners Paul Dunn, Mary McMahon, Jan White, William and Robin Cullinane, Linder Sweeney, Alexandra Shumway, Jessica Porter, Virginia Hickey, and Reynolds Hill, Inc. – intervenors below – have standing here because the AIM Project directly crosses their respective properties, exposes them to aesthetic and environmental harm and jeopardizes their safety. Petitioners Rickie Harvey, Audrey Brait have standing because they live in West Roxbury, an impacted community, while Malick is within the pipeline impact radius.⁴

⁴ See Coalition Rehearing Petition, Attachment A (listing intervenors and describing respective impacts), R.1847, JA____.

Organizational standing attaches where a group's members live in communities impacted by the challenged action. *See Horsehead Development Company v. Browner*, 16 F.3d 1246 (1994)(finding standing based on Natural Resources Defense Council's claim that members live in communities subject to incidents resulting from mismanagement of used oil); *accord. National Wildlife Fed'n v. Hodel*, 839 F.2d 694, 707 (D.C. Cir. 1988) ("Hodel"); *see also Lujan* (finding organizational standing if one of group's members has standing).⁵

Riverkeeper, the lead petitioner, is a member-supported watchdog organization dedicated to protecting the environmental, recreational and commercial integrity of the Hudson River and its tributaries. A significant number of Riverkeeper members depend on the NYC watershed for their drinking water supply, and use and enjoy the Hudson River and its tributaries, and are located along the pipeline route and may potentially be affected by construction, maintenance and safety

⁵ Because standing for the majority of petitioners is "self-evident," individual affidavits are unnecessary and were not submitted. *Sierra Club v. EPA*, 292 F.3d at 899.

considerations.⁶ The remaining organizational petitioners all include at least one member with standing.⁷

This Court can redress harm to Petitioners either by (1) vacating the certificate as inconsistent with the public convenience under Section 7 of the Natural Gas Act for failure to protect safety per *Washington Gas Light v. FERC*, 532 F.3d 928 (D.C. Cir 2008) or remanding the challenged orders with instructions to conduct a proper NEPA analysis, just as in *Delaware Riverkeeper*, 753 F.3d at 1309 (remand to consider segmentation and cumulative impacts, notwithstanding that project was completed).

⁶ Riverkeeper Motion to Intervene, R.389, JA____. One of these members, Nancy Vann, is a homeowner in Reynolds Hill, and owns property crossed by the pipeline with substantial damage to Dickey Brook, wetlands and a vernal pool.

⁷ Reynolds Hill Inc. is a community membership association with property bisected by the pipeline; Charles River Spring Valley Neighborhood Association (“CRSV”) and West Roxbury Saves Energy are unincorporated associations of several hundred residents of West Roxbury, Massachusetts including Ms. Harvey; Food and Water Watch (“FWW”) is a non-profit with approximately 320 members residing in Peekskill and Cortlandt, New York, and Dedham and West Roxbury, Massachusetts, all crossed by the pipeline; Sierra Club Lower Hudson Chapter has among its missions the protection of the environment from pipeline impacts, with 4,000 members who reside in Rockland, Westchester and Putnam Counties which are impacted by the pipeline; Stop the Algonquin Pipeline (“SAPE”) is an unincorporated association formed to oppose the AIM Project, with member Courtney Williams living along the pipeline route; Fossil Free Rhode Island, Better Future Project, and Capital versus the Climate, all grassroots organizations with members in the various communities impacted by the pipeline. *See* Coalition Rehearing, Att. 1, R. 1882, JA____ (listing intervenors and respective impacts).

II. Town of Dedham, Massachusetts

The Town also has standing. Pursuant to 15 U.S.C. § 717r(b), the Town may obtain a review of FERC's Certificate Order and Rehearing Order because it: (1) was an intervening party in the underlying FERC proceeding, Docket No. CP14-96-000; and (2) timely filed a request for rehearing of the Certificate Order with FERC on April 2, 2015 ("Town's Rehearing Request"). Certificate Order at Appendix A (list of intervenors), R. 1847, JA____; Town's Rehearing Request, R. 1883, JA____.

The Town fully satisfies all three elements of standing pursuant to Circuit Rule 28(a)(7): (1) injury-in-fact; (2) causation; and (3) redressability. *Lujan* at 561. First, the Town is directly and significantly injured by the AIM Project which involves opening several miles of Town-owned roads (parts of Allied Drive, Rustcraft Road, Elm Street, East Street and Washington Street, and the High/Harris Streets intersection) to lay *new* pipeline into trenches. Final Environmental Impact Statement, CP14-96-000 (January 23, 2015) ("FEIS") at 2-12, 2-2, 3-26, R. 1768, JA____; Town's Rehearing Request at 1, 4-5, R. 1883, JA____; Corrected Dedham Draft Environmental Impact Statement ("DEIS") Comments (September 30, 2014)("Dedham Comments") at 1, R. 1348, JA____. The pipeline was also installed underneath Gonzalez Field, a Town-owned municipal park that is used for recreational purposes. FEIS at 3-40 (map), 4-168, R. 1768, JA____. Construction

forced the Town to relocate some soccer games from Gonzalez Field. Dedham Comments at 5, R. 1348, JA___; Town's Rehearing Request at 8, R. 1883, JA___. Given the miles of Town-owned land along the route, the AIM Project imposes significant adverse impacts on the Town during construction by disrupting traffic, creating noise, and affecting business operations. Town's Rehearing Request at 1-2, 4-5, JA___; Town's Rehearing Request at 1-2, R. 1883, JA___.

After completion of the AIM Project, the Town will be bisected along busy roads by a high-pressure gas pipeline that poses an ongoing safety risk in the event of an accident or explosion, and a "permanent aesthetic eyesore" that may require future, inconvenient re-opening of the Town roads. *Moreau*, 982 F.2d at 566 (finding that a pipeline's "permanent aesthetic eyesore" and "continuing safety hazards" constituted "injury in fact" sufficient to establish standing by adjacent property owners). The Town's case here is that much stronger than *Moreau* since the pipeline traverses Town-owned land rather than being located on an adjacent easement. Further, the ongoing safety risks will result in financial impacts on the Town, including that the Town must ensure that its first responders are prepared in case of a pipeline-related emergency and will have higher costs for insurance premiums and road repair to hire adequately-insured companies to work on the impacted Town-owned roads.

Further, the Town's injuries are directly traceable to the challenged Commission's orders, in the absence of which Algonquin would not have authority to construct or operate the pipeline in the Town. *See* Certificate Order at P. 152(A), R. 1847, JA____. Finally, the Town's injuries are capable of redress by this Court since the Town's request – that FERC remand its Certificate Order, expand the scope of its environmental examination of the AIM Project, and issue a new order after fully complying with NEPA regulations – would redress its injuries. *See Lujan* at 561.

ARGUMENT

I. THE COMMISSION VIOLATED NEPA BY IMPROPERLY SEGMENTING THE AIM PROJECT FROM TWO OTHER INTERCONNECTED PIECES, AND FAILING TO PROVIDE A MEANINGFUL CUMULATIVE IMPACTS ANALYSIS OF THE INTERCONNECTED, REASONABLY FORESEEABLE PROJECTS.

A. Planning and Marketing Overview.

From the start, Spectra Energy Partners (“Spectra”) and its wholly-owned subsidiary, Algonquin Gas Transmission, LLC (“Algonquin”), conceived of the AIM Project as the gateway piece of a larger infrastructure development comprised of the AIM Project and the Atlantic Bridge and Access Northeast segments that in concert would move gas from the Mid-Atlantic up through Canada.⁸

⁸ *See* AIM Map Diagram, Coalition Rehearing Request at 12, R. 1882, JA____ (from Spectra Open Season for AIM, online at




Spectra and Algonquin treated the expansion of all three sections of the single Algonquin pipeline as one project when planning, marketing, engineering and siting the project. Spectra referred to the Atlantic Bridge Project (which also includes the reversal of flow in the Maritimes & Northeast pipeline owned by Spectra subsidiary Maritimes & Northeast Pipeline, LLC) as “an extension of the AIM concept” rather than as a separate unit. In fact, Spectra made clear that its


<https://infopost.spectraenergy.com/downloads/AIM%20Open%20Season%20Notice.pdf>).

decision to break the projects into pieces was to dissipate public opposition that might result if the scope of the full project were disclosed.⁹

Spectra - Atlantic Bridge

- Extension of AIM concept.
- Unitil Precedent Agreement for 100 MMscf per day.
- Potential 300 MMscf per day.
- In-Service 2H 2017





Atlantic Bridge Open Season

6

As early as the AIM open season in 2011-2012,¹⁰ Algonquin marketed the project as a unified whole comprised of three inextricably interconnected and

⁹ Coalition Rehearing at 26, R. 1882, JA_____ (citing quote by Spectra official William Yardley to Platts, online at *See Platt's Online* (August 3, 2014), online at <http://www.plattstv.com/video/new-england-seeks-more-gas-supplies-august-3/3706671906001> (“You can [build a new project] incrementally so you don't have to build the entire [project] all at once. ... I know you end up with a lot less potential opposition if you do that.”)

¹⁰ *See* Spectra Holds Open Season for AIM, February 2, 2011, <https://pgjonline.com/2011/02/23/spectra-energy-holds-open-season-for-aim-project/> (showing similar regional map).

interdependent pieces: the AIM, Atlantic Bridge and Access Northeast projects. Spectra's marketing slides – which were available during the AIM open season – show that gas entering the system from Marcellus Shale, a natural gas formation, would flow north via the AIM, Atlantic Bridge, and Access Northeast projects and into Canada for export via a liquefied natural gas (“LNG”) terminal. By the time Algonquin filed the application for AIM on February 28, 2014 (R. 320, JA____) plans for Atlantic Bridge and Access Northeast were well underway. *See* discussion *infra*.

Spectra designed the projects as a single unit. A report dated November 3, 2014, by pipeline engineering and safety expert Richard Kuprewicz (“Kuprewicz Report”) found that Spectra provided overcapacity in its design for the AIM Project to provide for Atlantic Bridge customers. Town of Cortlandt, New York, Comments (November 21, 2014) (“Cortlandt Comments”), R. 1633, JA____. Specifically, Mr. Kuprewicz opined:

The attempt to replace segments of the 26-inch pipeline segment with a 42-inch pipeline across Cortlandt are not in sync with the claimed increased gas demands identified in the current AIM FERC filing and subsequent DEIS. The operator appears to be positioning for further expansions on the Algonquin system and there are still serious bottlenecks on the looped system between the Stony Point and Southeast Compressor Stations that should have been included in this FERC application.

Even a cursory review of the project maps show that Atlantic Bridge picks up in Yorktown, New York, where the AIM Project abruptly leaves off.

Riverkeeper Rehearing, Exh. 5 (Project Maps), R. 1880, JA_____.



Algonquin also used the same third-party contractor, National Resource Group, LLC (“NRG”) – which was just revealed as having an alleged potential conflict of interest due to a financial interest in future work from Spectra – to prepare the environmental review documents for all three projects.¹¹

¹¹ See Part III, *infra* and *While Reviewing Spectra Energy Gas Pipeline Project, FERC Contractor Did Not Disclose Its Hiring by Spectra for Five Other Projects*, Itai Vardi (July 19, 2016) - 11:58 <http://www.desmogblog.com/2016/07/19/while->

Spectra sequentially developed the three segments (AIM, Atlantic Bridge and Access Northeast) with siting for the next segment overlapping the preceding piece or, in the case of the Maritimes & Northeast Project flow reversal, dependent on the completion of a subsequent segment. On February 28, 2014, Algonquin filed its application at the Commission to construct the AIM Project, to provide 342,000 dekatherms/day (“Dth/day”) of firm transportation service from Ramapo, New York, to various points in New England. R. 320, JA____, with notice of the application published on March 24, 2014, 79 FR 15987.

