

157 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP15-89-001

ORDER DENYING REHEARING

(Issued November 9, 2016)

I. Background

1. In an April 7, 2016 order, the Commission issued a certificate of public convenience and necessity to Transcontinental Gas Pipe Line Company, LLC (Transco) authorizing construction of its Garden State Expansion Project (Garden State Project). The Garden State Project is designed to provide 180,000 dekatherms (Dth) per day of incremental firm transportation service from Transco's Station 210 Zone 6 Pooling Point, located in Mercer County, New Jersey, to a new delivery point on Transco's Trenton Woodbury Lateral in Burlington, New Jersey.¹ The Garden State Project includes the construction and operation of a new compressor station and electric substation, a new meter and regulating station, the uprating of electric motor drives and rewheeling of an associated compressor unit, and related construction and modification of appurtenant facilities.

¹ *Transcontinental Gas Pipe Line Co. LLC*, 155 FERC ¶ 61,016 (2016) (April 2016 Order).

2. Bordentown Township (Bordentown)² and the Township of Chesterfield (Chesterfield)³ each filed a request for rehearing of the April 2016 Order and rescission of the certificate.⁴ We deny rehearing for the reasons discussed below.

II. Discussion

A. Public Convenience and Necessity

3. Chesterfield argues the Garden State Project fails to meet the “public convenience and necessity” standard of section 7(e) of the Natural Gas Act⁵ because the Project’s benefits are minimal and its need is unsupported.⁶ Chesterfield argues that the binding precedent agreement for 100 percent of the incremental firm transportation capacity of the Garden State Project between Transco and New Jersey Natural Gas (NJNG) is inadequate to prove the Garden State Project’s need because NJNG has a 20 percent stake in a connected pipeline, the PennEast Project. Chesterfield contends this results in an affiliate-like relationship because the success of the Garden State Expansion Project is dependent upon the PennEast Project.⁷

4. Moreover, Chesterfield contends that the need for the Garden State Project is speculative because the project will link gas deliveries from the PennEast Project to the Southern Reliability Link (SRL), neither of which is likely to move forward soon, if ever, in Chesterfield’s view.⁸ Consequently, Chesterfield argues the Garden State Project would effectively be a “bridge to nowhere.” Chesterfield contends that if the

² Bordentown Township, Rehearing Request, Docket No. CP15-89-001 (filed May 9, 2016) (Bordentown Rehearing Request).

³ Township of Chesterfield, Rehearing Request, Docket No. CP15-89-001 (filed May 9, 2016) (Chesterfield Rehearing Request).

⁴ The parties also filed for a stay of the Project, which was denied in a June 8, 2016 Order. *Transcontinental Gas Pipe Line Company, LLC*, 155 FERC ¶ 61,246 (2016).

⁵ 15 U.S.C. § 717f (e) (2012).

⁶ Chesterfield Rehearing Request at 12.

⁷ *Id.* at 13.

⁸ *Id.* at 14.

Commission does not reverse the April 2016 order, it should at least hold the certificate in abeyance until the PennEast and SRL Projects have received full and final regulatory approval.

5. We disagree. Long-term commitments serve as “significant evidence of demand for the project.”⁹ And here, Transco has entered into a precedent agreement with NJNG for 100 percent of the proposed Project capacity for a primary term of 15 years. Chesterfield argues that, in light of NJNG’s ownership interest in the PennEast Project, the import of the precedent agreement should be discounted as it is akin to an agreement with an affiliate.¹⁰ Regardless of NJNG’s partial ownership interest in the PennEast Project, the precedent agreement is sufficient evidence of need.¹¹ The Commission does not typically look behind such agreements to evaluate shippers’ business decisions to acquire capacity.¹²

6. Chesterfield also appears to claim that the Commission should not rely upon the precedent agreement because the PennEast Project could be jeopardized if the Garden State Project fails to move forward. As described more fully below, the Garden State Project is not reliant upon the PennEast Project. Moreover, NJNG has already made the business decision to contract for the Garden State Project’s capacity. In these circumstances, we find it reasonable to rely upon that agreement as evidence of need for the Garden State Project’s capacity.¹³

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement); *see also Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) (*Myersville*) (rejecting argument that precedent agreements are inadequate to demonstrate market need); *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 112 n.10 (D.C. Cir. 2014) (same).

¹⁰ Chesterfield Rehearing Request at 12-13.

¹¹ *E. Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331, at 62,398 (2002).

¹² *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 39 (2016); *Paiute Pipeline Co.*, 151 FERC ¶ 61,132, at P 33 (2015); *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 34 (2006).

¹³ *See Islander East Pipeline Co., L.L.C.*, 97 FERC ¶ 61,363, at P 48 (2001). *See also Trans-Union Interstate Pipeline, L.P.*, 92 FERC ¶ 61,066, at 61,219 (2000) (“When a natural gas pipeline has a contract with one or more shippers, the Commission does not

7. Chesterfield's characterization of the Garden State Project as a potential "bridge to nowhere"¹⁴ is inapt. The Garden State Project involves no extension of the Transco system. Rather, the Project involves adding additional capacity to Transco's existing pipeline system through the use of compression, and the construction of a new meter and regulating station on an existing lateral, which can be used regardless of whether the PennEast Project or the SRL Project receive requisite permits or are constructed. Consequently, we decline to hold the Garden State Project in abeyance on the basis that other unrelated projects might not receive adequate permitting.

