UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company LLC	)	Docket Nos. CP17-101-007
	)	CP20-49-001

REQUEST FOR REHEARING

Pursuant to Section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717r(a), and Rule 713 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") rules of Practice and Procedure, 18 C.F.R. § 385.713, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, Surfrider Foundation, and Natural Resources Defense Council (collectively, "Intervenors") respectfully request rehearing of the Federal Energy Regulatory Commission's ("FERC" or "Commission") order reissuing a certificate of public convenience and necessity to Transcontinental Gas Pipe Line Company, LLC ("Transco") for its Northeast Supply Enhancement Project ("NESE Project" or "Project").[1]

All Intervenors are parties to this proceeding because they were granted intervention into the docket.[2] Intervenors, therefore, have the right to file this rehearing request. *See* 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713(b). This request is timely filed because 30 days after the Commission's August 28, 2025, Order falls on Saturday, September 27, 2025, meaning that the deadline for rehearing requests extends to Monday, September 29, 2025, and this request is being filed on September 29, 2025. 15 U.S.C. § 717r(a); 18 C.F.R. § 385.2007(a)(2).

I. Statement of Relevant Facts

A. The Original Certificate Proceeding.

Transco submitted its initial application for the NESE Project in March 2017. The Project would have included: (1) constructing a new compressor station in Somerset County, New Jersey, (2) increasing pipeline pressure and capacity in certain existing pipelines in New Jersey and Pennsylvania, and (3) constructing almost 27 miles of new pipeline from Sayreville, New Jersey, across the Raritan and Lower New York Bays to a hookup off Rockaway Beach, New York. FERC issued a Final Environmental Impact Statement ("FEIS") for the Project in January 2019, concluding that significant adverse environmental impacts could be mitigated adequately

[1] *Transcontinental Gas Pipe Line Company, LLC*, Order Issuing Certificate, 192 FERC ¶ 61,184 (Aug. 28, 2025) ("Reissuance Order").

[2] *Id.* P12 & n.24.

by the adoption of various conditions.[3] On May 3, 2019, FERC issued a certificate of public convenience and necessity for the Project, which was conditioned upon Transco's receipt of all applicable authorizations, including the Clean Water Act Section 401 certifications ("Section 401 certifications") from New York and New Jersey.[4] The certificate also required that Transco complete construction and put the Project into service by May 3, 2021.

In May 2020, New York and New Jersey each denied Transco's application for the Section 401 certifications.[5] New York concluded that Transco had failed to demonstrate that the offshore portion of the Project would be consistent with water quality standards. Transco did not appeal those denials. It also did not contemporaneously file any new applications seeking to obtain the missing Section 401 certifications. Instead, on March 19, 2021, Transco submitted a request to FERC under 18 C.F.R. § 385.2008(a) for a two-year extension of the certificate's in-service deadline. FERC granted Transco's request and extended the deadline to May 3, 2023.[6]

On April 27, 2023, still having failed to reapply for or secure the Section 401 certifications, Transco asked FERC for another two-year extension to its in-service date.[7] The Commission asked Transco for additional information about the steps that Transco had taken to obtain the Section 401 certifications. Transco confirmed that it had not taken any steps, except to examine "how it might revise the scope of the project facilities to avoid impacts to offshore water resources."[8] Despite Transco's failure to litigate the states' denials or to reapply for water quality certifications, FERC found that good cause existed to grant Transco's request, but only for one year. The Commission noted that it was "concerned" that Transco had not submitted new applications under the Clean Water Act and had stopped paying for property easement rights that were necessary to complete the Project.[9] The Commission anchored its decision in the finding that the Project was "still supported by two long-term precedent agreements with National Grid

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[3] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101, Final Environmental Impact Statement, Accession No. 20190125-3001 (Jan. 25, 2019) ("FEIS").

[4] *Transcontinental Gas Pipe Line Company, LLC,* Order Issuing Certificate, 167 FERC ¶ 61,110, Appx. A, Environmental Condition 10 (May 3, 2019) ("Certificate Order").

[5] Letter from Diane Dow, Div. Land Use Regul., N.J. Dep't Env't Prot., to Joseph Dean, Transco (May 15, 2020) ("NJ 401 Denial") (Exhibit A to *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP-17-101 & CP20-49, Protest and Motion to Intervene by Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation, Accession No. 20250624-5513 (June 24, 2025) ("Joint Protest")); Letter from Daniel Whitehead, Div. Env't Permits, N.Y. State Dep't Env't Conservation to Joseph Dean, Transco (May 15, 2020) ("NY 401 Denial") (Exhibit B to Joint Protest). New York and New Jersey also denied Transco's Section 401 applications multiple other times prior to the 2020 denials.