By that time, Spectra had already launched an open season for Atlantic Bridge on February 4, 2014, which, similar to the AIM Project, would provide shippers with an opportunity to obtain firm transportation from Ramapo to delivery to New England.¹²

On March 31, 2014 – a week before the April 8, 2014 deadline for comments on the AIM application (*see* 79 FR 15987), the Atlantic Bridge open

[reviewing-spectra-energy-gas-pipeline-project-ferc-contractor-did-not-disclose-its-hiring-spectra-five-other.](#)

¹² Spectra Open Season Announcement for Atlantic Bridge Project (February 5, 2014), online at <http://www.spectraenergy.com/content/documents/Projects/Atlantic-Bridge-Open-Season.pdf>; *see also* Coalition Rehearing Request, Exh. 2 (Timeline of Spectra’s development of Northeast infrastructure) (“Atlantic Bridge Announcement”), R. 1882, JA____.

season closed. Four months later, by letter dated June 27, 2014, Algonquin outlined for the New England States Committee on Electricity (“NESCOE”) its Atlantic Bridge expansion plans.¹³ On July 1, 2014 – more than a month before the Commission’s release of the AIM DEIS on August 12, 2014 – Algonquin formally announced Access Northeast, which would “complete the AIM/Atlantic Bridge.”¹⁴ By September 2014, Algonquin was actively and openly marketing all three projects in a proposal to the Maine Public Utilities Commission (“Maine PUC”).¹⁵ FERC’s FEIS issued on January 23, 2015, followed one week later on January 30, 2015, by Algonquin’s pre-filing application for Atlantic Bridge in Docket No. PF15-12-000. The Commission issued the Certificate for the AIM Project on March 3, 2015. Algonquin filed its pre-filing application for Access Northeast later that same year on November 3, 2015, in Docket No. PF16-1-000.

¹³ Coalition Rehearing Request at 12, R. 1882, JA____, citing Spectra Letter to NESCOE (June 27, 2014) (“NESCOE Letter”); *also* online at http://www.nescoe.com/uploads/Spectra_EnhancingElectricReliabilityinNE_27Jun2014.pdf.

¹⁴ *See* Access Northeast Announcement, attached as Exh. 4 to Riverkeeper Rehearing Petition, R. 1880, JA____.

¹⁵ *See* Spectra Proposal submitted to Maine PUC (September 29, 2014), referenced in Exhibit 4 at 1, Riverkeeper Rehearing, R. 1880, JA____. (“Maine PUC Proposal”).

The three projects also have serial construction schedules: the AIM Project (2015-16); Atlantic Bridge (anticipated 2017) and Access Northeast (anticipated 2018). Rehearing Order at P. 71, R. 2181, JA_____.

In spite of this evidence, the Commission persisted in concluding that the projects were not improperly segmented, and failed to conduct a meaningful analysis of the cumulative impacts associated with all three sections.

B. The Commission Improperly Segmented the AIM Project from Atlantic Bridge and Access Northeast.

The Council on Environmental Quality (“CEQ”) regulations implementing NEPA require that an EIS include: (1) connected actions, including those that are “interdependent parts of a larger action and depend on the larger action for their justification;” (2) cumulative actions, “which when viewed with other proposed actions have cumulatively significant impacts;” and (3) similar actions, “which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” 40 C.F.R. § 1508.25(a). An agency “impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate pieces under consideration.” *Delaware Riverkeeper*, 753 F.3d at 1315 (“the agency's determination of the proper scope of its environmental review must train on the governing regulations, which here means 40 C.F.R. § 1508.25(a)”).

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); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006). In other words, the anti-segmentation rule prevents applicants and agencies from thwarting their NEPA obligations by chopping projects into smaller components in order to avoid considering their collective impact and to “conceal the environmental significance of the project or projects.” *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005) (“*Hammond*”); *see also Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987) (‘Piecemealing’ or ‘Segmentation’ allows an agency to avoid the NEPA requirement that an EIS be prepared for all major federal actions with significant environmental impacts by dividing an overall plan into component parts, each involving action with less significant environmental effects.”).

This Court has previously admonished the Commission for impermissibly segmenting its NEPA review as regards natural gas pipelines and ignoring the clear language of the CEQ regulations that require agencies to consider connected, cumulative and similar actions. *See generally Delaware Riverkeeper*, 753 F.3d at 1313–19 (discussing segmentation under NEPA). The Commission, it seems, has

elected to ignore this admonition. On rehearing, the Commission asserts that, all evidence to the contrary, the AIM, Atlantic Bridge, and Access Northeast projects “are not Cumulative, Connected, or Similar Actions.” Rehearing Order at P. 62, R. 2181, JA____.

1. The AIM, Atlantic Bridge and Access Northeast Projects are Cumulative, Connected and Similar Actions.

Contrary to the Commission’s Rehearing Order, the AIM, Atlantic Bridge and Access Northeast projects fall into all three categories of actions that must be evaluated together in an EIS pursuant to 40 C.F.R. § 1508.25(a). First, the three projects are connected actions without independent utility, as all are interdependent on the upgrade and expansion of the Algonquin pipeline system which stretches from the Mid-Atlantic to New England. Four of the six miles of Atlantic Bridge proposed within the New York watershed were originally included in the AIM Project proposal and later separated into different project proposals. Riverkeeper Rehearing Request at 14-16, R. 1880, JA_____.

That the AIM project was never intended as a stand-alone unit is corroborated by the Kuprewicz Report observing that the AIM Project was poised for further expansion. Cortlandt Comments at Kuprewicz Report, R. 1633, JA____. Another reviewing agency, the Corps of Engineers, agreed,

commenting that “[i]t is unclear as to whether the Atlantic Bridge Project is fundamentally just an expansion of the AIM facilities.”¹⁶

The connection between the projects is also apparent in Spectra’s open access materials for the last leg, the Access Northeast Project. There, Spectra revealed that “the AIM expansion project will begin to de-bottleneck the pipelines system by winter of 2016, helping to enhance reliability and reduce natural gas volatility in New England.” Riverkeeper Rehearing Request, Exh. 5, R. 1880, JA____. Spectra also spoke of the three projects’ respective capacity collectively; for example, noting in open access documents, that Access Northeast, when combined with the AIM Project and Atlantic Bridge, would increase capacity on the system by 150 percent. *Id.*

As in *Delaware Riverkeeper*, the projects are linear, further demonstrating their interconnectedness. (*See* Diagrams, Part I.A, *supra*). The pipeline will deliver natural gas from Marcellus Shale from a start point in Ramapo, New York, and deliver it to the Maritimes & Northeast Project via a direct path through New York, Connecticut, Rhode Island and Massachusetts. The projects are also closely

¹⁶ Comments, Corps of Engineers (New England Region), October 6, 2014, R. 1430, JA____.

connected in time with only one year between construction schedules, and share a single third-party contractor. *See* Discussion, Part I.A., *supra*.

Second, the projects are cumulative actions. They affect the same resources in the same area and combined incremental effects have the potential to be cumulatively significant. *See* Part I.C., *infra* (cumulative impacts discussion). The Commission itself acknowledged that the AIM Project and Atlantic Bridge are cumulative actions with facilities in the same area. Certificate Order at P. 118, R. 1847, JA____. Similarly, Access Northeast is also being constructed in the same area, during the same timeframe and will affect many of the same areas as the AIM Project and Atlantic Bridge.

Finally, the AIM Project, Atlantic Bridge and Access Northeast are similar projects. All are large interstate pipelines transporting shale gas to the Northeast, rely on the same third-party contractor and serve some of the same customers. *See* Rehearing Order at P.75, R.2181, JA____ (noting overlap in project shippers for all three projects). Because the projects are cumulative, connected and similar, the Commission erred in segmenting the projects for environmental review.

In evaluating the appropriate scope of an EIS and whether projects are “connected, cumulative and similar,” this Court and others consider factors as whether the proposed segment “(1) has logical termini, (2) has substantial independent utility, (3) does not foreclose the opportunity to consider alternatives,

and (4) does not irretrievably commit federal funds for closely related projects.”

Delaware Riverkeeper, 753 F.3d at 1316, *Piedmont Heights Civic Club, Inc. v.*

Moreland, 637 F.2d 430, 439 (5th Cir. 1981). The first two – logical termini and

substantial independent utility – are analyzed below, along with project timing.

2. Logical Termini.

The Commission attempts to avoid the “logical terminus” criterion by equating the AIM Project, Atlantic Bridge, and Access Northeast collectively with the “interstate pipeline grid.” Rehearing Order at 47, R. 2181, JA____. (“[i]t is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”) (quoting *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). As this Court has previously informed the Commission, *Coalition on Sensible Transportation* does not apply to pipeline construction that is “physically interdependent.” *Delaware Riverkeeper*, 753 F.3d at 1316.

The Commission also asserts that the three projects are not “physically connected.” Rehearing Order at P. 70, R. 2181, JA____. Yet, this conclusion flies in the face of the fact that Atlantic Bridge and Access Northeast “may physically overlap or abut with AIM Project facilities.” *Id.* at P. 51; Cortlandt Comments at Kuprewicz Report, R. 1663 (showing that the AIM Project overcompensated in

anticipation of Atlantic Bridge).¹⁷ Both Atlantic Bridge and Access Northeast will involve further modifications to the Stony Point and Chaplin Compressor Stations (part of the AIM project), and will require pipeline installations in Westchester County, New York; Fairfield County, Connecticut; and Norfolk County, Massachusetts where AIM is located. Rehearing Order at P.70, R. 2181, JA____. Similarly, the AIM Project and Atlantic Bridge will share a supply point at Ramapo, New York. *Id.* at P.70. The AIM Project also picks up where Atlantic Bridge leaves off. Exhibit 4, Riverkeeper Rehearing, R.1880, JA____(attaching project maps).

The Commission simply does not explain how projects that “physically overlap or abut” as a single, continuous pipeline are nevertheless not “physically connected.” *Id.* at P.51. As yet another example of the Commission’s lack of division along rational end points, “an early plan of the AIM Project included some modifications that are now part of the Atlantic Bridge Project.” Rehearing Order at P. 78, R. 2181, JA____. It seems highly unlikely that such modifications could be interchangeable between projects if the projects are not connected.

¹⁷ The Commission’s response to the Report is that hydraulic models confirm the AIM Project design was appropriately sized for shippers, but those models are not listed in the Certification of the Record. Rehearing Order at P. 76, R. 2181, JA____. Moreover, the Commission’s finding begs the question because the design could be both appropriate for shippers, but still overbuilt in anticipation of Atlantic Bridge.