B. National Environmental Policy Act (NEPA) Review

1. Segmentation

8. Bordentown and Chesterfield argue the Commission unlawfully segmented its NEPA review by failing to analyze other projects in the area along with the Garden State Project in one environmental analysis.¹⁵

9. Emphasizing that the Garden State Project's proposed facilities are all located in New Jersey, Bordentown further contends that by improperly segmenting the Garden State Project from other related projects by Transco and other companies that include pipeline facilities in other states, the Commission "removed the interstate commerce aspect" of the Garden State Project that is the basis for the Commission's jurisdiction.¹⁶ Bordentown asserts "[t]he Commission cannot exercise jurisdiction based on the interstate aspects of the Project but then under NEPA only consider the intrastate aspects of the Project."¹⁷ According to Bordentown, if the Commission claims interstate jurisdiction over the Garden State Project, it is required to analyze the Project together with other natural gas projects in the area.¹⁸ Chesterfield similarly argues the Commission should have analyzed the PennEast Project in its Garden State Project

typically look behind those contracts to assess the certainty that an end-use shipper will actually require the service.”).

¹⁴ Chesterfield Rehearing Request at 14.

¹⁵ Bordentown Rehearing Request at 7; Chesterfield Rehearing Request at 16.

¹⁶ Bordentown Rehearing Request at 9.

¹⁷ *Id.*

¹⁸ *Id.*

Environmental Assessment (EA). Specifically, Chesterfield argues a combined analysis is warranted because: (1) the PennEast Project and the Garden State Expansion Project are both components of a continuous system as there is no rational demarcation between the two Projects; (2) the Garden State Project is functionally dependent on the PennEast Project with no independent utility of its own; and (3) the PennEast Project and Garden State Expansion Project are temporally connected because they were intended to commence service at roughly the same time.¹⁹

10. To the extent Bordentown is arguing that the Garden State Project is somehow beyond our jurisdictional purview unless it is linked with the PennEast Project, we disagree. The Project is an expansion of Transco's existing interstate transportation system which extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey to its termini in the New York City metropolitan area.²⁰ The fact that pertinent construction activity will only affect facilities in a single state does not strip the Project of its interstate character and thus does not place it beyond the Commission's jurisdiction.²¹

11. We further affirm that the scope of the Garden State Project EA was appropriate. In *Delaware Riverkeeper*, the D.C. Circuit found the Commission unlawfully segmented

¹⁹ *Id.* at 17.

²⁰ April 2016 Order, 155 FERC ¶ 61,016 at PP 3-6.

²¹ *See, e.g., Oklahoma Natural Gas Co. v. FERC*, 28 F.3d 1281, 1287 (D.C. Cir. 1994) (finding that although facilities proposed by a jurisdictional interstate pipeline company would be located entirely within a single state to serve an end user in that state, the new facilities would be operationally integrated with the interstate pipeline's jurisdictional system and therefore subject to the Commission's jurisdiction, not state jurisdiction as Hinshaw pipeline facilities); *Midcoast Ventures I*, 61 FERC ¶ 61,029, at 61,156 (1992) (finding that a facility within a single state that is transporting gas in interstate commerce, "is an interstate pipeline and must apply for a certificate under section 7(c) of the NGA" "unless the facility is an intrastate pipeline that is eligible to transport gas in interstate commerce under the provisions of NGPA section 311, or is exempt from the Commission's NGA jurisdiction as a local distribution company or Hinshaw pipeline"); *United Gas Pipe Line Co.*, Opinion No. 610, 47 FPC 245 (1972) (finding that "the commingling of interstate gas with intrastate gas and the delivering of gas to intrastate markets from interstate pipelines are sufficient integration of interstate and intrastate operations to bring the uncertificated sales and facilities within the Commission's jurisdiction").

its EA where four pipeline projects were considered “connected actions” which taken together, would result in “a single pipeline,” that was “linear and physically interdependent” with “no physical offshoots.”²² The Court based its determination on the fact that the projects were unquestionably connected, under consideration by the Commission at the same time, and that the projects were financially interdependent. Courts have subsequently indicated that the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.²³

12. Under the Council for Environmental Quality’s regulations implementing NEPA, actions are “connected” if they: “[a]utomatically trigger other actions which may require environmental impact statements;” “[c]annot or will not proceed unless other actions are taken previously or simultaneously;” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.”²⁴ In evaluating whether multiple actions are, in fact, connected actions, a “substantial independent utility” test helps inform the Commission’s analysis. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”²⁵ Here, by contrast, the PennEast Project and Garden State Project are physically distinct. As described above, the Garden State Project consists primarily of compressor facilities and a meter station on Transco. None of these facilities directly connects with the PennEast Project.²⁶ In fact, the PennEast Project terminates approximately 2.5 miles south of Compressor Station 205.²⁷ Therefore, there are clear end points between the PennEast Project and the Garden State Project.

²² *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1315-16 (D.C. Cir. 2014) (*Delaware Riverkeeper*) (citing 40 C.F.R. § 1508.25(a)).

²³ *Id.* at 1326.

²⁴ 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2016).

²⁵ *See Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). *See also O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether on project “can stand alone without requiring construction of the other [projects] either in terms of other facilities required or of profitability”); *Delaware Riverkeeper*, 753 F.3d at 1316 (applying the substantial independent utility test).

²⁶ *See* EA at 47.

²⁷ *See* Transco Garden State Project Application in Docket No. CP15-89-000 (filed February 18, 2015) at 1 (Transco Application).

13. The PennEast Project is not functionally dependent on the Garden State Project. The PennEast Project will connect with Transco south of the Station 210 Zone 6 Pool and Compressor Station 205. Accordingly, Compressor Station 205 was not designed to serve as an interconnection between the PennEast Project and Transco.