[6] *Transcontinental Gas Pipe Line Company, LLC,* Order Granting Request for Extension of Time, 175 FERC ¶ 61,148 (May 20, 2021).

[7] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101, Request for Extension of Time until May 3, 2025, to Construct and Place into Service its Northeast Supply Enhancement Project, Accession No. 20230427-5427 (April 27, 2023).

[8] *Transcontinental Gas Pipe Line Company, LLC,* Order Granting Extension of Time, 186 FERC ¶ 61,038, P13 (Jan. 18, 2024).

[9] *Id.* at P17.

for one hundred percent of the project's capacity."[10] FERC concluded that Transco's "continued commitment to the National Grid contracts and revising the project in response to the New York and New Jersey water quality permit denials supports our action."[11]

Despite Transco's prior assurances to FERC, on April 10, 2024, Transco informed FERC that it planned to let the Project certificate expire. On June 10, 2024, the Commission vacated the Project's certificate and dismissed as moot a then-pending rehearing request.[12] The precedent agreements Transco signed with its two shippers also lapsed.

B. Transco's Petition for Reissuance of the Expired and Vacated Certificate.

On May 29, 2025, Transco filed a "petition" in its original docket requesting "reissuance" of its certificate that had been vacated nearly a year earlier.[13] On June 3, FERC issued a notice of the petition and established a deadline for protests and interventions of June 24, 2025.[14] Intervenors submitted timely motions to intervene and protests on June 24, 2025.[15] The motions to intervene were not opposed.

On August 28, 2025, FERC issued an order that purported to "reissue" a certificate for the NESE Project.[16] The Reissuance Order granted the certificate based primarily on the record for the previous certificate, including the 2019 FEIS; however, FERC selectively addressed new information. For example, in the Reissuance Order, FERC, for the first time, analyzed the NESE Project's compliance with the current National Ambient Air Quality Standard for particulate matter, which had been lowered since the 2019 FEIS was completed.[17] FERC also considered studies that Transco submitted with its answer to the protests, as well as the fact that Transco had recently re-signed precedent agreements with its shippers.[18] The Reissuance Order granted the certificate subject to the environmental conditions listed in the original Certificate Order, as well as several new conditions.[19] The Reissuance Order also noted that the timely, unopposed motions to intervene, including that of Intervenors, had been granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c)(1),[20]

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[10] *Id.* at P16.

[11] *Id.* at P17.

[12] *Transcontinental Gas Pipe Line Company, LLC*, Order Vacating Certificate and Dismissing Rehearing, 187 FERC ¶ 61,145 (June 10, 2024).

[13] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Petition for Expedited Reissuance of Certificate Authority, Accession No. 20250529-5275 (May 29, 2025) ("Petition").

[14] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Notice of Petition and Establishing Intervention Deadline, Accession No. 20250603-3065 (June 3, 2025).

[15] Joint Protest, *supra* note 5; *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Protest and Motion to Intervene of Natural Resources Defense Council, Accession No. 20250624-5365 (June 24, 2025) ("NRDC Protest").

[16] Reissuance Order P1.

[17] *Id*. at PP83–85.

[18] *Id*. at PP26–27.

[19] *Id*. at Ordering Paragraph (B)(3).

[20] *Id*. at P12 & n.25.

and accepted both Transco's answer[21] to the filed protests and several Intervenors' answer[22] to Transco's answer.[23]

II. Statement of Issues

A. FERC does not have any statutory authority to reissue a previously expired and vacated certificate. Therefore, the Reissuance Order is in excess of FERC's statutory authority and is arbitrary and capricious, 5 U.S.C. § 706(2). The NGA provides FERC the power to grant applications for certificates or to grant temporary certificates where an application is pending, 15 U.S.C. § 717f(c)–(e), but it does not empower FERC to grant petitions for reissuance of previously expired and vacated certificates. Agencies have no authority beyond that which is provided by statute, *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022); *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024), so the fact that no provision of the NGA prohibits FERC from reissuing a certificate is irrelevant. FERC cannot lawfully grant the Petition by claiming to treat it as an application under 15 U.S.C. § 717f, because the Petition does not comply with the requirements of the NGA, including the requirement to contain the components FERC by regulations requires, § 717f(d). FERC cannot make up for this lack of statutory authority by relying on its discretion to manage its own docket. Nor can FERC create authority where there is none by analogizing to the situation in which FERC reissues a certificate previously vacated by a court; no statutory provision gives FERC the power to take such action in the absence of a court vacating and remanding a certificate.

B. FERC's treatment of Transco's Petition as an application, despite the fact that the Petition does not comply with FERC's regulations on applications because it does not contain the components required by 18 C.F.R. §§ 157.1–157.23, § 380.12, is arbitrary and capricious, 5 U.S.C. § 706(2). The Commission's handling of Transco's application also does not comply with FERC's regulations governing in-service deadlines, 18 C.F.R. § 385.2008, and is inconsistent with FERC's precedent about the importance of imposing and enforcing such deadlines, and is therefore arbitrary and capricious, 5 U.S.C. § 706(2).