3. Substantial Independent Utility.

The “commercial and financial viability of a project when considered in isolation from other actions is potentially an important consideration in determining whether the substantial independent utility factor has been met. *Delaware Riverkeeper*, 753 F.3d at 1316. As the Commission admits, both Atlantic Bridge and Access Northeast are physically and financially interconnected with the AIM Project. *See* Rehearing Order at P. 51, R. 2181, JA____. Moreover, as in *Delaware Riverkeeper*, Atlantic Bridge and Access Northeast were designed “in *express contemplation* of the synergies to be obtained between” them and the AIM Project, such that the AIM Project’s utility “is inextricably intertwined with the other [two] improvement projects.” 753 F.3d at 1317; Rehearing Order at P. 49-53, R. 2181, JA____. For that reason, Spectra jointly marketed the projects to customers, promoting them as a single path from the Mid-Atlantic to New England and Canada. *See supra* p. 13-15.

Nevertheless, the Commission relies on the existence of shipping contracts to conclude that each project has “independent utility and will serve a distinct transportation purpose.” Rehearing Order at P. 75, R. 2181, JA____. This is so even though Algonquin executed all contracts for shipping, with substantial overlap in shippers between the various projects. *Id.* at n.102 and accompanying

text. FERC apparently believes that this evidence of “specific customer demand” is sufficient to withstand all scrutiny. *Delaware Riverkeeper*, 753 F.3d at 1317.

This Court has emphasized that “[t]o interpret the ‘substantial independent utility’ factor to allow such fractionalization of interdependent projects would subvert the whole point of the rule against segmentation.” *Id.*; *see also Florida Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 401 F. Supp. 2d 1298, 1315 (S.D. Fla. 2005) (“... the concept of ‘independent utility’ should not be manipulated to avoid significance or ‘troublesome’ environmental issues, in order to expedite the permitting process.”). In this regard, the Commission’s conclusory rejection of the Coalition’s arguments that Algonquin submitted its application prematurely to keep the AIM project a few steps ahead and separate from subsequent segments to avoid environmental review misses the point. The Commission suggests that if Algonquin’s AIM application were as deficient as petitioners’ contend, it would have been rejected; instead, it was accepted. Rehearing Order at P.74. Equating “patent” deficiencies in an application with *any* deficiency in an application serves as a dodge, which the Commission used to avoid meaningfully addressing the questions of whether Algonquin jumped the gun in submitting the AIM Project quickly to avoid adequate environmental review.

4. Project Timing.

While NEPA “does not require agencies to commence NEPA reviews of projects not actually proposed,” agencies are nevertheless “obliged to take into account other ‘connected’ or ‘similar’ projects” when conducting NEPA reviews. *Delaware Riverkeeper*, 753 F.3d at 1318. Courts have the power “to prohibit segmentation or require a comprehensive EIS for two projects, even when one is not yet proposed, if an agency has egregiously or arbitrarily violated the underlying purpose of NEPA.” *Envtl. Def. Fund v. Marsh*, 651 F.2d 983, 999 n.19 (5th Cir. 1981) (“*Marsh*”). In this instance, FERC bent over backwards to avoid fulfilling the underlying purpose of NEPA.

The Commission apparently believes that physically interlinking projects that are proposed and planned for sequential construction within three years of one another do not share a temporal nexus. This Court in *Delaware Riverkeeper* gave a *decade* of temporal separation as an example of interrelated projects having independent utility. 753 F.3d at 1318. As in *Hammond*, 370 F.Supp.2d 226 (D.D.C. 2005), the sponsoring entity(ies) behind the projects are on record¹⁸ as favoring incremental upgrades, as they “end up with a lot less potential opposition” under such an approach. The Commission was clearly aware of the planned,

¹⁸ See Yardley Interview, *cited* in Coalition Rehearing Request at 26, R. 1882, JA____.

sequential expansions of the Algonquin pipeline through the projects. As already discussed, the record shows that the projects are functionally interdependent and geographically proximate, and the proposed timing of each project only reinforces the need to consider the cumulative environmental impact of all three.

Accordingly, the Commission is obligated to consider all three projects as the unified whole that they are and its failure to do so warrants vacating and remanding the certificate for violating NEPA.

C. FERC Failed to Provide Meaningful Cumulative Impacts Analysis of the Interconnected, Reasonably Foreseeable Projects.

Pursuant to NEPA, FERC is required “to consider the cumulative impacts of proposed actions.” *Hodel* at 297. FERC failed to take a “hard look” at the cumulative impacts of the AIM Project in conjunction with two other interconnected and reasonably foreseeable projects, Atlantic Bridge and Access Northeast, and failed to provide a reasoned basis for its determination that the cumulative impacts were insignificant.¹⁹ *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (requiring federal agency under NEPA to take a “hard look” at the environmental consequences of a major action prior to undertaking it).

¹⁹ Commenters clearly requested that FERC evaluate the cumulative impacts of the AIM Project together with Atlantic Bridge and Access Northeast. *See* Certificate Order at P. 112, R. 1847, JA____.

1. Atlantic Bridge and Access Northeast were Reasonably Foreseeable Infrastructure that FERC Should Have Meaningfully Included in its Cumulative Impacts Analysis.

FERC must evaluate cumulative impacts, which are defined by the CEQ 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.

40 C.F.R. § 1508.7. A “meaningful cumulative impacts analysis” must identify:

(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions — past, present, and proposed, and reasonably foreseeable — that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

Delaware Riverkeeper, 753 F.3d at 1319 (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002) (“*Grand Canyon Trust*”).

Atlantic Bridge and Access Northeast were reasonably foreseeable projects that FERC should have fully included in its cumulative impacts analysis. FERC conceded on rehearing that these two projects are reasonably foreseeable for purposes of the cumulative impacts analysis. Rehearing Order at P. 62, R. 2181, JA____. In *Delaware Riverkeeper*, the Court held that “the three Eastern Leg

upgrade projects preceding and following the Northeast Project were clearly ‘other actions – past, present, and proposed, and reasonably foreseeable.’” 753 F.3d at 1319. In that case, one of the three upgrade projects, the MPP project, had not yet filed its application with FERC prior to FERC issuing the Environmental Assessment (“EA”) on November 21, 2011. The MPP application was later filed in Docket No. CP12-28-000 on December 9, 2011, without a pre-filing application. Atlantic Bridge and Access Northeast were similarly timed as the MPP project in that the FEIS issued on January 23, 2015, and the Atlantic Bridge pre-filing application followed one week later on January 30, 2015 in Docket No. PF15-12-000 while the Access Northeast pre-filing was made later that same year on November 3, 2015 in Docket No. PF16-1-000.²⁰

FERC clearly knew or should have known when it issued the DEIS on August 6, 2014 that Algonquin planned serial, interconnected upgrades on the very same pipeline system in the very same region of influence. Spectra had formally announced Atlantic Bridge and its associated open season on February 5, 2014,

²⁰ Projects need not have applications on file to be considered reasonably foreseeable. *See Northern Plains Resource Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011) (stating that “reasonably foreseeable future actions need to be considered even if they are not specific proposals”).

and Access Northeast on July 1, 2014.²¹ Both projects were clearly reasonable foreseeable and should have been meaningfully included in FERC's cumulative impacts analysis.

Instead, however, the record shows that FERC included Atlantic Bridge only on a limited, inadequate basis and simply mentioned (rather than evaluated) Access Northeast. *See, e.g.*, FEIS at 4-282 – 4-304, R. 1768, JA____. The record is wholly lacking in detail on these two projects because FERC: (1) abrogated its duty to develop a record on and to meaningfully analyze the reasonably foreseeable, interconnected projects under NEPA; and (2) allowed Algonquin to time its projects to evade a meaningful cumulative impacts analysis.

2. FERC Violated NEPA by Shirking its Duty to Develop a Record on and to Meaningfully Analyze the Reasonably Foreseeable, Interconnected Projects.

FERC failed to properly develop the record below on and to meaningfully evaluate Atlantic Bridge and Access Northeast. In the DEIS, FERC acknowledged that the AIM Project and Atlantic Bridge involved the same region of influence, and that, “[i]f the Atlantic Bridge Project gets constructed, air emissions during

²¹ *See* Atlantic Bridge Announcement, R. 1882, JA____; Access Northeast Announcement, attached as Exh. 4 to Riverkeeper Rehearing Petition, R. 1880, JA____; *see also* NESCOE Letter, Coalition Rehearing Request at 12, R. 1882, JA____; Maine PUC Proposal, Exhibit 4 at 1, Riverkeeper Rehearing, R. 1880, JA____; Coalition Rehearing Request at Exh. 2 (Project Development Table), R. 1882, JA____.

operation of compressor stations would overlap with the operational air emissions of the AIM Project.” DEIS at 4-272, R. 865, JA____. Yet, FERC failed to include Atlantic Bridge in Table 4.13-1 of the DEIS, and summarily concluded that: (1) “[t]he specific details about the Atlantic Bridge Project are currently not developed and no applications have been filed;” and (2) because “the Atlantic Bridge Project would not occur at the same time as the AIM Project, and because details are not known, it is not considered further in this analysis.” DEIS at 4-272, R. 865, JA____. FERC entirely failed to even mention Access Northeast in the DEIS. Nevertheless, at the time of the DEIS issuance, Spectra had clearly announced that the AIM Project was part of a more expansive, systematic upgrade of Algonquin’s pipeline system in the northeast with Atlantic Bridge and Access Northeast.²²

In the FEIS, FERC continued to inadequately limit its evaluation of Atlantic Bridge. While FERC included that project in Table 4.13-1 and in certain resource sections of the FEIS, the information was limited to conclusory statements. FEIS at 4-273-75, 4-284-88, R. 1768, JA____. Only one week later, Algonquin filed its pre-filing application with FERC. Algonquin Pre-Filing Application, PF15-12-000

²² See Atlantic Bridge Announcement, R. 1882, JA____; Access Northeast Announcement, attached as Exh. 4 to Riverkeeper Rehearing Petition, R.1880, JA____; see also NESCOE Letter, Coalition Rehearing Request at 12, R. 1882, JA____; Maine PUC Proposal, Exhibit 4 at 1, Riverkeeper Rehearing, R. 1880, JA____; Coalition Rehearing Request at Exh. 2 (Project Development Table), R. 1882, JA____.

(January 30, 2015). FERC also continued to ignore Access Northeast and did not include it in Table 4.13-1 or any resource sections of the FEIS. *See id.* Instead, the FEIS concluded that, since construction of Access Northeast “would not occur at the same time as the AIM Project, and because details are not known, it is not considered further in this analysis.” FEIS at 4-290, R. 1768, JA____. In its Rehearing Order, the Commission provided that “[w]ithout more detail on project facilities or locations, Commission staff could not determine whether the Access Northeast Project would result in cumulative impacts within the same project area or geographic scope as the AIM Project.” Rehearing Order at P. 145 (citing FEIS at 4-283, R. 1768, JA____), R. 2181, JA____.

The FEIS makes it plain that FERC knew Algonquin would be in a position to seek regulatory approvals that same year (2015) for Atlantic Bridge and Access Northeast with the goal of constructing and placing the facilities in service in 2017 and 2018, respectively. FEIS at 4-290, R. 1768, JA____. Despite that knowledge, following issuance of the DEIS and prior to issuance of the FEIS, FERC did not include in any of its data requests to Algonquin – including one on January 16, 2015, just a week prior to issuance of the FEIS and two weeks prior to submittal of the Atlantic Bridge pre-filing application – any questions seeking updated information on Atlantic Bridge and Access Northeast. *See* R. 1716, JA____; *see also* R. 1663, JA____; R. 1639, JA____. For its part, Algonquin filed several

supplemental responses generally involving segmentation in between issuance of the DEIS and FEIS, but rather than providing any updated information on Atlantic Bridge (even on January 21, 2015, a mere two days away from its pre-filing application) or Access Northeast, Algonquin repeatedly cited back to an older, generic supplemental response on October 14, 2014. *See* Algonquin Data Responses, R. 1463 at 7-8 (Oct. 14, 2014), JA___; R. 1674 at Response No. 5(iii) (Dec. 23, 2014), JA___; R. 1753 at Response 4 (Jan. 21, 2015), JA___.