14. Nor is the Garden State Project functionally dependent on the PennEast Project. Compressor Station 205 is located north of the Transco interconnect with the PennEast Project. Indeed, the NJNG and the Garden State Project precedent agreement indicates that NJNG is responsible for contracting at the Station 210 Zone 6 Pool.²⁸ Thus, the Station 210 Zone 6 Pool, and not the PennEast Project, is intended to be the supplying source for the additional capacity created by the Garden State Project. We underscore that the PennEast Project is supported by eleven other shippers.²⁹

15. Finally, the fact that the PennEast Project and the Garden State Project were originally expected to commence service within three months of each other does not support the conclusion that they are “connected actions” for NEPA purposes.³⁰ There is no evidence that one project must proceed before the other. Moreover, as explained in the April 2016 Order, neither project is financially dependent on the other.³¹

16. In short, when projects are neither functionally nor financially interdependent and have independent utility, they do not become connected actions as contemplated by NEPA simply because shippers that will use capacity to be created by one project may also use capacity that will be created by the other project.³² We therefore affirm the April 2016 Order’s determination to exclude the PennEast Project from the Garden State Project’s EA for NEPA purposes.

²⁸ April 2016 Order, 155 FERC ¶ 61,016 at P 67.

²⁹ *Id.* P 66.

³⁰ Service on the PennEast Project was expected to commence in November 2017. Phase 1 service of the Garden State Project was expected to commence in November 2016, with Phase 2 service commencing in August 2017.

³¹ April 2016 Order, 155 FERC ¶ 61,016 at PP 66-67.

³² *Myersville*, 783 F.3d 1301, 1321.

17. We also deny Bordentown's arguments that the EA should have included other natural gas projects in the area, as these claims were sufficiently addressed in the April 2016 Order.³³

2. Direct Impact Analysis

18. Chesterfield argues that the Commission violated NEPA by failing to consider the direct impacts of the SRL Project.³⁴

19. The SRL Project is an intrastate pipeline. As explained in the April 2016 order, the Commission employs a four-part test to determine whether there is sufficient federal control and responsibility over a non-jurisdictional project to warrant the environmental analysis of a project outside the Commission's jurisdiction.³⁵

20. The first factor requires an assessment of whether the regulated activity is "merely a link" in a corridor type project. Here, Chesterfield argues that the PennEast Project, Garden State Project, and SRL Project comprise a corridor-type project. But the Garden State Project does not physically connect the PennEast Project to the SRL Project. Nor do the precedent agreements indicate that gas is intended to flow through the Transco system in the manner Chesterfield contends.³⁶

21. Moreover, in assessing this factor, the Commission considers whether the jurisdictional project constitutes only a minor link to a more expansive non-jurisdictional project, examining the size and the scope of each project.³⁷ In this instance, the SRL Project is an approximately 30-mile lateral natural gas pipeline intended to traverse

³³ April 2016 Order, 155 FERC ¶ 61,016 at PP 60-65.

³⁴ Chesterfield Rehearing Request at 19.

³⁵ See April 2016 Order, 155 FERC ¶ 61,016 at PP 70-72.

³⁶ As we stated in the April 2016 Order, it is feasible, using backhaul and other methods, that natural gas from the PennEast Project could ultimately be delivered on Transco to reach the Southern Reliability Link Project. However, based upon precedent agreements, the flow of natural gas will originate from the Station 210 Zone 6 Pooling Point and terminate at Compressor Station 203. See April 2016 Order, 155 FERC ¶ 61,016 at P 73.

³⁷ *Impulsora Pipeline, LLC*, 153 FERC ¶ 61,204, at PP 20-21 (2015); *Enable Gas Transmission, LLC*, 153 FERC ¶ 61,055, at PP 83-84 (2015).

multiple counties in New Jersey. It encompasses aboveground permanent facilities including valves and a pig launcher and receiver.³⁸ On the other hand, the Garden State Project is much smaller in scale, comprising merely of updates to and additions of compressor facilities, uprating existing motors, and the construction of a meter and regulating station.³⁹ Thus, the jurisdictional Garden State Project is smaller in scope than the larger, non-jurisdictional, SRL Project.

22. The second factor considers whether a non-jurisdictional facility (here, the SRL Project) uniquely determines the location of the jurisdictional facility (here, the Garden State Project). Chesterfield argues the Garden State Project's location was determined by the SRL Project and thus alternative locations were foreclosed. Although the Garden State Project's EA limited its review of compressor site alternatives to locations that would be in close proximity to the planned SRL Project, the SRL Project's location was not wholly determinative of the location and configuration of Compressor Station 203. The SRL Project only needed to connect with the existing Transco system, not necessarily the Garden State Project's Compressor Station 203, to transport natural gas.⁴⁰ Since there were multiple points at which the SRL Project could connect with Transco, we do not find that the SRL Project's location was uniquely determinative of the Compressor Station 203 location.

23. The third factor considers the extent to which the entire project will be within the Commission's jurisdiction. Chesterfield contends this factor is satisfied because the Commission will approve the costs of the PennEast Project and Garden State Project, which in turn, will be passed onto ratepayers on the SRL Project. Thus, the SRL Project is "directly impacted by any Commission decision."⁴¹ We disagree. The SRL Project, the Garden State Project, and the PennEast Project are owned by different companies. Accordingly, each project's individual costs will not be passed from one company to another. Rather, shippers who will transport natural gas using one of the new project facilities will bear the costs for their respective movements. Further, since the SRL Project is a purely intrastate line, its tariffs will be on file with the New Jersey Board

³⁸ EA at 47.

³⁹ See Transco Application at 4.

⁴⁰ As the April 2016 Order explains, the location of the SRL Project, particularly the point where the Transco system connects to the SRL Project, is reliant upon the location of Transco's existing facilities, not necessarily the Garden State Project facilities. April 2016 Order, 155 FERC ¶ 61,016 at P 74.