C. The process FERC provided was insufficient to meet the NGA's requirement that the Commission set a Section 7 matter for hearing, 15 U.S.C. § 717f(c)(1)(B), that allows

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[21] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Motion for Leave to Answer and Answer of Transcontinental Gas Pipe Line Company, LLC to Protests, Accession No. 20250805-5228 (Aug. 5, 2025) ("Transco Answer").

[22] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Answer to Transco's Motion for Leave; Motion for Leave to Answer and Proposed Answer, Accession No. 20250820-5089 (Aug. 20, 2025) ("Intervenors' Answer").

[23] Reissuance Order P13.

"all interest[ed] parties to be heard and therefore facilitates full presentation of the facts necessary" to FERC's decision under the NGA. *Cascade Nat. Gas Corp. v. FERC*, 955 F.2d 1412, 1425 (10th Cir. 1992) (quoting *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529, 538 (1979)). The timeline and opportunities for comment were insufficient to allow the public to provide input on key components of the record, including materials submitted after the only comment window FERC provided closed and within days of the Commission issuing the Reissuance Order. The record FERC had before it, therefore, was incomplete and one-sided. In employing a radically truncated process, FERC violated its own regulations, including the requirement that the applicant submit Resource Reports with its application, *see* 18 C.F.R. § 157.14(a)(7); 18 C.F.R. § 380.12, and that FERC issue a schedule for its environmental review, 18 C.F.R. § 157.9(b). The Commission also acted arbitrarily and capriciously in conducting this proceeding in a manner that is completely inconsistent with its handling of other Section 7 applications. The Reissuance Order's attempt to explain and justify FERC's process also is arbitrary and capricious. 5 U.S.C. § 706(2).

D. FERC's findings of Project need and benefits are arbitrary and capricious, 5 U.S.C. § 706(2), and violate the NGA, 15 U.S.C. § 717f. FERC's conclusions are not supported by the evidence in the record and, had FERC not arbitrarily truncated the proceedings, Intervenors could have submitted additional evidence, attached to this rehearing request, that undermines the conclusions FERC reached.

1. In finding project need, FERC arbitrarily relied on a one-sided set of evidence that Project opponents did not have a meaningful opportunity to rebut before FERC issued the Reissuance Order. In particular, FERC relied upon National Grid's Final Gas Systems Long-Term Plan Addendum and the Levitan Study, which Transco attached to its Answer to Intervenors' Protests. Those documents were originally filed in a New York Public Service Commission Proceeding. FERC issued the Reissuance Order, however, before either the comment period on those documents at the Public Service Commission had run or the window to move for leave to answer Transco's Answer in the FERC proceeding had closed.

2. FERC's reliance on the projected gas supply/demand shortfall in National Grid's Addendum is arbitrary and capricious, 5 U.S.C. § 706(2), because the Addendum was based on National Grid's 2024 demand day forecast, but the Addendum itself admitted that National Grid's newer 2025 forecast showed a much slower rate of demand growth. FERC's failure to ask Transco for additional information to clarify this discrepancy was arbitrary and capricious. *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019). Additionally, had FERC not arbitrarily truncated the proceeding, Intervenors could have submitted evidence undermining the

Addendum's conclusions, including: National Grid's 2025 forecast, which does not predict a winter supply shortfall until winter 2041–42, after the 15-year term of Transco's precedent agreements; a New York Public Service Commission Order; and two reports on the Addendum.

3. The Reissuance Order fails to grapple with evidence that undermines the value of the precedent agreements as evidence of project need. *New Jersey Conservation Found. v. FERC*, 111 F.4th 42, 60–61 (D.C. Cir. 2024). FERC did not consider plausible evidence of incentives for LDCs to exploit their captive ratepayers by purchasing capacity ratepayers will not use but will be required to subsidize. It does not acknowledge that the Project will increase costs for National Grid's gas ratepayers while potentially reducing electricity costs statewide, creating a cross-subsidization where downstate gas ratepayers fund benefits for statewide electricity customers. It also fails to examine National Grid's plans to employ releases and off-system sales when possible.

4. FERC's conclusion that the Project would help to improve reliability during winter storm events similar to Winter Storm Elliott is arbitrary and capricious, 5 U.S.C. § 706(2), because it is not supported by the record and because FERC fails to draw a rational connection between the record facts and this conclusion. *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The causes of curtailments during Winter Storm Elliot were not a shortage of pipeline capacity into Downstate New York, but producer under-performance and upstream delivery disruptions. FERC fails to point to evidence supporting its conclusion that additional pipeline capacity could help to prevent similar low-pressure issues, or to explain how it reached this conclusion.