FERC had a duty to critically review Algonquin's limited information, rather than accepting it at face value. *See Hammond*, 370 F. Supp. 2d at 251 (finding NEPA violation where agency "unquestionably accept[ed]" and failed to seek substantiation of company's self-serving and unreliable statements). However, FERC failed to fully evaluate Atlantic Bridge and Access Northeast, and to meet its obligation to provide the public with a FEIS that allows full evaluation of the project. In addition, it was within FERC's authority to delay issuance of the FEIS until it was able to conduct a meaningful evaluation of the cumulative impacts, but it did not do so. *See* 40 C.F.R. § 1501.8 (b)(vi).

FERC should have determined from the record that Algonquin's three upgrade projects would have a larger impact if the individual actions are allowed to accumulate. The AIM Project, Atlantic Bridge and Access Northeast share the same region of influence, would re-disturb some of the same project land because

of the serial, yearly construction projects, and greatly add to the capacity of Algonquin's existing system. FEIS at 4-290-91, R. 1768, JA____. Atlantic Bridge could add up to 600,000 Dth/day of additional capacity, almost twice the size of the AIM Project. *See* NESCOE Letter, Coalition Rehearing Request at 12, R. 1882, JA____. Access Northeast in turn would more than double the capacity provided by the AIM Project and Atlantic Bridge, and would interconnect with an LNG terminal to export gas overseas. *See* Riverkeeper Rehearing Petition, Exh. 4 ("Access Northeast Announcement"), R. 1880, JA____. Spectra stated that Access Northeast will "complement [Spectra's] Algonquin and Maritimes pipelines by up to 1,000,000 Dth/day of natural gas per day." *See id.*, R. 1880, JA____; *see also* Coalition Rehearing Request at Exh. 2 (Table of Project Development), R. 1882, JA____.

In addition, FERC failed to adequately support its conclusions that Atlantic Bridge and Access Northeast do not result in significant cumulative impacts. An agency must provide a reasoned explanation to support its conclusions rather than mere recitation of conclusory statements to avoid its decision being arbitrary and capricious. *Hodel* at 298-99 (stating that "perfunctory references do not constitute analysis useful to a decisionmaker in deciding whether, or how, to alter the program to lessen cumulative environmental impacts."). NEPA requires such an analysis because "[e]ven a slight increase in adverse conditions . . . may sometimes

threaten harm that is significant. One more factory ... may represent the straw that breaks the back of the environmental camel.” *Grand Canyon Trust*, 290 F.3d 343 (quoting *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2nd Cir. 1972)). In *Hodel*, the Court found that:

Although the FEIS contains sections headed "Cumulative Impacts," in truth, nothing in the FEIS provides the requisite analysis. ... The few times the FEIS *does* discuss the [cumulative impact], it makes only conclusory remarks, statements that do not equip a decisionmaker to make an informed decision about alternative courses of action or a court to review the [Environmental Protection Agency] Secretary's reasoning.

Hodel at 297.

In the instant case, FERC's abbreviated, conclusory statements in its DEIS and FEIS provided an inadequate analysis of the cumulative impacts, similar to *Delaware Riverkeeper*, where this Court held that:

FERC's EA for the Northeast Project states, in conclusory terms, that the connected pipeline projects were "not expected to significantly contribute to cumulative impacts in the Project area." ... This cursory statement does not satisfy the test enunciated in *Grand Canyon Trust*. The EA also contains a few pages that discuss potential cumulative impacts on groundwater, habitat, soils, and wildlife, but only with respect to the Northeast Project. It is apparent that FERC did not draft these pages with any serious consideration of the cumulative effects of the other project upgrades on the Eastern Leg of the 300 Line. In light of the close connection between the various sections of the line that have been upgraded with new pipe and other infrastructure improvements, FERC was obliged to assess cumulative impacts by analyzing the Northeast Project in conjunction with the other three projects.

Delaware Riverkeeper at 1319-20. In the present case, FERC's conclusory statements similarly fail to satisfy the test enunciated in *Grand Canyon Trust*, and do not result in meaningful evaluation of the cumulative effects of the other two project upgrades. FERC did not support its tenuous conclusions with concrete evidence or actual analysis, but instead suggested that the cumulative impacts are self-evidently insignificant. For example, the FEIS stated that "it is likely the Atlantic Bridge Project would have as much or more operational emissions than the AIM Project." FEIS at 4-300, R. 1768, JA____. FERC then stated that it "[does] not *believe* the effect on regional air quality would be significant." FEIS at 4-300 (emphasis added), R. 1768, JA____. However, the Commission did not undertake an analysis to definitively rule out significant cumulative impacts, relying instead on nothing more than its conclusory beliefs and assumptions.

In addition, FERC repeatedly and automatically assumes that no significant cumulative impacts may result from these three projects simply because their construction periods would not overlap and are spaced one year apart. FEIS at 4-290, 5-19, ES-9, R. 1768, JA____; Certificate Order at P. 118, R. 1847, JA____; Rehearing Order at P. 144-45, R. 2181, JA____. For example, regarding geology, FERC concluded without adequate basis that there would be no significant cumulative impacts because, "[a]lthough many of the same general areas would be

affected, the temporal scale of the projects is different. ... [T]he disturbed areas would be restored prior to any start of the Atlantic Bridge Project...” FEIS at 5-18, R. 1768, JA____. The public is left to take that conclusion at face value rather than seeing it supported by actual evidence. The cumulative impacts evaluation does not contain *any* analysis on the impacts of re-disturbing the same areas within one year’s time, nor one year being sufficient recovery and restoration time for each of the resources.

3. FERC Violated NEPA by Allowing Algonquin to Time its Reasonably Foreseeable, Interconnected Atlantic Bridge and Access Northeast Projects to Evade the Cumulative Impacts Analysis.

Moreover, as discussed in Part I.B., the Court should prohibit segmentation and require FERC to conduct a meaningful investigation of the cumulative impacts. *See Marsh* at 999 n.19. By proceeding with its environmental review when it was fully aware of the serial, interconnected and reasonably foreseeable upgrades, FERC allowed Algonquin to circumvent a meaningful cumulative impacts evaluation under NEPA, and in doing so FERC failed to comply with NEPA requirements.

The timing of the three projects raises the question whether Algonquin attempted to manipulate the NEPA regulatory scheme by undertaking three different upgrades (rather than one project) and spacing out the filing of project

applications with FERC to prevent it from conducting a meaningful, full-scale cumulative impacts analysis.²³ See *Florida Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 401 F. Supp. 2d 1298 (S.D. Fla. 2005) (agency action precluded ability to thoroughly evaluate alternatives) (citing *Named Individual Members of San Antonio Conservation Soc. v. Texas Highway Dept.*, 446 F.2d 1013 (5th Cir. 1971)). As mentioned above, Algonquin initiated the Atlantic Bridge pre-filing application on January 30, 2015, a mere week after the FEIS for the AIM Project issued, and only a few months after that the Access Northeast pre-filing application followed on November 3, 2015. FERC must not permit pipeline companies to stage interconnected upgrade plans in a manipulative manner, all the while ignoring the broader, regional impacts of the overall infrastructure upgrade project by limiting what is included in the cumulative impacts analysis. The line between providing flexibility and economic options on the one hand and manipulation on the other may not always be a bright one, but here FERC cannot simply ignore this kind of manipulation of NEPA by a pipeline company. In this case, that manipulation clearly limited the information FERC used in its cumulative impacts

²³ See Yardley Interview, *cited* in Coalition Rehearing Request at 26, R. 1882, JA____; also Cortlandt Comments at Kuprewicz Report at 7 (presenting evidence that the AIM Project results in the need for further expansion), R. 1633, JA____.

evaluation and prevented FERC from taking a hard look at the impacts of the AIM Project in conjunction with Atlantic Bridge and Access Northeast.

FERC also violates its own 1999 Statement of Policy in Docket No. PL99-3-000 by allowing pipeline companies to evade the NEPA process by timing their applications to prevent a full-scale cumulative impacts review. *See Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227 (Sept. 15, 1999); Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (Feb. 9, 2000); Order Further Clarifying Statement of Policy, 92 FERC ¶ 61,094 (July 28, 2000) (“Policy Statement”). FERC recognized in its Policy Statement that the certificate process is designed to take concerns of landowners and communities into account and mitigate those concerns where feasible, all the while “foster[ing] competitive markets, protect[ing] captive customers, and avoid[ing] unnecessary environmental and community impacts while serving increasing demands for natural gas.” Policy Statement at 61,743. FERC’s Policy Statement provides that:

Commission policy should give the applicant an incentive to file a complete application that can be processed expeditiously and to develop a record that supports the need for the proposed project and the public benefits to be obtained. Commission certificate policy should also provide an incentive for applicants to structure their projects to avoid, or minimize, the potential adverse impacts that could result from construction of the project.

Policy Statement at 61,743. When FERC allows pipelines, like Algonquin, to stage its overall project in different proceedings, in particular here where construction projects are separated by only one year, it fails to provide the pipeline that proper incentive. The results of that failure range from allowing such segmentation to interfere with FERC's ability to effectively plan pipelines on a regional (and national) basis to harming the public's ability to evaluate the overall cumulative impacts of a project. Landowners and communities should not have to participate in up to three (here, FERC Docket Nos. CP14-96-000 (AIM Project); PF15-12-000 (Atlantic Bridge); PF16-1-000 (Access Northeast)) lengthy, resource-heavy proceedings (instead of one combined proceeding) to protect their interests. Requiring the pipeline to wait a short period of time to fully develop the interconnected segments of its overall upgrade is a fair balance against those landowner and community interests. Accordingly, FERC fails to protect the public as well as the landowners and communities, and to satisfy its own Policy Statement as well as NEPA when it allows pipelines to time applications such that the NEPA process becomes nothing more than a farce where the cumulative impacts are by no means fully analyzed.

II. THE COMMISSION'S RELIANCE ON THE NRC'S CONCLUSIONS AND FINDINGS ON SAFETY WERE ARBITRARY, CAPRICIOUS AND UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

A. Overview of Safety Issues

When evaluating whether a project is in the public convenience and necessity, the Commission has an obligation to ensure that the project will not jeopardize public safety. *See Washington Gas Light v. FERC*, 532 F.3d 928 (D.C. Cir 2008) (remanding certificate based on Commission's failure to show, based on substantial evidence, that LNG facility could be safely constructed); *also* Boston Delegation Br. 34-35 (discussing criteria for evaluating projects).