⁴¹ Chesterfield Rehearing Request at 21.

of Public Utilities,⁴² and the Commission will not have jurisdiction over the permitting, licensing, funding, construction or operation of the SRL Project.⁴³ Consequently, this factor weighs against its “federalization.”

24. The last factor assesses the extent of cumulative federal control and responsibility. Chesterfield argues federal control for the SRL Project is significant because a portion of the pipeline traverses the McGuire-Dix-Lakehurst military base and therefore the Garden State Project must obtain an easement from the U.S. Department of Defense.⁴⁴ Although we acknowledge the SRL Project may need to acquire an easement in addition to other relevant federal permits, only limited federal involvement exists. Typically, a project’s federal financing, assistance, direction, regulation, or inherent approval demonstrates cumulative federal control.⁴⁵ These factors are generally absent in this case.

25. On balance, the pertinent factors weigh against a finding that the Commission must consider the direct effects of the SRL Project as part of its certificate authorization of the Garden State Project under NEPA. We nonetheless note that the cumulative impacts of the intrastate pipeline are comprehensively evaluated in the EA consistent with the Commission’s NEPA responsibility.

3. Cumulative Impact Analysis

a. Detail in Analysis

26. Chesterfield argues the Commission’s analysis of the project’s cumulative impacts upon water resources and wetlands was inadequate, lacking detail and analytics.⁴⁶ Chesterfield contends that the EA’s conclusion about the lack of cumulative effects is similar to the one the D.C. Circuit rejected in *Delaware Riverkeeper*, which found

⁴² N.J.A.C. § 14:3-1.3 (“Each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the Board for approval, with an electronic copy to Rate Counsel”).

⁴³ April 2016 Order, 155 FERC ¶ 61,016 at P 75.

⁴⁴ Chesterfield Rehearing Request at 20-21.

⁴⁵ *Algonquin Gas Transmission Co.*, 59 FERC ¶ 61,255, at 61,935 (1992).

⁴⁶ Chesterfield Rehearing Request at 21-23.

conclusory statements of “no consequence” are insufficient to fulfill an agency’s duty under NEPA.⁴⁷

27. Contrary to Chesterfield’s contention, the Commission’s analysis here is not analogous to that at issue in *Delaware Riverkeeper*. In *Delaware Riverkeeper*, the EA reviewed cumulative impacts for only one project, the Northeast Project, to the exclusion of three connected, closely related and interdependent nearby projects. There, the D.C. Circuit found the Commission’s cumulative impact assessment of only the Northeast Project and conclusory statement of no significant impacts suggested the Commission did not appropriately consider the effects of other projects in its cumulative impacts assessment.⁴⁸ Here, by contrast, the EA assessed all nearby projects and weighed their impacts in the cumulative analysis.

28. The D.C. Circuit has repeatedly held that “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.”⁴⁹

29. The EA meets these factors. First, the EA explained that despite the initial determination that the region of influence for cumulative impacts is a 0.25-mile radius from each Project component,⁵⁰ the EA nevertheless considered projects specifically identified by *Delaware Riverkeeper* in its cumulative review.⁵¹ Because the Northeast Supply Link Project and Atlantic Sunrise Project were located well beyond the Garden State Project’s region of influence, those two projects were not analyzed further.⁵² The

⁴⁷ *Id.* at 22.

⁴⁸ *Delaware Riverkeeper*, 753 F.3d 1304, 1320.

⁴⁹ *Sierra Club v. FERC*, 827 F.3d 36, 39 (D.C. Cir. 2016) (quoting *TOMAC, Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) and *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002)).

⁵⁰ EA at 46.

⁵¹ *Id.* at 46-47.

⁵² *See id.* at 46.

Leidy Southeast Expansion Project, the PennEast Project, and the SRL Project facilities in Mercer County, New Jersey, even though outside the 0.25-mile region of influence, were included in the EA's cumulative impact analysis. The EA also identified the verified or estimated amount of construction and operational impacts that would occur on wetlands in the Garden State Project area, as illustrated in Table 8 of the EA.⁵³ Table 8 identified each Garden State Project component, the wetland class and ID, and the acreage impacted. Although Chesterfield contends the EA did not adequately address the SRL Project or the PennEast Project, offering little detail about affected resources, the EA identified the proposed temporary and permanent impacts of the SRL Project,⁵⁴ in addition to an evaluation of the impacts, such as review of the specific types of wetland, the type of disturbance, and acreage affected. A similar exercise was conducted for the impacts of the PennEast Project.⁵⁵ Table 17 identified the New Jersey Department of Environmental Protection (NJDEP) classification, the length crossed, the acreage of wetlands affected during construction, and the wetlands affected during operation.⁵⁶ We therefore disagree with Chesterfield's contentions regarding our assessment of past, present, and future impacts. Finally, the EA concluded that overall the Garden State Project would not contribute significantly to the cumulative long-term impacts on wetlands with the Leidy Southeast Expansion, PennEast Pipeline, or the Southern Reliability Project. The EA considered the Garden State Project's impact assessment and project impacts as outlined in the EA⁵⁷ in addition to mitigation factors such as NJDEP permitting, Transco's site-specific implementations, and additional Commission recommendations to reach this conclusion. Consequently, the EA's cumulative impact review achieved precisely the type of review required and we find the Commission's cumulative impacts assessment appropriate.

⁵³ *Id.* at 20.

⁵⁴ *Id.* at 48 and Table 16.

⁵⁵ *Id.* at 49 and Table 17.

⁵⁶ *Id.*

⁵⁷ *Id.*

b. Reliance on Other Permits

30. Chesterfield next contends the Commission erred by finding that cumulative impacts would be minimized with implementation of the conditions associated with all applicable permits and approvals.⁵⁸ We reject this argument.