E. FERC's assessment of the Project's environmental harms, which consists of a 1-page Environmental Assessment Report and discussion in the Reissuance Order concluding that continued reliance on the 2019 FEIS was appropriate, falls short of the requirements of both National Environmental Policy Act, 42 U.S.C. § 4336(b)(1), and the NGA, 15 U.S.C. § 717f. The conclusion that continued reliance on the 2019 FEIS is appropriate is also arbitrary and capricious. 5 U.S.C. § 706(2).

1. FERC's use of an Environmental Assessment Report ("EAR") indicating that environmental review for the Project was complete (based on a finding that no environmental review beyond the 2019 FEIS was required) violates FERC's regulations and its precedent. FERC's regulations require preparation of an environmental assessment or environmental impact statement for a pipeline, unless the project falls into a categorical exclusion under 18 C.F.R. § 380.4, or is

an auxiliary installation or replacement facility under § 2.55, neither of which is applicable here. 18 C.F.R. § 380.05(b)(1). Because this pipeline is a "major" one in a new right-of-way, an environmental impact statement is required. 18 C.F.R. §§ 380.05(b)(1), 380.6(a)(3). In other instances, in which FERC has used an EAR indicating that environmental review is complete, FERC staff typically verified that a project completed under a blanket certificate complied with the environmental requirements applicable to blanket certificate projects, and FERC staff provided more justification for their determination that environmental review was complete.

2. FERC's continued reliance on the 2019 FEIS, despite evidence demonstrating that several of its conclusions have since been invalidated, is arbitrary and capricious, 5 U.S.C. § 706(2), and violates the National Environmental Policy Act. Additionally, this reliance on conclusions that are no longer supported renders FERC's weighing of the project's harms and benefits arbitrary, meaning that its decision that the Project is required by the public convenience and necessity was issued in violation of the NGA, 15 U.S.C. § 717f. The FEIS's conclusions about the sedimentation impacts of jet trenching have been undermined by the New York Department of Environmental Conservation's determination that the FEIS failed to support an estimate of sediment loss that was a fraction of the estimate used for other projects. The FEIS's conclusions about impacts of clamshell dredging relied on an assumption that Transco would slow the speed of dredging, but, as the New York Department of Environmental Conservation noted, FERC never established what speed would be acceptable. Additionally, Transco is now proposing an accelerated construction schedule that may be incompatible with slowed dredging, especially when factoring in time-of-year restrictions on construction. The FEIS's conclusion that Transco could rely on a 500-foot mixing zone is inconsistent with the New York Department of Environmental Conservation's determination that a zone that large was inappropriate, given the sensitive ecosystem in the area of the Project, and modeling demonstrating that water quality standards would be exceeded even at the boundaries of a 500-foot mixing zone. The FEIS's conclusion that mitigation could reduce water quality impacts to a less-than-significant level has been undermined by the states of New York and New Jersey denying water quality certifications for the project and, therefore, finding that its impacts could not, in fact, be adequately mitigated.

3. FERC's failure to prepare an EIS or supplemental EIS for the project violates NEPA's requirement to prepare an EIS for projects that will have a significant environmental impact, 42 U.S.C. § 4336(b)(1), and violates FERC's regulations requiring an EIS for major pipeline projects in new rights-of-way, 18 C.F.R. §§ 380.05(b)(1), 380.6(a)(3). FERC has failed to demonstrate that its decision not

to prepare a supplemental EIS was based on an informed exercise of agency discretion and a reasonable determination that new information did not demonstrate that the project will "'affect the quality of the human environment in a significant manner or to a significant extent not already considered'" and did not " 'provide[] a seriously different picture of the environmental landscape.'" *See Friends of Cap. Crescent Trail v. FTA*, 877 F.3d 1051, 1060 (D.C. Cir. 2017) (quoting, first*, Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373–74 (1989), then *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004)); *Marsh*, 490 U.S. at 366–77; *Mayo v. Reynolds*, 875 F.3d 11, 16 (D.C. Cir. 2017).

III. Arguments in Favor of Rehearing

A. FERC Does Not Have Authority to Reissue a Previously Expired and Vacated Certificate.

The NGA does not provide FERC with the authority to grant a certificate for a pipeline except in response to an application that fulfills the requirements of Section 7. Because there is no such application here, FERC has no authority to "reissue" a certificate that it had previously vacated after Transco indicated that it would allow the certificate to expire. While the Commission does have the authority to extend the in-service date for expired certificates, effectively giving those certificates new leases on life, it has regulations and precedents establishing the very narrow circumstances under which FERC would allow that to happen. *See* 18 C.F.R. § 385.2008.[24] Here, both the Commission and Transco have very clearly stated that they are not treating Transco's Petition as a request to extend the in-service date for an expired certificate.[25] Indeed, as Intervenors demonstrated in their Protests, Transco has not and could not meet the standards required to obtain an extension for its expired certificate.[26] Instead, Transco asked, and FERC agreed to take the novel approach of reissuing an expired and vacated certificate.