The AIM project raises serious public safety issues. Approximately 2,159 feet of the AIM Project will run through property that is part of the Indian Point Energy Center ("Indian Point"), a nuclear power plant owned by Entergy Nuclear Operations, Inc. ("Entergy"). The new segment will be located a half-mile south of Algonquin's existing right of way and will contain a high-pressure 42-inch pipeline – more than *double* the existing capacity. The new pipeline is 1,600 feet from the nuclear reactors. It is just 105 feet and 115 feet from two key structures that are necessary to prevent core damage and the major release of radioactive materials to the environment – a vital fact omitted from the Commission's discussion on rehearing. *See* Rehearing Order, P.197-198, R.2181, JA_____. The pipeline's

proximity to the nuclear plant imperils public safety, with a rupture triggering an incident on a similar order of magnitude as one of the atomic bombs dropped on Japan in 1945, according to pipeline safety expert Paul Blanch.²⁴

The NRC reviewed the potential impact of the pipeline's proximity to the nuclear facilities, but instead of conducting an independent analysis, it adopted the analysis of Entergy, the plant operator, which concluded that the 42-inch pipeline would not jeopardize the safety of Indian Point. Blanch Letter, R.1217, JA._____ Entergy's conclusions (and by association, the NRC's) relied on two erroneous assumptions regarding natural gas pipeline safety issues that as a nuclear plant operator, it has no experience with: (1) that gas flow could be terminated within three minutes in the event of a rupture and that (2) based on a three-minute release, the maximum impact radius would be 1,195 feet.²⁵

Petitioners' expert Richard Kuprewicz, filed comments in November 2014 questioning the NRC's "unreasonably optimistic assumption" that a pipeline rupture could be addressed in a three-minute time frame. Cortlandt Comments at Kuprewicz Report, R. 1633, JA____. Mr. Kuprewicz also challenged the assumed

²⁴ Blanch Comments, (September 29, 2014), R. 1217, JA_____.

²⁵ See Cortlandt Comments (November 21, 2014), submitting Kuprewicz Analysis (November 3, 2014), R.1633, JA_____.

blast radius, based on his review of actual blast radius information from pipeline ruptures compared to calculated blast projections for pipelines of the same size and type. Additionally, while the reactor cores are approximately 1,600 feet from the pipeline, the control room, spent fuel pools, electrical infrastructure and backup cooling materials are closer to the pipeline and are not protected from the effects of a rupture. *Id.*

Based on these concerns, Mr. Kuprewicz urged the Commission to conduct an independent risk analysis of the NRC's conclusions, which the Commission declined to do. By adopting the NRC's conclusions, the Commission erred twice: first, by failing to address Mr. Kuprewicz's objections and second, by relying on the findings of the NRC when its findings were under question by legislators and when it lacks expertise over pipelines. Discussion follows.

B. The Commission Did Not Address Concerns Raised by Experts.

On rehearing, the Commission defended its findings regarding safety at Indian Point, relying largely on information gathered at an October 2014 meeting with the NRC staff. Rehearing Order at P. 198, R. 2181, JA_____.²⁶ But the information exchanged at the October 2014 meeting does is non-responsive to the criticisms raised by Mr. Kuprewicz regarding the NRC's critical and erroneous

²⁶ See also Meeting Summary of conference call between FERC and NRC (October 17, 2014), R.1644, JA_____.

assumption regarding Algonquin's ability to address a pipeline rupture. For starters, the NRC staff meeting pre-dated the Kuprewicz Report filed at the Commission, and logically, could not have addressed his concerns. Nor does the Commission point to any evidence by the NRC or otherwise in the record that might explain why the NRC's three-minute assumption was right and Mr. Kuprewicz's opinion was not accurate. Because the Commission failed to address the petitioners' objections regarding pipeline safety that "on their face [are] legitimate, its decision can hardly be classified as reasoned," and must be reversed. *PPL Wallingford Energy v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (remanding decision where FERC did not respond to petitioners' claims).

1. The Commission Improperly Relied on the NRC's Conclusions Because the NRC's Rulings Were Subject to Criticism and the NRC Is Not an Expert on Pipeline Ruptures.

The Commission should have disregarded the NRC's findings for two reasons: first, they were the subject of congressional criticism and second, the Commission and not the NRC has expertise over nuclear power plant operations.

a. Controversy over NRC Findings

As early as October 2014, when the NRC initially determined that the pipeline would not jeopardize public safety, Congresswoman Nita Lowey wrote to the Commission, requesting a safety assessment related to Indian Point. R. 1445,

1545; JA____, _____. Congressional pressure continued; on February 9, 2015, New York Senators Schumer and Gillibrand sent letters to the Commission, again raising the safety issues and calling for an independent risk assessment of the pipeline project next to Indian Point. R. 1822, 1888, 1911, JA____, ____, _____. Yet, neither the Certificate nor the Rehearing Order mention these Congressional investigations at all. This Congressional pressure should have been a red flag to the Commission that it needed to further evaluate the NRC's conclusions and make its own findings regarding pipeline safety.

b. NRC Does Not Deserve Deference.

While the NRC has expertise related to nuclear power plant operations,²⁷ it is the Commission has expertise over technical pipeline matters such as safety.²⁸ The proximity of the 42-inch pipeline to the nuclear reactor gives rise to the potential for catastrophic harm not because of operational issues related to the nuclear facility, but rather, because of the NRC's erroneous and overly optimistic

²⁷ See *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 217 (1983) (“Pursuant to its authority under the [Atomic Energy] Act, 42 U.S.C. §§ 2071-2075, 2111-2114 (1976 ed. and Supp. V), the AEC, and later the NRC, promulgated extensive and detailed regulations concerning the operation of nuclear facilities and the handling of nuclear materials.”)

²⁸ *Washington Gas Light v. FERC*, 532 F.3d at 930-32 (2008) (according Commission “considerable deference” over technical issues such as source of leakage in local utility’s pipeline).

assumptions regarding the pipeline blast radius and the amount of time needed to close off a pipeline rupture. Resolution of this issue requires expertise on pipeline operations – which falls within the Commission’s bailiwick – and not nuclear operational issues where the NRC has no expertise. *See supra* notes 27-28 (describing scope of each agency’s respective expertise).

Given both the controversy over the NRC’s findings (evidenced by Congressional demands for inquiries) and the NRC’s lack of pipeline expertise, the Commission’s reliance on *EMR Network v. FCC*, 391 F.3d 269 (D.C. Cir. 2004) as support for its adopting of the NRC’s conclusions without independent review or analysis was misplaced. In *EMR Network*, this Court permitted the FCC’s reliance on EPA and outside experts in declining to promulgate new regulations regarding radio-frequency radiation in cell phones. This Court found FCC’s outside reliance justified both because the EPA’s expertise on radiation was unchallenged, and the FCC had no expertise whatsoever on radiation. By contrast, here, the NRC’s findings were disputed by the petitioners’ experts and by legislators. More significantly, the NRC lacks expertise on pipeline ruptures, which falls within the Commission’s expertise. *See supra* notes 27-28.

Ultimately, the Commission and not the NRC has a statutory obligation to support its findings that a project will not jeopardize public safety with substantial evidence. *See* Natural Gas Act, 15 U.S.C. § 717r(b) (stating that findings based on

substantial evidence are conclusive). The NRC's report -- which was the subject of legislative inquiries and is rife with erroneous assumptions regarding the pipeline blast radius and response times (issues that the Commission never itself addressed even when raised by Petitioners' expert) simply does not constitute substantial evidence of project safety. Moreover, this Court need not accord deference to the Commission's findings of fact regarding safety because the Commission chose to rely on an outside agency rather than exercising its own expertise. *C.f. B&J Oil & Gas v. FERC*, 353 F.3d 71,76 (D.C. Cir. 2004) (when agency orders involve complex matters over which they have expertise, "we are particularly reluctant to interfere with the agency's reasoned judgments.")

Because the Commission's findings regarding project safety are unreasonable and unsupported by substantial evidence, the project does not meet the public convenience and necessity standard under Section 7 of the NGA and the certificate must be vacated.

III. THE COMMISSION'S ORDER IS ARBITRARY AND CAPRICIOUS BECAUSE IT RELIES ON AN ENVIRONMENTAL REPORT PREPARED BY A THIRD-PARTY CONTRACTOR WITH A CONFLICT OF INTEREST.

Like many federal agencies, the Commission relies on third-party contractors – identified by and paid for by project applicants and approved by the

Commission – to prepare its EIS.²⁹ To avoid conflicts, potential third-party contractors must complete and submit an Organizational Conflict of Interest Statement (“OCI”) to demonstrate that they “have no financial or other conflicting interest in the outcome of the project.”³⁰

The Commission selected NRG to prepare the EIS or EA for the AIM, Atlantic Bridge and Access Northeast projects.³¹ The record of decision does not contain NRG’s OCI. Following approval of the AIM Project, news emerged that “NRG was already working directly for PennEast LLC (“PennEast”), a major pipeline consortium of which Spectra is a member” beginning in 2014 – the same timeframe during which NRG prepared the DEIS for the AIM Project and the EA for Atlantic Bridge.³² By working for Spectra on one pipeline project, while preparing a DEIS on its behalf for the AIM, Atlantic Bridge and Access Northeast

²⁹ See FERC Website (discussing third-party contractors), online at <http://www.ferc.gov/industries/gas/enviro/tpc.asp>.

³⁰ Commission Handbook for Using Third-Party Contractors to Prepare Environmental Documents (“Handbook”) at 3-21 and 3-45; online at <http://www.ferc.gov/industries/hydropower/enviro/tpc/tpc-handbook.pdf>.

³¹ See FERC Letter approving use of pre-filing process and third-party contractor. R. 1, R.2, JA____, ____.

³² See “Contractors Hired by FERC to Review a New Spectra Pipeline did not Disclose Work for FERC,” desmetblog.com/2016/05/26/revealed-contractors-hired-ferc-review-new-spectra-energy-pipeline-work-spectra-related-project.

projects, Algonquin/Spectra violated the Commission's third-party contractor regulations.

The Commission's Handbook asks whether there are "conflicting roles (including potential financial involvement) which might bias a contractor's judgment in relation to its work for the Commission." The Handbook notes that "These may include work for the applicant on this project, or for applicant or another energy firm in the same general project area, especially if the work is for a similar project." And the Commission's Handbook also requires that the "offeror must similarly avoid agreeing to perform any function for another company on a similar project in the same geographic area, and over the same time period if the facilities would be located in the same area or if there could be a perception that there would be a conflict." *Id.*

NRG is performing work for a company — the PennEast consortium — of which Spectra is a partner. Moreover, the PennEast project has a "major interconnect" with the Algonquin pipeline system, according to PennEast's own materials. This relationship clearly falls within the Commission's own definitions of an OCI for a third-party contractor. Because of this conflict, the FEIS does not comply with CEQ regulations concerning Agency Responsibility, specifically 40 C.F.R. § 1506.5(b), which requires that the agency (the Commission) "make its own evaluation of the environmental issues and take responsibility for the scope

and content of the [EA].” This situation is at least as egregious as the situation in *Colorado Wild, Inc. v. United States Forest Service*, 523 F. Supp. 2d 1213 (D. Colo. 2007), where the court found that communications between the agency’s third-party contractor and the applicant raised sufficiently serious and difficult questions as to support a preliminary injunction against the agency’s determination. Notably, in the present case, there has been no disclosure of the conflict of interest and certainly no discussion in the DEIS or FEIS of any efforts the Commission undertook to cure the harm that arose because of NRG’s conflict.