31. The Commission routinely relies on permits and review by other agencies as a component of its environmental review. It is appropriate for the Commission, as part of its independent analysis, to consider the fact that other regulatory authorities must authorize certain aspects of the Project. To that end, Transco must coordinate with state and local authorities, meet certain threshold quality standards, and comply with conditions imposed by the pertinent authorities. It is reasonable for the Commission to conclude that such standards and conditions will minimize the relevant environmental impacts, even where those permits have yet to be issued.⁵⁹

32. Chesterfield also contends that the Commission may not reasonably consider other applicable permits and approvals “since it is unlikely that those permits will address cumulative impacts.”⁶⁰ But the Commission’s EA did not rely upon cumulative impact analyses to be performed by other regulatory bodies. In its independent analysis, the Commission considered regulatory requirements imposed by other agencies in assessing the potential impacts of the Garden State Expansion Project in connection with past, present, and reasonably-foreseeable future projects within the project area affected by the proposed Project.⁶¹

⁵⁸ Chesterfield Rehearing Request at 23.

⁵⁹ See, e.g. *EarthReports, Inc. v. FERC*, 828 F.3d 949, 959 (D.C. Cir. 2016) (*EarthReports, Inc.*) (“Regardless, as noted, the Commission conducted an extensive independent review of safety considerations; the opinions and standards of – and Dominion’s future coordination with – federal and local authorities were one reasonable component.”); *Friends of Ompompanoosuc v. FERC*, 968 F.2d 1549, 1555 (2d Cir. 1992) (requirement that licensee consult with local agencies to develop measures to mitigate adverse project impact is a rational basis for a finding of no significant impact).

⁶⁰ Chesterfield Rehearing Request at 23.

⁶¹ See *EarthReports, Inc.*, 828 F.3d, 949, 957 (distinguishing cases where agency deferred to another agency’s assessment without independent evaluation).

4. Wells and Fresh Water Wetlands

33. Chesterfield argues the Commission's analysis of the Garden State Project's impact on wells violated NEPA because it was not until after issuance of the EA that Transco identified any public or private supply wells within 150 feet and up to one mile, respectively, of any construction area. Chesterfield contends that the Commission's environmental analysis was necessarily faulty as it failed to quantify the precise number of wells potentially impacted by the Project.⁶²

34. As explained in the April 2016 Order, Transco's comments on the EA provided additional information regarding wells in the vicinity of the Project, as did potentially affected landowners. In light of this information, the Commission prohibits any construction until Transco files the location of all private wells within 150 feet of Compressor Station 203 and the Chesterfield Meter Station activities undertaken by Transco.⁶³ The Commission also requires Transco to conduct pre- and post-construction monitoring of well yield and water quality for these wells.⁶⁴ The April 2016 Order directs the implementation of procedures designed to minimize and remediate those ground water resources systems,⁶⁵ and to repair, replace, or provide alternative sources of potable water if permanent impacts on a wells or springs are permanently impacted by construction.⁶⁶ These measures appropriately identify and mitigate any potential impacts to groundwater resources.

35. Chesterfield next contends that the Commission's mitigation measures are inadequate because they do not provide for independent, third party testing funded by Transco and do not contain a mechanism to force Transco to address any water quality or yield issues that may arise.⁶⁷

36. We do not find that third party testing is necessary because adequate monitoring activities have been employed. As stated above, Transco will conduct pre- and post-

⁶² Chesterfield Rehearing Request 29-30.

⁶³ April 2016 Order, 155 FERC ¶ 61,016 at P 103.

⁶⁴ *Id.*

⁶⁵ *Id.* P 101.

⁶⁶ *Id.*

⁶⁷ Chesterfield Rehearing Request at 31.

construction monitoring of well yield and water quality for all private wells within 150 feet of Compressor Station 203.⁶⁸ Moreover, Environmental Condition 14 requires Transco to report any complaints regarding well yield or water quality to the Commission, including the resolution of such complaints.⁶⁹ As for an enforcement mechanism, if post-construction monitoring determines that construction has impacted yield and water quality of the wells and springs, the Commission has the authority to require Transco to mitigate the impact.⁷⁰

37. Chesterfield contends that Transco's dewatering activities could have significant impacts on the surrounding freshwater wetlands and riparian areas due to the prolonged nature of the activities, contrary to the Commission's determination in the EA that the impacts will be minor.⁷¹ Chesterfield further argues that the Commission's finding regarding impacts to freshwater wetlands was not based on substantial evidence since NJDEP has not yet issued its Clean Water Act (CWA) permit, and the Commission should have conditioned the April 2016 Order on Transco obtaining an approved mitigation plan and freshwater wetlands permit from NJDEP and compliance with its conditions and requirements.

38. Pursuant to Transco's application, trench dewatering will be performed in a manner that does not result in silt-laden water flowing into any waterbody.⁷² Transco will also comply with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and the *Wetland and Waterbody Construction and Mitigation Procedures* (Plan and Procedures) (Volume 1, Appendix 1-B),⁷³ which will minimize erosion and enhance revegetation, and includes wetland construction techniques. If

⁶⁸ April 2016 Order, 155 FERC ¶ 61,016 at P 103.

⁶⁹ *Id.*

⁷⁰ *See, e.g., Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 76 (2006) (requiring a pipeline to mitigate any concerns regarding well yield and water quality).

⁷¹ Chesterfield Rehearing Request at 31.

⁷² Transco Application at 11.