FERC provides several explanations for why it believes such a reissuance is proper: that no law expressly prohibits it; that FERC's authority to issue a certificate in response to a "petition" is the same as its authority to issue a certificate in response to an application; that FERC is merely exercising discretion to manage its own docket; and that the situation is analogous to when a court vacates a certificate. None of these explanations, however, succeeds or can transform the Reissuance Order that was arbitrarily and capriciously granted in excess of FERC's statutory authority, 5 U.S.C. § 706(2), into a lawful order.

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[24] *See also* Joint Protest, *supra* note 5, at 3–4.
[25] Certificate Order PP19, 21; Transco Answer, *supra* note 21, at 1–2, 4–5.
[26] Joint Protest, *supra* note 5, at 4–5; NRDC Protest, *supra* note 15, at 3–4.

FERC gets the law entirely backwards when it says that "while commenters claim that the Commission is not allowed to reissue the certificate authorizing the project, they fail to point to any section of the NGA, Commission rule, or Commission precedent to substantiate that assertion."[27] Agencies' powers are limited to those created by statute. Therefore, it is *FERC* that must identify where the NGA permits it to re-issue a vacated and expired certificate, rather than the burden being on Intervenors to point to a provision of law that prohibits it. *Nat'l Fed'n of Indep. Bus.*, 595 U.S. at 117; *Marin Audubon Soc'y*, 121 F.4th at 912 (quoting *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 301 (2022)).

FERC is wrong that Section 7 itself allows FERC to reissue a previously expired and vacated certificate. FERC claims that "our authority under section 7 of the NGA to reissue a certificate of public convenience and necessity is no different than our authority to issue a certificate in the first instance."[28] The NGA provides only that the Commission can grant applications for certificates or grant temporary certificates where an application is pending. 15 U.S.C. § 717f(c)–(e). It does not provide for "reissuing" or re-granting a previously expired and vacated certificate in response to a "petition." The NGA also grants FERC the authority to attach conditions to a certificate order, including in-service deadlines. *Id*. at § 717f(e). When the Commission grants an extension of time of an in-service deadline pursuant to 18 C.F.R. § 385.2008, it is therefore merely exercising its authority to amend conditions it had previously attached to certificates. But that is not what FERC is doing here, as the Reissuance Order makes clear.[29]

Further, FERC cannot claim to be acting under Section 7 while failing to comply with the requirements of that section. FERC says that "[b]ecause the facilities Transco requests reauthorization to construct and operate will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of NGA section 7, subsections (c) and (e) [15 U.S.C. § 717f(c), (e)]."[30] Neither Transco nor FERC has actually complied with the requirements of those statutory sections, however. The NGA gives FERC the authority to grant a certificate "to any qualified applicant therefor, authorizing the whole or any part of the [activity] covered by the application." 15 U.S.C. § 717f(e). An application is therefore required. The NGA further requires that "[a]pplication for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require." *Id*. at § 717f(d). There is no application here, though. There is only a "petition," which contains none of the elements required by the NGA or, as explained *infra*, Section B, by FERC's regulations.

[27] Reissuance Order P21.
[28] *Id*. at P21.
[29] *Id*. at PP19, 21.
[30] *Id*. at P16. *See also id.* at P21.

FERC's claim that the decision whether to issue a new docket number for Transco's Petition falls under FERC's discretion to manage its own docket and that creating a new docket number would prevent parties already engaged in the existing docket from knowing about the new application,[31] entirely misses the point of why a new docket number is needed. A new docket number is needed because a new application is needed, as explained above. FERC cannot exercise discretion that the NGA does not provide. Moreover, reviewing the Petition on the existing docket, without the requirement for an application, is not the only way to ensure that entities who intervened in or commented on the existing docket are informed of a new, related application.[32] FERC could always file a copy of the notice of the new application in the existing docket, thereby notifying parties and commenters to the existing docket that they must intervene in the new docket. FERC required existing parties to re-intervene in response to Transco's Petition,[33] so as long as FERC issued notice in this docket that intervention was required in the new docket, the existing parties would not face any greater prejudice from there being a new application and docket number. Or, if FERC were committed to keeping the same parent docket number as part of its discretion over management of its dockets, FERC could have required Transco to file a new application, meeting all of the statutory and regulatory requirements, in a sub-docket to the existing docket.