Because of NRG’s conflict of interest, the Commission’s FEIS is inherently unreliable. The public’s ability to rely on the Commission’s independence and the independence of its third-party contractors has been seriously compromised in this case.

Moreover and of equal importance, the usual presumptions of regularity and impartiality of an agency’s findings³³ do not exist here. Therefore, in addition to the Court vacating and remanding the Certificate in its entirety on the basis of this OCI, it must also view with a skeptic’s eye each and every conclusion in the environmental review – from the decision to segment review and ignore

³³ See e.g., *Louisiana Ass’n. of Independent Producers v. FERC*, 958 F.2d 1101, 1111 (D.C. Cir. 1992).

cumulative impacts, to the findings regarding project safety – rather than applying a deferential standard of review.³⁴

CONCLUSION

Wherefore, for the foregoing reasons, the Petitioners respectfully request that this Court find that the Commission’s Certificate Order and Rehearing Order are arbitrary, capricious and unsupported by substantial evidence, and vacate the Certificate or, in the alternative, remand the Certificate for further proceedings consistent with the Court’s order.

Respectfully submitted,

/s/ Rebecca F. Zachas

Jeffrey M. Bernstein, Esq.

Rebecca F. Zachas, Esq.

BCK LAW, P.C.

271 Waverley Oaks Road, Suite 203

Waltham, MA 02452

³⁴ This Court has jurisdiction to entertain the conflict of interest argument, which was not raised on rehearing. Section 717r(b) of the NGA provides that “[n]o objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing *unless there is reasonable ground for failure so to do.*” (emphasis added). Petitioners had reasonable grounds for not raising the conflict issue because the conflict was concealed. Because NRG’s OCI – which the Commission’s own regulations require to be filed – is not part of the record (*See* the Certified Index of the Record filed by the Commission with the Court on May 13, 2016.), Petitioners had no way of knowing whether NRG had a financial interest in Spectra’s other projects. This information did not come to light until a recent investigation by the DeSmog blog that was conducted a month ago. Because information on NRG’s conflict was not available until that time, Petitioners had reasonable grounds for not raising the issue on rehearing.

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*Attorneys for the Town of Dedham,
Massachusetts*

/s/ Carolyn Elefant
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Alexander English Esq.
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202-297-6100
Carolyn@carolynelefant.com
*Counsel to Environmental and
Community Petitioners (Coalition)*

Dated: July 29, 2016

CERTIFICATE OF COMPLIANCE

I certify that Petitioners' Initial Brief is in compliance with Fed. R. App. P. 28(a)(11); and Fed. R. App. P.32 (a)(7)(C), and this Court's Briefing Order. The brief was prepared using 14-point Times New Roman, a serif font. The brief contains 10,973 words as calculated by my word processing system, which includes footnotes. The City of Boston Delegation Brief is, according to its Certificate of Compliance, 9,941 words, for a total word count of 20,914, which is under the 21,000-word count allotted for both briefs.

Respectfully submitted,

/s/ Carolyn Elefant

Carolyn Elefant, Esq.

Alexander English Esq.

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Counsel to Environmental and

Community Petitioners (Coalition)

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2016, I electronically filed the foregoing Petitioners' Initial Brief with the United States Court of Appeals for the D.C. Circuit through use of the appellate EM/ECF system and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

Respectfully submitted,

/s/ Carolyn Elefant _____

Carolyn Elefant, Esq.

Alexander English Esq.

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Counsel to Environmental and

Community Petitioners (Coalition)

EXHIBIT 6

THIS AGREEMENT is made this 27th day of July, 1999, by and between SITHE EDGAR DEVELOPMENT, L.L.C., a Delaware limited liability company having its principal offices at 173 Alford Street, Charlestown, Massachusetts ("Sithe"); and THE TOWN OF WEYMOUTH, MASSACHUSETTS, a municipality having its principal offices at 75 Middle Street, Weymouth, Massachusetts (the "Town").

WHEREAS, Sithe is developing, and proposes to construct and operate on a parcel of land located within the Town, as shown on sheets 6 and 9, block 64, lot 1 (including any affiliated land rights, the "Site"), a combined-cycle electric generation facility having a design capacity of approximately seven hundred seventy-five (775) megawatts (including a natural gas pipeline, an electric transmission line, and all other ancillary and appurtenant facilities, the "Plant"); and

WHEREAS, the Town and Sithe agree and acknowledge that the construction and operation of the Plant has and will provide benefits to the Town, including the entry by Sithe into a Tax Increment Financing Agreement incorporating a schedule of payments as set forth on Attachment E hereto (subject to later approval by the Weymouth Town Meeting, the "TIF Agreement") and a commitment by Sithe to employ union labor during construction of the Plant; and

WHEREAS, Sithe has applied and will continue to apply for numerous licenses, permits, and approvals necessary for the development and construction of the Plant, including approval by the Massachusetts Energy Facilities Siting Board (the "Siting Board") in proceedings docketed as Sithe Edgar Development, L.L.C., EFSB 98-7 (the "Siting Board Proceedings"); and

WHEREAS, the Town and Sithe agree and acknowledge that the Town has identified certain concerns with respect to the impact of the construction and operation of the Plant on the Town, and that the Town has appeared as an intervenor in the Siting Board Proceedings; and

WHEREAS, the Town and Sithe agree and acknowledge that the performance by Sithe of its obligations set forth herein will address such concerns to the Town's satisfaction, and that the Town is therefore willing, *inter alia*, to cease its intervention in the Siting Board Proceedings in accordance with the provisions hereof;

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sithe and the Town hereby agree as follows.

1. Non-Opposition and Other Consideration to be Provided by the Town

1.1 As soon as practicable, but in no event later than three (3) business days following the date of the execution of this Agreement, the Town shall withdraw from, and shall direct its attorneys to withdraw its name as a party in, any and all administrative, regulatory, and judicial cases and proceedings, in any and all fora, currently docketed or pending involving the Plant, the Site, or Sithe. This includes, without limitation, withdrawal by the Town from the Siting Board Proceedings, and the filing by the Town of such documentation as is necessary to withdraw all

testimony of the Town's witnesses, all of the Town's responses to discovery requests, and all cross-examination (if any), by the Town of any witnesses. From the date of this Agreement, neither the Town nor any of its agents or representatives will take any action, either directly or indirectly, publicly or privately, in any forum, to oppose or to assist any party in the opposition of the development, construction, or operation of the Plant, except as provided in section 1.6 hereof.

1.2 The Town shall work cooperatively with Sithe to achieve a mutually-agreeable plan for the future development or utilization of the land to the north of the Site that is currently owned by Sithe.

1.3 The Town shall work cooperatively with Sithe to gain state certification of the development of the Plant pursuant to the applicable Massachusetts Economic Opportunity Area statutes, rules, and regulations.

1.4 The Town shall execute any and all documentation required for Sithe to obtain authorization to purchase operational water for the Plant from the City of Quincy pursuant to the "Straddle Policy" of the Massachusetts Water Resource Authority (the "MWRA").

1.5 Nothing contained herein shall prevent the Town from pursuing any claim for physical harm suffered by it, or for injuries or property damage suffered by it or any persons or property lawfully upon its premises arising out of the actual operation of the Plant or Sithe's actions or omissions in connection with the same. Nothing contained herein shall prevent the Town or any of its permitting boards, commissions, or officials from legally exercising its or their own legal regulatory authority.

1.6 Nothing contained herein shall prevent the Town from seeking to participate, and Sithe agrees not to oppose the Town's seeking to participate, in any adjudicatory proceeding before the Siting Board or other federal or state agency or court in which is being considered significant new information regarding, or a significant change to, the Plant proposal that is not consistent with the filings made in any pending federal or state proceedings involving the Plant as of the date of this Agreement, if the Town and Sithe agree after good-faith consultation that such new information demonstrates, or that such change may cause, significant public health, safety, or environmental impacts to the Town that are materially greater and more adverse than those that have been presented in such proceedings as of the date of this Agreement.

1.7 In the event that Sithe notifies the Town that it is canceling the Plant prior to the date that Sithe first draws funds following the close of its financing for the construction of the Plant, the Town shall deem any amount paid to the Town in accordance with the provisions of section 2.5 hereof as an advance payment of *ad valorem* property taxes on the Site.

2. Consideration to be Provided by Sithe

2.1 Sithe shall meet all noise limitations imposed with respect to the Plant under its operating permits and licenses and under applicable municipal, state, and federal statutes and regulations.

Sithe agrees to incorporate in the Plant such noise abatement features as are accepted by the Massachusetts Department of Environmental Protection ("DEP") as the Best Available Noise Control Technology. Sithe further agrees that it will operate the Plant so that at no time following the date upon which the Plant begins producing electricity regularly for sale to the commercial market (the "Commercial Operation Date") will the Plant cause increases in noise levels at any residence in excess of 6 dBA above minimum L₉₀ background levels as measured in its application in the Siting Board Proceedings. Sithe shall comply with the applicable DEP noise monitoring protocol and shall promptly forward the results of such monitoring directly to the Town's designated representative.

2.2 Sithe shall meet all air emissions requirements imposed with respect to the Plant under its operating permits and licenses and under applicable municipal, state, and federal statutes and regulations. Sithe shall comply with all applicable requirements and regulations concerning the safe transportation, handling, use, and storage of aqueous ammonia.

2.3 Sithe shall consult with the Town's Board of Selectmen with respect to the visual compatibility of the exterior appearance of the Plant's buildings, structures, and other components with the areas surrounding the Plant, and with respect to designing such exterior appearance to be "sensitive to the Edgar Station Buildings as well as the neighboring Fore River Shipyard, and the Fore River Bridge" (letter from J. McDonough, Mass. Hist. Comm'n, to Secretary T. Coxe, E.O.E.A. (Aug. 12, 1998) (regarding review of Environmental Notification Form filed with respect to the Plant)).

2.4 Sithe and the Town shall negotiate in good faith and shall attempt to agree with respect to a protocol for construction of the Plant. Such protocol may include provisions concerning the coordination of the anticipated impacts of Plant construction with those of other projects undertaken in the vicinity of the Plant by the MWRA and the Massachusetts Highway Department (the "MHD"), and the specification of routes for construction worker access and major plant component deliveries to the Site. The parties shall endeavor to complete such protocol within ninety (90) days following the execution of this Agreement.

2.5 Upon the execution of this Agreement, Sithe shall pay to the Town the amount of one hundred fifty thousand dollars (\$150,000), to be allocated to defraying a portion of the costs of obtaining the necessary permits for a new water source to serve the Town.

2.6 Upon the date that Sithe first draws funds following the close of its financing for the construction of the Plant, Sithe shall pay to the Town the total amount of three million, two hundred fifty thousand dollars (\$3,250,000), to be allocated as follows:

2.61 One hundred fifty thousand dollars (\$150,000) shall be allocated to defraying a portion of the costs of safety training and equipment for the Weymouth Fire Department;

2.62 One hundred thirty thousand dollars (\$130,000) shall be allocated to defraying a portion of the costs of vehicles and equipment for the Weymouth Police Department;

2.63 Two million dollars (\$2,000,000) shall be allocated to defraying a portion of the costs of a new water storage tank to be constructed by the Weymouth Department of Public Works;

2.64 Five hundred seventy thousand dollars (\$570,000) shall be allocated to defraying a portion of the costs of improvements to the Town's water distribution system; and

2.65 Four hundred thousand dollars (\$400,000) shall be allocated to defraying a portion of the costs of the public health activities of the Weymouth Board of Health.