⁷³ Commission, *Upland Erosion Control, Revegetation, and Maintenance Plan* and the *Wetland and Waterbody Construction and Mitigation Procedures*, <https://www.ferc.gov/industries/gas/enviro/guidelines/upland-pocket-guide.pdf>.

dewatering is necessary, the impacts are expected to last only a few days.⁷⁴ Contrary to Chesterfield's assertions, the April 2016 Order conditioned its approval upon Transco obtaining all applicable authorizations required under federal law,⁷⁵ and the EA noted Transco's adherence to other relevant permits is required.⁷⁶

C. Clean Water Act

1. Certificate Prior to CWA Approval

39. Bordentown and Chesterfield argue the Commission should not have issued a certificate prior to NJDEP making a determination on the permit application by Transco.⁷⁷ Chesterfield argues that the Commission's conditional permit does not cure the Commission's violation of the CWA because the CWA does not include an exception for a conditional license or permit.⁷⁸ Moreover, Chesterfield argues the Commission improperly limits the states' authority under the CWA.⁷⁹ Chesterfield argues that the April 2016 Order intrudes on the states' rights to grant, condition, or deny a Section 401 certification, specifically when it directed that any Section 401 certificates to be incorporated in the Commission's order.⁸⁰

40. As we have explained in prior cases,⁸¹ we disagree with the parties' assertion that the plain language of the Clean Water Act erects an absolute bar to Commission action on a project application prior to a state's issuance of a water quality certification. Section 401(a)(1) of the Clean Water Act provides that no federal "license or permit shall be granted until the" state certifies that any activity "which may result in a discharge into

⁷⁴ EA at 18.

⁷⁵ April 2016 Order, 155 FERC ¶ 61,016 at Appendix Condition 8.

⁷⁶ EA at 21-22.

⁷⁷ Bordentown Rehearing Request at 10; Chesterfield Rehearing Request at 24.

⁷⁸ Chesterfield Rehearing Request at 26.

⁷⁹ *Id.* at 27.

⁸⁰ *Id.* at 28.

⁸¹ *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 154 FERC ¶ 61,166, at PP 43-47 (2016); *Constitution Pipeline Company, LLC*, 154 FERC ¶ 61,046, at PP 62-69 (2016).

the navigable waters” will comply with the applicable provisions of the Act.⁸² Consistent with this language, the April 2016 Order, and specifically Environmental Condition 8, ensures that unless and until NJDEP issues the water quality certification, Transco may not begin an activity, i.e., pipeline construction, which may result in a discharge into jurisdictional waterbodies.

41. In considering statutes structured similar to the Clean Water Act, courts have affirmed agency actions authorizing projects conditioned on subsequent receipt of other necessary federal and state approvals.⁸³ For instance, in *City of Grapevine*, the D.C. Circuit held that an agency’s conditional approval of an airport runway did not violate the National Historic Preservation Act, because the Act specifically prohibited only the approval of expenditures of federal funds, and not any other approval. The Commission has likened the National Historic Preservation Act to the Clean Water Act because they each expressly prohibit a federal agency from acting prior to compliance with their terms, but those terms do not bar all agency actions.⁸⁴ And, as in *City of Grapevine*, if a certificate holder commits its own resources to further development activities prior to receipt of all federal approvals, “it does so at the risk of losing its investment”⁸⁵

⁸² 33 U.S.C. § 1341(a)(1) (2012).

⁸³ See *City of Grapevine, Tex. v. Dep’t. of Transp.*, 17 F.3d 1502 (D.C. Cir. 1994) (*City of Grapevine*) (finding that that the U.S. Department of Transportation had not violated the National Historic Preservation Act by conditioning its approval of a new airport runway on the review process required by that federal statute); see also *Myersville*, 783 F.3d at 1315, 1317-21 (finding the Commission did not violate the NGA or the Clean Air Act by conditioning its approval of new compressor station on the review process required by the Clean Air Act); *Pub. Utils. Comm’n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (noting that Commission expressly conditioned pipeline on completion of environmental review under the National Environmental Policy Act); *Delaware Department of Natural Resources and Environmental Control v. FERC*, 558 F.3d 575, 578 (D.C. Cir. 2009) (dismissing an appeal of a certificate order conditioned on the favorable outcome of Delaware’s environmental reviews because the court was “unable to see how [the Commission’s] allegedly illegal procedure causes Delaware any injury in light of [the Commission’s] acknowledgment of Delaware’s power to block the project”).

⁸⁴ See *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 72 (2009); *Broadwater Energy LLC*, 124 FERC ¶ 61,225, at P 60 (2008) (*Broadwater Energy*); *Georgia Strait Crossing Pipeline LP*, 108 FERC ¶ 61,053, at P 16 (2004).

⁸⁵ *City of Grapevine*, 17 F.3d at 1509.

42. The cases cited by Chesterfield are unpersuasive. They primarily address the extent to which the Commission must verify that a state's water quality certification is valid,⁸⁶ or simply summarize the requirements of the Clean Water Act, confirming that state certification is, of course, necessary before the Commission authorizes activities "which may result in a discharge into the navigable waters."⁸⁷

43. The Commission's approach, which ensures that a state's certification is given full effect, appropriately respects the integration of the various permitting requirements for interstate pipelines, as reflected in the Natural Gas Act and the Clean Water Act.⁸⁸ It is also a "practical response to the reality that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's issuance of its certificate without unduly delaying the project."⁸⁹

44. We further reject Chesterfield's claims that the April 2016 Order somehow limits a state's authority to issue state water quality certificates.⁹⁰ Nothing in the April 2016 Order limits state agencies from imposing conditions pursuant to their authority. By the terms of section 401(d) of the Clean Water Act,⁹¹ any limitations or monitoring prescribed in the water quality certification to ensure that the applicant will comply with federal or state standards under the Clean Water Act shall become conditions of the

⁸⁶ See *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006); see also *Keating v. FERC*, 927 F.2d 616, 624-25 (D.C. Cir. 1991).