FERC's assertion that this situation is analogous to the situation that occurs when a court vacates a certificate,[34] is incorrect. FERC claims that just like when it reissued a certificate that had been vacated by a court in *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232, at P 24 (2022), *order on reh'g,* 183 FERC ¶ 61,048, here "the Commission considered the existing record, as well as the circumstances that had changed since the original certificate was issued."[35] The fact that FERC followed a similar procedure here as in *Spire STL* is not, however, contested; what is contested is whether FERC had the authority to reissue a certificate it had vacated. As Intervenors explained in their Answer, FERC has not established that it can invoke these procedures at will, in the absence of a court order.[36] Nor has FERC responded to Intervenors' argument that the analogy breaks down because, here, there is no court opinion guiding the Commission as to which elements of the previous record or decision must be revisited.[37] When a court vacates a Commission order because of specifically identified legal deficiencies, the Commission needs only to supplement the record or its analysis as necessary to correct those specific deficiencies. The applicant and the parties to the docket in such a situation, therefore, have clear notice of which issues the Commission will be addressing upon remand. Here, by contrast, FERC largely took Transco at its word about which relevant circumstances have

[31] *Id*. at P14.
[32] *See id.*
[33] Notice of Petition and Establishing Intervention Deadline, Accession No. 20250603-3065, *supra* note 14.
[34] Reissuance Order P19.
[35] *Id*.
[36] Intervenors' Answer, *supra* note 22, at 3.
[37] *Id*. at 3–4.

changed and which have not.[38] And, for the first time in the Reissuance Order, FERC made some of its own judgments about which circumstances had changed sufficiently to warrant additional analysis.[39]

As Intervenors explained, a more apt analogy would be a situation in which a federal court litigant opts to voluntarily dismiss a case when faced with court deadlines it will not meet.[40] Even a dismissal without prejudice does not give such a litigant the ability to simply reopen the case at its request. Instead, a litigant seeking to reopen such a case would need to either file a new action or satisfy the demanding standard of Federal Rule of Civil Procedure 60(b), such as by showing mistake, fraud, or newly discovered evidence that could not reasonably have been presented earlier. Fed. R. Civ. P. 60(b); *see Waetzig v. Halliburton Energy Servs.*, 145 S. Ct. 690 (2025). Neither Transco nor FERC has identified any mistake, fraud, newly discovered evidence, or any other circumstances analogous to those that would justify reopening a voluntarily dismissed case in federal court.

FERC also is wrong that its decision in the Jordan Cove project provides support for its decision to reissue the certificate in the instant docket.[41] In Jordan Cove, the Commission was not acting on a petition to reissue an expired and vacated certificate; it was acting on a request for rehearing of an existing certificate, as well as a number of other procedural motions. 139 FERC ¶ 61,040 (2012). FERC determined that, because Jordan Cove's proposal had changed from an import terminal to an export terminal in the time since the Commission had issued the facility its NGA authorization, FERC would vacate the certificate.[42] Because the Jordan Cove order says nothing about reissuing a vacated certificate, whether and to what extent the changes in the Jordan Cove project were more or less extensive than the changes to the NESE project is irrelevant.[43] The Jordan Cove case in fact supports the notion that it would create significant uncertainty for FERC to suddenly start revisiting its vacatur decisions years after they are made, as it is attempting to do here. Jordan Cove and other applicants—among others—must be able to take FERC at its word that vacatur decisions are final and can be relied upon. When Jordan Cove asked FERC to approve its project after FERC denied it in 2016, it did not simply request reconsideration in its old docket. To the contrary, Jordan Cove filed a new docket because it understood that its new attempt constituted a new application that could not be stapled onto its old denial.

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[38] Transco Answer, *supra* note 21, at 5.

[39] *See, e.g.*, Reissuance Order P73 (discussing flooding); *id*. at PP83–85 (providing new analysis of compliance with $PM_{2.5}$ NAAQS); *id*. at PP89–94 (providing new analysis of general conformity); *id*. at P105 (providing new analysis of cumulative impacts).

[40] Intervenors' Answer, *supra* note 22, at 4 n. 27.

[41] *See* Reissuance Order P20.

[42] *Id.* at P25.

[43] *See id.*

B. FERC's Treatment of Transco's Request to Reissue the Certificate Violates FERC's Regulations and Past Precedent.

FERC attempts to argue that there is no difference between how it is handling Transco's request and how it would treat a new application by Transco for a certificate.[44] However, if FERC required that Transco file a new application for a certificate, it would have to comply with the requirements of the Commission's regulations governing applications, 18 C.F.R. §§ 157.1–157.23, including the requirement to submit multiple resource reports, § 157.14(a)(7) (requiring applications to contain resource reports as described in 18 C.F.R. § 380.12). Transco's Petition included none of the required elements of an application—it did not contain updated resource reports that accurately reflected basic elements, such as 2025 cost estimates for the Project or an assessment of the Project's air quality impacts based on the standards in place in 2025. In the absence of a compliant application, FERC cannot lawfully grant a certificate. FERC's grant of a certificate despite the lack of a complete application was therefore arbitrary and capricious, 5 U.S.C. § 706(2).