2.7 Sithe and the Town agree that the total application fee for all building permits required for the construction of the Plant shall be three hundred thousand dollars (\$300,000). Sithe shall cause its construction contractor to pay such fee into a contingency account, as specified by the Town.

2.8 Commencing on April 1, 2000, and on each anniversary of such date during the term of this Agreement, Sithe shall pay to the Town the amount of twenty-five thousand dollars (\$25,000), to be allocated to defraying a portion of the costs incurred by the Weymouth Fourth of July Celebration Committee for an annual Independence Day fireworks display, or for other recreational or related purposes.

2.9 Within six (6) months following the completion of all construction activities on the Site related to the Plant and of all such activities related to the MWRA's Braintree-Weymouth relief facilities and intermediate pumping station (or following the completion of the MHD's reconstruction of the Fore River Bridge, if such reconstruction is commenced prior to and completed later than the completion of Plant construction), Sithe shall have substantially completed (i) the preparation and production of the information brochures, and (ii) the renovation of the Gatehouse building located on the Site, both in accordance with the provisions of the Memorandum of Agreement, dated as of April 13, 1999, executed by Sithe, the Weymouth Board of Selectmen, and the Weymouth Historical Commission. In the event that Sithe determines that it will be unable to do so within such time, it shall promptly notify the Town thereof and the parties shall agree on a reasonable additional period therefor.

2.10 Within six (6) months following the completion of all construction activities on the Site related to the Plant and of all such activities related to the MWRA's Braintree-Weymouth relief facilities and intermediate pumping station (or following the completion of the MHD's reconstruction of the Fore River Bridge, if such reconstruction is commenced prior to and completed later than the completion of Plant construction), Sithe shall, in order to implement the mitigation plan contained in its final environmental impact report under the Massachusetts Environmental Policy Act, commence the improvement of certain real estate, as further described and shown on Attachments A through D hereto, for access by members of the public in accordance with a plan therefor to be approved by the Town, such approval not to be unreasonably withheld or delayed. In no event shall Sithe be required to spend in excess of five hundred thousand dollars (\$500,000) for the completion of such improvements. In addition, Sithe shall paint the existing oil storage tank located at the northern portion of the Site.

Following the completion of such improvements, Sithe shall convey at no cost to the Town or to its designee a perpetual Conservation Restriction satisfying the requirements of Massachusetts General Laws chapter 184, sections 31-33, authorizing access to such areas by members of the public for passive recreational purposes. Upon the date of such conveyance and on each anniversary of such date during the term of this Agreement, Sithe shall pay to the Town the amount of twenty-five thousand dollars (\$25,000), to be allocated to defraying a portion of the costs of maintaining and improving such public access area.

2.11 Sithe shall work cooperatively with the Town to achieve a mutually-agreeable plan for the future development or utilization of the land to the north of the Site that is currently owned by Sithe.

2.12 Following the Town's withdrawal from the Siting Board Proceedings, Sithe agrees that it will promptly provide to the Town and to its counsel a copy of all filings it makes or receives in any administrative, regulatory, or judicial cases or proceeding, in any forum, currently docketed or pending involving the Plant, the Site, or Sithe, at the addresses specified in section 5.2 hereof.

3. Term, Termination

3.1 This Agreement shall be effective from and after the date of its execution and shall continue through the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the provisions hereof or extended by mutual agreement of the Town and Sithe.

3.2 Sithe shall have the right, in its sole discretion, to terminate this Agreement upon the termination of the TIF Agreement other than by Sithe.

3.3 Upon the substantial and material breach of any provision of this Agreement by a party hereto, the other party may exercise any and all remedies available to it, in law, in equity, or otherwise; subject to the provisions of section 4 hereof, and further provided that the breaching party shall be entitled to cure its breach within a reasonable amount of time following its receipt of written notice from the other. Notwithstanding the foregoing, the parties acknowledge and agree that, in the event of a breach of the terms of this Agreement, the remedies available at law would be inadequate, and that the non-breaching party shall therefore be entitled to equitable relief enforcing the terms of this Agreement.

4. Force Majeure

It is distinctly understood and agreed that all parties hereto shall make a reasonable and good faith effort to perform their obligations under this Agreement. If and to the extent that either party is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties instead shall negotiate in good faith with respect to appropriate

modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any supervening cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; storm, flood, fire, earthquake, explosion, civil disturbance, labor dispute, or act of God or the public enemy.

5. Miscellaneous

5.1 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns, successors in interest, mortgagees, nominees, shareholders, trustees, directors, officers, agents, employees, and affiliates (collectively, "Representatives"), to the fullest extent permitted by law. The assumption of this Agreement and the obligations thereunder shall be a specific condition of any sale or transfer of the Plant or the Site or any substantial interest therein during the term of this Agreement to any party not an affiliate of Sithe. Sithe may in its discretion transfer its interests, rights, and obligations hereunder to any parent or affiliate by assignment, merger, or otherwise without the prior approval of the Town, and may also in its discretion collaterally assign such interests as security to the parties providing construction or long-term financing for the plant without the prior approval of the Town, but written notice of such transfer shall be given. The Town shall execute any and all acknowledgments and other documentation required by such financing parties in connection therewith. Any other transfer by Sithe of its interests, rights, and obligations hereunder shall require the prior approval of the Town, such approval not to be unreasonably withheld or delayed. Sithe shall be entitled in its discretion to perform any or all of its obligations under this agreement through one or more affiliates. The liability of Sithe or its Representatives to the Town or its Representatives hereunder shall be limited solely to its or their respective interests in the Plant and the Site.

5.2 All notice permitted or required under the provisions of this Agreement shall be in writing, and shall be sent by registered or certified mail, postage prepaid, or shall be delivered by private express carrier, as follows or at such other address as may be specified by a party in writing and served upon the other in accordance with this section.

If to the Town:
Town of Weymouth
75 Middle Street
Weymouth, Massachusetts 02189
Att'n: Jim Clarke, Director of
Planning and Development

If to Sithe:
Sithe Edgar Development, L.L.C.
173 Alford Street
Charlestown, Massachusetts 02129
Att'n: John O'Brien

with a copy to:
J. Raymond Miyares, Esq.
Pickett and Miyares
47 Winter Street, 7th Floor
Boston, Massachusetts 02108

with a copy to:
John A. DeTore, Esq.
Rubin and Rudman L.L.P.
50 Rowes Wharf
Boston, Massachusetts 02110

5.3 The Town's Board of Selectmen shall cause an article calling for the approval of the TIF Agreement to be placed on the next warrant for a Special Town Meeting of the Town. This Agreement and the TIF Agreement contain the entire agreement of Sithe and the Town with respect to taxes and other payments to be paid to the Town by Sithe in connection with the development, construction, and operation of the Plant, and supersede all previous agreements, understandings, discussion, communications, and correspondence with respect to such subject matter.

5.4 This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law rules.

5.5 The provisions of this Agreement are separate and divisible, and if any court of competent jurisdiction determines that any provision of this Agreement is void or unenforceable, the remaining provisions hereof shall remain in full force and effect.

5.6 This Agreement may be amended or modified only by writing executed by the parties hereto; provided, however, that if any applicable federal or state law mandates the inclusion of any term or provision into this Agreement, this section shall be understood to import such term or provision into this Agreement.

5.7 This Agreement has been drafted jointly by the parties hereto and accordingly shall not be construed for or against any such party solely on account of such drafting.

5.8 Nothing in this Agreement shall be construed as creating any rights or granting any benefits to anyone other than the Town and Sithe.

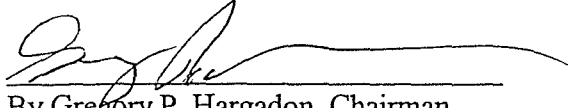
5.9 This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures on this Agreement shall be deemed to be original signatures.

5.10 Sithe shall provide to the Town other evidence of the capacity and authority of the party executing this Agreement for and on behalf of Sithe. Sithe shall comply with all applicable provisions of Massachusetts law relating to the appointment of a resident agent, and shall maintain on file with the Secretary of State any and all documents required by law for the conduct of business in Massachusetts.

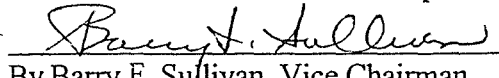
In witness whereof, THE TOWN OF WEYMOUTH and SITHE EDGAR DEVELOPMENT, L.L.C. have caused this Agreement to be executed by their respective duly authorized officials and officers as of the date and year first above written.

THE TOWN OF WEYMOUTH

SITHE EDGAR DEVELOPMENT, L.L.C.



By Gregory P. Hargadon, Chairman,
Weymouth Board of Selectmen



By Barry F. Sullivan, Vice Chairman,
Sithe Edgar Development, L.L.C.

Attachments A-D: plans of public access area
Attachment E: schedule of payments under TIF Agreement

EXHIBIT 7

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT DEPARTMENT
C.A. No. _____

<p>Robert L. Hedlund, as Mayor of THE TOWN OF WEYMOUTH on behalf of the Planning Board of the Town of Weymouth,</p> <p style="text-align: right;">Plaintiff</p> <p>v.</p> <p>CALPINE FORE RIVER ENERGY CENTER, LLC AND ALGONQUIN GAS TRANSMISSION, LLC,</p> <p style="text-align: right;">Defendants</p>
--

16 1611

SUPERIOR COURT DEPARTMENT
 NORFOLK COUNTY
 500 FISC ST
 WYOMING MA 01986
 508-853-2100

COMPLAINT

1. Plaintiff, Robert L. Hedlund, Mayor of the Town of Weymouth on behalf of the Planning Board of the Town of Weymouth, brings this action for a declaratory judgment pursuant to *M.G.L. c.231A, §1*, and to enforce the provisions of the *Subdivision Control Law, M.G.L. c.41, §§81K-81GG*, pursuant to *M.G.L. c.41, §81Y*, with respect to land located at 6 & 50 Bridge Street, Weymouth, MA 02191 (the "Locus").

PARTIES

2. Plaintiff, Robert L. Hedlund, Mayor of the Town of Weymouth on behalf of the Planning Board of the Town of Weymouth, is the duly elected chief executive of the Town, which is a Massachusetts municipal corporation

with an address of 75 Middle Street, Weymouth, MA 02189, who by charter has exclusive authority over all litigation and brings this action on behalf of the Town's duly constituted Planning Board.

3. Defendant, Calpine Fore River Energy Center, LLC ("Calpine"), is a limited liability company formed under the laws of the State of Delaware with a principal place of business at 717 Texas Avenue, Suite 1000, Houston, TX 77002. Calpine's resident agent is Corporation Service Company, 84 State Street, Boston, MA 02109.

4. Defendant, Algonquin Gas Transmission, LLC ("Algonquin"), is a limited liability company formed under the laws of the State of Delaware with a principal place of business at 5400 Westheimer Court, Houston, TX 77056. Algonquin's resident agent is C T Corporation System, 155 Federal Street, Suite 700, Boston, MA 02110.

JURISDICTION AND VENUE

5. Jurisdiction over Calpine is proper pursuant to *M.G.L. c.223A*, §3(a), (b), and (e), because it has a place of business in Massachusetts and transacts business within the Commonwealth, supplies services or things in the Commonwealth, and has an interest in real property in the Commonwealth.