⁸⁷ 33 U.S.C. § 1341(a)(1) (2012). See *Pub. Util. Dist. No. 1 of Jefferson Cnty. v. Wash. Dep't. of Ecology*, 511 U.S. 700 (1994) (holding that a state may include minimum stream flow requirements in a water quality certification for a hydroelectric project), see also *S.D. Warren Co. v. Me. Bd. of Env'tl. Prot.*, 547 U.S. 370, 384 (2006) (holding that FERC-licensed hydroelectric dams result in a discharge requiring state water quality certification).

⁸⁸ See *Keating v. FERC*, 927 F.2d at 622.

⁸⁹ *Broadwater Energy*, 124 FERC ¶ 61,225 at P 59; see also *AES Sparrows Point*, 129 FERC ¶ 61,245 at P 67.

⁹⁰ See *Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,046 at P 69 (clarifying that a section 401 certification is an exercise of federal authority rather than state or local authority).

⁹¹ 33 U.S.C. § 1341(d) (2012).

federal license or permit and thus control the construction and operation of the project.⁹² Nor does anything in the April 2016 Order require states to accept applications that would otherwise be deficient.

2. Environmental Condition 12

45. Bordentown argues it was improper for Environmental Condition 12 to be limited to aboveground structures.⁹³ Bordentown argues that underground facilities should also be included in the plot plan.

46. Environmental Condition 12 states that, “[p]rior to construction, Transco shall file with the Secretary, for review and approval of the Director of the OEP, a revised plot plan for all aboveground structures proposed to be placed in wetlands to avoid direct wetland impacts; or provide documentation from the NJDE Protection [*sic*] and/or the EPA that its permits allows its placement in the wetland.”⁹⁴ Environmental Condition 12 was issued to ensure that the Garden State Project complies with the Commission’s *Wetland and Waterbody Construction and Mitigation* (Procedures).⁹⁵ The Procedures identify baseline mitigation measures to minimize the extent and duration of project-related disturbance on wetlands and waterbodies.⁹⁶ Specifically, the Procedures prohibit the placement of aboveground facilities in wetlands (except when the placement of those facilities would prohibit compliance with the U.S. Department of Transportation regulations).⁹⁷ Bordentown’s request to include underground facilities in the wetland plot plan is unnecessary to ensure Transco’s compliance with the Procedures and, absent compelling reasons for adoption, we decline to modify this environmental condition. We further note that Environmental Condition No. 12 does not inhibit conditions imposed by the NJDEP under its section 404 permitting program. For the reasons explained above

⁹² See *U.S. Dep’t of Interior v. FERC*, 952 F.2d 538, 548 (D.C. Cir. 1992).

⁹³ Bordentown Rehearing Request at 11.

⁹⁴ April 2016 Order, 155 FERC ¶ 61,016.

⁹⁵ Commission, *Wetland and Waterbody Construction and Mitigation Procedures*, <https://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

⁹⁶ *Id.* at ii.

⁹⁷ *Id.* (“Do not locate aboveground facilities in any wetland, except where the location of such facilities outside of wetlands would prohibit compliance with U.S. Department of Transportation regulations”).

with regard to section 401 of the Clean Water Act, the Commission's conditional authorization is likewise consistent with section 404 of the Act.

D. Diversion of Bordentown Parcel

47. Bordentown argues the Commission erred by issuing a section 7 certificate for facilities on the Bordentown Parcel prior to the NJDEP and the State House Commissioner (SHC) granting approval of a diversion under the New Jersey Green Acres Act.⁹⁸ Bordentown explains that, under the Act⁹⁹ the Bordentown Parcel is preserved for recreational or conservation use, unless a diversion is obtained.¹⁰⁰ Bordentown contends the Commission should refrain from prejudging whether the diversion will be approved and abstain from interfering with state policy decisions.¹⁰¹ Similarly, Chesterfield requests that the Commission include a restriction prohibiting Transco from expanding its project on available land on either tract, or from transferring the property by lease or sale, to another gas company.¹⁰²

48. The Commission found a public need for the Garden State Project and determined that the route that crosses the Bordentown Parcel is the best route and location for the Project. Transco has attempted to minimize the effect on the Bordentown Parcel by locating its facilities underground, not visible to the public, and pledging to restore and reseed the affected land.¹⁰³ The Commission continues to encourage cooperation between interstate pipelines, local authorities, and affected entities regarding the treatment of this parcel of land, but also notes that the NGA and the Commission's regulations implementing that statute generally preempt state and local law that conflict

⁹⁸ Bordentown Rehearing Request at 5.

⁹⁹ The Green Acres Program proposes to "preserve and enhance New Jersey's natural environment and historic, scenic, and recreational resources for public use and enjoyment." See NJ DEPT. ENVTL. PROTECTION, *Green Acres Program*, <http://www.nj.gov/dep/greenacres/>.

¹⁰⁰ Bordentown Rehearing Request at 5.

¹⁰¹ *Id.* at 6.

¹⁰² Chesterfield Rehearing Request at 35-36.

¹⁰³ April 2016 Order, 155 FERC ¶ 61,016 at P 145.

with federal regulation, or would unreasonably delay the construction and operation of facilities approved by the Commission.¹⁰⁴

E. Request for Additional Requirements

49. Chesterfield requests that the Commission amend the certificate to include various additional conditions if it does not vacate the order.¹⁰⁵ For the reasons discussed below, we decline to impose the sought-after conditions.

1. Building Codes

50. Chesterfield argues that Transco represented that it would comply with the township's building code and coordinate with the township on permits and development approvals. Chesterfield states that such representations bind Transco and should be incorporated as conditions prior to the commencement of construction.¹⁰⁶

51. We decline to incorporate an obligation requiring Transco to abide by the township of Chesterfield's building codes. Were Transco to violate any state or local building provisions, Transco would be subject to the applicable penalties, as appropriate, set forth by the respective entities. We therefore see no need to incorporate an obligation in the certificate. We continue to encourage Transco to closely and transparently coordinate with all local authorities.