The Commission's handling of Transco's application also does not comply with FERC's past precedent governing in-service deadlines and is therefore arbitrary and capricious, 5 U.S.C. § 706(2). FERC's dismissal of the discussion in prior Commission orders of the importance of construction deadlines as relevant only to extension requests,[45] entirely misses the point that FERC's decision to reissue a long-expired, long-vacated certificate creates the same massive uncertainty that in-service deadlines and FERC's regulations governing them are designed to prevent. Applicants should not be allowed to circumvent construction deadlines, whether through applications for extension or novel petitions for reissuance. Deadlines on certificates protect "the information supporting FERC's public convenience and necessity determinations from going stale with the passage of time." *Sierra Club v. FERC*, 97 F.4th 16, 20 (D.C. Cir. 2024) (quoting *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P16 (2020)). Deadlines prevent neighboring landowners from indefinitely being unable to use their land in a manner that might be incompatible with a project. *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 10 (2012)). Deadlines also "prevent developers from holding on to certificates for so long that they 'inhibit a potential competitor from pursuing its own project to serve the same market.'" *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 9). FERC has failed to explain why the same concerns that limit its grant of extensions should not also keep it from reissuing expired and vacated certificates. If FERC could resurrect the certificate at issue here, how many years must pass after the expiration of a certificate before it has been too long for the applicant to attempt to resurrect it? Landowners and other users of land would literally never know when they could count on a project being truly dead, nor would other pipeline companies or local distribution companies have any certainty whether a project may be resurrected. FERC also

[44] *Id*. at P21.
[45] *Id*.

would be unable to evaluate whether new pipeline proposals are needed if there is always the possibility that a project that has been vacated might come back. FERC's regulations governing the extension of in-service deadlines are designed to avoid exactly these problems, and the Commission's refusal to force Transco to adhere to them by inventing a process that effectively accomplishes exactly the same outcome violates its own regulations.

C. The Commission's Arbitrarily Truncated Process Failed to Comply with the NGA and FERC's Regulations and Failed to Allow for the Creation of a Complete Record.

While FERC asserts that it granted the Petition pursuant to its authority under Section 7, it failed to provide either required or adequate opportunity for public engagement and review. Section 7 requires that the Commission "set the matter for hearing." 15 U.S.C. § 717f(c)(1)(B). Even if the Commission is entitled to some flexibility in determining how to structure its proceedings, it must still provide for a hearing that allows for "all interest[ed] parties to be heard and therefore facilitates full presentation of the facts necessary" to FERC's decision under the NGA. *Cascade Nat. Gas Corp. v. FERC*, 955 F.2d 1412, 1425 (10th Cir. 1992) (quoting *United Gas Pipe Line Co. v. McCombs*, 442 U.S. 529, 538 (1979)). The FERC process here did not satisfy this requirement and, therefore, violated the NGA.

The dramatic curtailment of opportunities for meaningful public input caused by FERC's made-up two-month "reissuance" process resulted in the Commission failing to provide the "hearing" required by the NGA. *See* 15 U.S.C. § 717f(c)(1)(B). The process did not qualify as a "hearing" because it did not allow for the full presentation of the necessary facts. *See Cascade Nat. Gas Corp.*, 955 F.2d at 1425. FERC's record, instead, was one-sided and incomplete. As discussed below in more detail, the inadequate process the Commission provided here left FERC without critical information on both the Project's need and benefits, *see infra* Section III.D, and its harms, *see infra* Section III.E.

The process FERC provided for here stands in stark contrast to the typical Section 7 "hearing" and violates key FERC regulations. If Transco had been required to file a new application, the initial intervention and protest window would be the first of many opportunities for the public to learn about the Project and file comments on it. The history of this docket demonstrates the extent of public input, which typically occurs on a Section 7 application and was absent here. Transco filed its original application on March 27, 2017, and on April 6, 2017, FERC provided 21 days to intervene and protest the application.[46] FERC then issued an advanced notice of its planned schedule for environmental review on January 3, 2018, which listed the intended dates for the issuance of the FEIS and the 90-day federal authorization

[46] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, PF16-5-000, Notice of Application, Accession No. 20170406-3006 (April 6, 2017).

decision deadline.[47] The Commission made the draft environmental impact statement available for public review and comment on March 23, 2018, and gave 52 days to comment.[48] FERC then issued a revised schedule for its environmental review on September 6, 2018,[49] and the FEIS on January 25, 2019.[50] FERC only issued the order granting the certificate on May 3, 2019.[51] As FERC notes, the Commission accepts comments throughout the pendency of a docket, which, during the proceedings on the original application for the NESE Project, allowed the public the opportunity to review the many new items the company and FERC added to the docket, including the conformity analysis and the new information submitted by Transco.