6. Jurisdiction over Algonquin is proper pursuant to *M.G.L. c.223A*, §3(a), (b), and (e), because it has a place of business in Massachusetts and transacts business within the Commonwealth, supplies services or things

in the Commonwealth, and has an interest in real property in the Commonwealth.

7. The Court has subject matter jurisdiction pursuant to *M.G.L. c.231A, §1* and *M.G.L. c.41, §81Y*.

8. Venue is proper pursuant to *M.G.L. c.231A, §1* and *M.G.L. c.41, §81Y* because the Town and the Locus are situated in Norfolk County.

STATEMENT OF FACTS

9. An actual controversy has arisen between the Town, Calpine, and Algonquin as specifically described below.

10. On October 18, 2016, Calpine and Algonquin submitted documentation to the Planning Board seeking an endorsement of two Approval Not Required Plans for the division of the Locus. As some of the Locus is registered land, two nearly identical plans were submitted, with one (dated September 23, 2016) to be registered with the Norfolk County Land Court, and the other (dated September 24, 2016) to be recorded with the Norfolk County Registry of Deeds. The submitted documentation is attached hereto as "Exhibit A."

11. The submitted documentation proposed to divide the Locus into six lots.

12. Upon information and belief, Calpine and Algonquin did not file the notice of its submitted documentation with the Town Clerk as required by *M.G.L. c.41, §§81P, and 81T*.

13. On November 9, 2016, the Planning Board issued a denial of the joint application, stating its reasons as follows:

The plan creates three (3) unbuildable lots (H-1, H-2, B-1). The letter accompanying the submission states that these lots are not buildable however, each of these lots needs to be clearly labeled as such on the mylars intended for recording. In addition, both ANR submittals included property located within the City of Quincy.

The denial letter is attached hereto as "Exhibit B." To date, no appeal from the Planning Board's decision has been brought.

14. On December 2, 2016, a Deed purporting to convey to Algonquin portions of the Locus, corresponding to three of the six lots shown on the Plan that was denied ANR endorsement, was registered with the Norfolk County Land Court as Document Number 126,036 and was also recorded at the Norfolk County Registry of Deeds at Book 34726, Page 482. The Deed is attached hereto as "Exhibit C."

15. The portions of the Locus described in the Deed to Algonquin are portrayed on a "Sketch" of land submitted for registration and recorded therewith. The Deed contains the following printed language: "The parcels that comprise the Real Property are shown the [sic] Plan that is Exhibit B..." with a marking that crossed out the word "Plan" and inserted the word "Sketch" handwritten above. The "Sketch" contains a stamp with the following disclaimer language: "THIS IS A SKETCH AND SHALL NOT BE REFERRED TO AS A PLAN FOR THE PURPOSES OF CONVEYING OR SUBDIVIDING LAND."

16. Notwithstanding the quoted disclaimer language, Calpine and Algonquin used the "Sketch" for purposes of conveying portions of the Locus, and the "Sketch" was attached to the Deed and labeled "Exhibit B Subdivision Plan of Land in Weymouth & Quincy Massachusetts."

17. Notwithstanding its label, the "Sketch" is not a definitive plan of a subdivision of land duly approved pursuant to *M.G.L. c.41, §81U*.

18. The "Sketch" shows the Locus divided into the identical six lots as they appeared on the Plan that was denied endorsement by the Planning Board.

19. The Deed purports to convey three lots of the Locus to Algonquin, with Calpine retaining the other three lots.

20. The "Sketch" attached to and recorded with the Deed does not bear an endorsement of the Planning Board that approval thereof is not required, as provided in *M.G.L. c.41, §81P*.

21. The "Sketch" attached to the Deeds is not accompanied by a certificate of the Clerk of the Town of Weymouth that it is a plan submitted pursuant to *M.G.L. c.41, §81P* and that it has been determined by failure of the Planning Board to act thereon within the prescribed time that approval is not required. Nor does the "Sketch" include a reference to the book and page where such certificate is recorded.

**COUNT I
DECLARATORY JUDGMENT**

22. The Town repeats and incorporates by reference the allegations contained in paragraphs 1 through 21 of this Complaint as if set forth in their entirety herein.

23. The Town seeks relief in the form of a declaration, in a form acceptable for recording in the Norfolk County Registry of Deeds and registration in the Norfolk County Land Court, that the "Sketch" accompanying the Deed from Calpine to Algonquin was recorded in violation of *M.G.L. c.41, §81X*, and that the conveyance purportedly effected by such Deed was therefore *void ab initio*.

**COUNT II
ENFORCEMENT OF THE SUBDIVISION CONTROL LAW**

24. The Town repeats and incorporates by reference the allegations contained in paragraphs 1 through 23 of this Complaint as if set forth in their entirety herein.

25. The Town seeks injunctive relief in the form of an order rescinding the conveyance of the Locus from Calpine to Algonquin because of the failure to comply with the requirements of the *Subdivision Control Law, M.G.L. c.41, §§81K-81GG*.

26. The Town seeks further injunctive relief in the form of an order acceptable for recording and registration in the Norfolk County Registry of Deeds and the Norfolk County Land Court, pursuant to *M.G.L. c.41, §81Y*, enjoining any all persons and entities from recording or registering any instruments related to the Locus, unless and until the lots comprising the Locus are properly divided from adjacent parcels in accordance with the *Subdivision Control Law, M.G.L. c.41, §§81K-81GG*.

PRAYER FOR RELIEF

WHEREFORE, the Town requests that this Court:

1. Issue a declaratory judgment, in a form acceptable for recording in the Norfolk County Registry of Deeds and registration in the Norfolk County Land Court, declaring that the "Sketch" accompanying the Deed to Algonquin was recorded in violation of *M.G.L. c.41, §81X*, and that the conveyance purportedly effected by such Deed was therefore *void ab initio*.
2. Issue an order rescinding the conveyance of the Locus from Calpine to Algonquin.
3. Pursuant to *M.G.L. c.41, §81Y*, issue an injunction preventing any person or entity from recording or registering any instruments with respect to the Locus in the Norfolk County Registry of Deeds or the Norfolk County Land Court, respectively, unless and until the lots comprising the


Locus are properly divided from adjacent parcels in accordance with the
Subdivision Control Law, M.G.L. c.41, §§81K-81GG.

4. Award the Town their costs; and
5. Order any other relief that it deems proper.

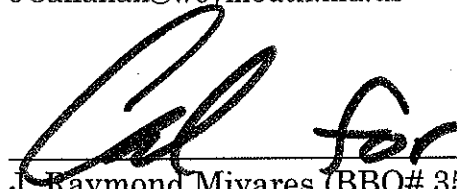
Respectfully submitted,

THE TOWN OF WEYMOUTH

By its attorneys



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Date: December 23, 2016

EXHIBIT 8

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

Algonquin Gas Transmission, LLC,
Maritimes & Northeast Pipeline, LLC

Docket No. CP16-9-000

AFFIDAVIT

I, Edward Duncan, hereby depose and state as follows:

1. I am a person of the legal age of majority.
2. I am employed as a Director with Resource System Group, Inc, ("RSG") with a primary business address of 55 Railroad Row, White River Junction, VT 05001.
3. I hold a BS in Engineering Science from Rensselaer Polytechnic Institute and an MS in Environmental Studies from Green Mountain College.
4. I am Board Certified through the Institute of Noise Control Engineering.
5. I am a member of the Acoustical Society of America and serve on its Technical Committee on Architectural Acoustics.
6. The Town of Weymouth (the "Town") has retained the services of RSG for expert analysis of the Atlantic Bridge Project's noise impacts within the Town.
7. Pursuant to that retainer, I conducted acoustical analysis of the noise data and analysis presented in the referenced docket and in the Access Northeast Project, FERC Docket No. PF16-1-000.
8. In addition, I assisted the Town's Special Town Counsel in drafting the Town's Request for Rehearing of the Commission's Order on the Certificate of Public Convenience and Necessity for the Atlantic Bridge Project.

9. I am providing this Affidavit to offer a technical explanation of two statements contained in the Request for Rehearing.

10. In Section III.4.a.2 of the Request for Rehearing, it is stated that “the Compressor Station may result in an increase in sound level of 10 to 20 dBA, depending on the actual background sound level, which would be perceived as a double to quadrupling of loudness.” I reached this conclusion as follows: There is a 15dB difference in the reported existing Ldn between Measurement Position 2 (54.9 dBA) and Measurement Position 1 (70.4 dBA). In paragraph 220 of the FERC Order, the Commission apparently used data from Measurement Position 1 to reach its conclusion that there would be no more than a 2 dB increase in noise levels at the King’s Cove Parcel due to the operation of the proposed Weymouth Compressor Station. Based on a 2 dB increase over the existing Ldn of Measurement Position 1 (70.4), the sound level of the Weymouth Compressor Station at the King’s Cove Parcel would be 68 dBA ($72.4 \text{ dBA} - 70.4 \text{ dBA} = 68 \text{ dBA}$). Since sound pressure levels are a logarithmic function, the equation to energetically subtract sound levels is $L_{p1-2} = 10 \cdot \log_{10}(10^{(L_{p1}/10)} - 10^{(L_{p2}/10)})$. If, instead, the Commission had chosen to use Measurement Position 2 to characterize background sound levels at the King’s Cove area, it would have found a greater increase ($68 \text{ dBA} + 54.9 \text{ dBA} = 68 \text{ dBA}$, or an increase of 13 dBA). Since sound pressure levels are a logarithmic function, the equation to energetically add sound levels is $L_{p1+2} = 10 \cdot \log_{10}(10^{(L_{p1}/10)} + 10^{(L_{p2}/10)})$. The fact is that we do not know the precise background noise level because measurements taken from these monitoring points are not adequate for this purpose. Due to insufficient background sound data, I concluded that

there is a possibility of a 10-20 dB increase, based in part on the 13 dB increase calculated using the noise data collected.

11. In Section III.4.a.2 of the Request for Rehearing, it is stated that “[a]ssuming that the King’s Cove parcel is 80 to 90 feet from the noise producing equipment, the cited noise level corresponds to 71 dBA, assuming a 6 dB addition per halving of distance, accounting for geometric spreading.” On page 79 of the FERC Order, it is stated that the noise level will be 60 dBA at a distance of 300 feet from the proposed Compressor Station. The generally applicable rule is that halving the distance from a noise point source results in a 6 dB increase in the noise level. This rule is expressed mathematically as $Lp_2 = Lp_1 + 20 \cdot \log(d_1/d_2)$, where Lp_n represents the sound pressure level at a given distance d_n . Therefore, halving the distance to 150 feet would result in a noise level of 66 dBA, and halving it again to 75 feet would result in a sound level of 72 dBA. Based on this calculation, I estimate that the expected noise level at 80 to 90 feet, the asserted distance of the King’s Cove Parcel from the Compressor Station, would be 71 dBA.

12. I declare under the pains and penalties of perjury that the foregoing statements are true and correct.

[signature on following page]

Signed under the pains and penalties of perjury this 24th day of February 2017.



Acknowledgement

State of Vermont)
County of Windsor) ss.

On this 24th day of February 2017, before me personally appeared Edward Duncan known to me to be the person who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same to be his free act and deed.



Notary Public Signature

STEPHANIE JARRATT, Notary Public
My Commission Expires February 10, 2019

EXHIBIT 9