2. Setting of Funds

52. Chesterfield also argues the Commission should include a condition requiring Transco to post a bond or set aside money to fund project remediation, to compensate the township for any property damages or increase in municipal or homeowners' liability

¹⁰⁴ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding that state and local regulation is preempted by the Natural Gas Act to the extent they conflict with federal regulation or would delay the construction and operation of facilities approved by the Commission); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,403-4 (1990).

¹⁰⁵ Chesterfield Rehearing Request at 33.

¹⁰⁶ *Id.* at 34.

insurance that may result from the Garden State Project and to cover the cost of decommissioning.¹⁰⁷

53. We decline to require Chesterfield to set aside funds for costs associated with remediation, property damages, increased liability insurance, or decommissioning. Assessments of project-related damages or liability remedies are beyond the Commission's jurisdiction.¹⁰⁸ An assessment of decommissioning costs at this juncture is too speculative. If such costs are required, they should be addressed at the time of the injury.

3. Land Use Restriction

54. Chesterfield states the Commission should reconsider its rejection of a route alternative that would confine the Garden State Project's development to one tract of land. Chesterfield contends the Commission should preclude Transco from expanding the Garden State Project on available land by lease or sale to another gas company, because such a condition would limit future harm.¹⁰⁹

55. We reject this claim. As explained in the April 2016 Order, "[n]one of the alternatives or sites evaluated in the EA would meet the project objectives or offer any significant environmental advantages over the proposed project."¹¹⁰ The additional land use restrictions called by Chesterfield are unnecessary to meet any federal regulatory requirements. State and local governments are still permitted to impose land use or other restrictions, provided they are not incompatible with the conditions of our certificate authorization.¹¹¹

4. Independent Noise Survey

56. Chesterfield states a third party, not Transco, should perform the noise survey.¹¹² Chesterfield also argues the township should receive any implementation plans, revisions,

¹⁰⁷ *Id.*

¹⁰⁸ *Florida Se. Connection, LLC*, 154 FERC ¶ 61,080, at P 285 (2016).

¹⁰⁹ Chesterfield Rehearing Request at 35-36.

¹¹⁰ April 2016 Order, 155 FERC ¶ 61,016 at P 142.

¹¹¹ *See Transwestern Pipeline Co., LLC*, 122 FERC ¶ 61,165, at P 49 n.62 (2008).

¹¹² Chesterfield Rehearing Request at 36.

status reports provided to state and federal agencies, noise survey results, and complaints from local property owners.¹¹³

57. We decline to mandate an independent third party noise survey. The requirements set forth in the certificate serve as adequate mitigation mechanisms. Transco is required to file noise surveys within 60 days of placing the Compressor Stations into operation, and if noise attributable to the Project exceeds a certain threshold, Transco is required to report on what changes are needed and should install the additional noise controls to meet the level within one year. We encourage Transco to coordinate and cooperate with local authorities.

F. Inadequate Notice

58. Bordentown claims that Transco failed to make a good faith effort to notify all landowners about the proposed activity.¹¹⁴ Bordentown claims it was not notified of Transco's actions; neither in its capacity as the municipality in which the proposed activity would take place, nor as a landowner of the property upon which the proposed activities will take place. Consequently, Bordentown claims that Transco failed to make a "good faith" effort to notice.

59. We reject Bordentown's claim. First, as explained in the April 2016 Order, Transco's filed landowner list complied with the intent of the Commission's landowner notification requirements.¹¹⁵ In a March 24, 2015 filing, Transco explains that Notices were mailed to all affected landowners and those that were returned to Transco were subsequently re-mailed to new addresses.¹¹⁶ Accordingly, the record does not reflect evidence of bad faith by Transco.

¹¹³ *Id.*

¹¹⁴ Bordentown Rehearing Request at 11.

¹¹⁵ April 2016 Order, 155 FERC ¶ 61,016 at P 38. *See also* 18 C.F.R. § 157.6 (d) (2016).

¹¹⁶ Transco Updated List of Affected Landowners, Docket No. CP15-89-000 (filed March 24, 2015).

60. Moreover, notice of Transco's application was published in the Federal Register on March 13, 2015.¹¹⁷ Bordentown did not suffer injury because it intervened and meaningfully participated in the proceedings¹¹⁸ prior to the issuance of the Certificate.¹¹⁹

The Commission orders:

The requests for rehearing are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹⁷ "It is a well-established principle of law that notice by publication in the Federal Register constitutes adequate notice to all parties subject to or affected by its contents. Actual notice is not required... the notice in the Federal Register was clearly sufficient to make [the party] aware that its interests were potentially at stake before the Commission...." *Williams Natural Gas Co.*, 54 FERC ¶ 61,190, at 61,572 (1991).

¹¹⁸ *Mojave Pipeline Co.*, 45 FERC ¶ 63,005, at 65,015 (1988) ("[P]ublication in the *Federal Register* 'is sufficient to give notice of the contents of the document to a person subject to or affected by it'" (citing 44 U.S.C. §1507); *NW Cent. Pipeline Corp.*, 27 FERC ¶ 61,430, at 61,798 (1984).

¹¹⁹ See Bordentown's comments filed on March 31, 2016; Bordentown's Motion to Intervene Out-of-Time filed on 03/15/2016; and Bordentown's Resolution Opposing the Compressor Station Project passed by the city of Bordentown on January 11, 2016 which was filed with the Commission in February 2016. In the April 2016 Order, the Commission explained it had accepted late, unopposed motions to intervene in the proceedings, finding they would not delay, disrupt, or unfairly prejudice any parties to this proceeding.

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