Here, Transco filed a novel petition to suddenly request the resurrection of an abandoned project with a vacated certificate. The 21-day comment period was not, in this circumstance, long enough to evaluate the veracity of Transco's claims that nothing had changed since the grant of the original certificate. Numerous organizations, including some of the Intervenors, requested an extension "to allow community members, experts, and local officials the opportunity to thoroughly review and respond to this reapplication."[52] Given the unprecedented nature of Transco's request and the limited amount of time provided to comment on Transco's Petition, Intervenors necessarily focused their comments on Transco's misplaced claims that reissuing its vacated certificate was lawful and procedurally appropriate. Commenters also addressed the need for the legally required process and for full information and adequate time to respond.

FERC further deviated from its standard "hearing" process under Section 7 by not giving the public any sense of a schedule for the Commission's review or whether additional comment opportunities might occur. For example, FERC unlawfully allowed the Project to skip National Environmental Policy Act ("NEPA") review, *infra* Section III.E., and did not provide a notice of schedule for environmental review as it normally does and as its regulations require. 18 C.F.R. § 157.9(b) ("for each application that will require an environmental assessment or environmental impact statement, notice of a schedule for the environmental review will be issued within 90 days of the notice of application, and subsequently published in the Federal Register"). That the

[47] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101-007, Notice of Schedule for Environmental Review of the Northeast Supply Enhancement Project, Accession No. 20180103-3005 (Jan. 3, 2018).

[48] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101-007, Notice of Availability of the Draft Environmental Impact Statement for the Proposed Northeast Supply Enhancement Project, Accession No. 20180323-3010 (Mar. 24, 2018).

[49] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101-007, Notice of Revised Schedule for Environmental Review of the Northeast Supply Enhancement Project, Accession No. 20180906-3063 (Sept. 6, 2018).

[50] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101-007, Notice of Availability of the Final Environmental Impact Statement for the Proposed Northeast Supply Enhancement Project, Accession No. 20190125-3014 (Jan. 25, 2019).

[51] *Transcontinental Gas Pipe Line Company, LLC*, Order Denying Rehearing and Stay, 171 FERC ¶ 61,031 (April 16, 2020).

[52] *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP17-101, Comment by New Jersey League of Conservation Voters *et al.*, Accession No. 20250620-5298 (June 20, 2025).

process FERC employed here violated the Commission's regulations is both a stand-alone basis for granting rehearing and further evidence that the process FERC used fell short of adhering to the NGA's requirement that FERC conduct a "hearing."

FERC's failure to follow the standard Section 7 process also created a serious information deficit for the public. Had Transco been required to file a new application, that application would have included updated Resource Reports. *See* 18 C.F.R. § 157.14(a)(7); 18 C.F.R. § 380.12. Those updated Resource Reports would have provided the public with a much more complete body of information to review and comment on in their protests. Allowing Transco to proceed without these Resource Reports not only violated FERC's regulations, it also caused the only comment window given to the public to be far less meaningful than in standard Section 7 processes, thus failing to constitute a "hearing."

The process here was also compressed into a far shorter window of time than standard Section 7 proceedings. While most Section 7 proceedings involve information being submitted to the docket after the initial application is filed and the comment window on that application closes, that process usually unfolds over many months, not mere weeks. Here, despite Transco's assertion that FERC could reissue the Certificate based on the same 2019 record, key pieces of information that FERC relied upon were submitted to the docket *after* the only comment window closed and with little to no time for the public to digest them.

Transco appended two new studies on the alleged need for the Project to its August 5, 2025 Answer: National Grid's Long-Term Plan Addendum[53] and a study by Levitan and Associates, prepared for National Grid.[54] FERC did not even give the public the 30 days its regulations provide for parties to seek leave to answer an answer, 18 C.F.R. § 385.213(d)(2)(ii), before it issued the Reissuance Order. Answers to answers are allowed to aid the Commission in its decision-making process, but FERC inexplicably issued the Reissuance Order a full week before that 30-day period expired. The Reissuance Order also came before the comment period on the two studies attached to Transco's Answer closed at the New York State Public Service Commission, where the documents were originally filed.[55] FERC also issued a draft conformity analysis on June 24, 2025, and a final version only sixteen days before it issued the Reissuance Order. Even on the same day FERC issued the Reissuance Order, basic information continued to

[53] National Grid, Final Gas System Long-Term Plan Addendum (July 2, 2025) ("Long-Term Plan Addendum") (attached to Transco Answer, *supra* note 21).

[54] Levitan & Associates, Inc., Assessment of Economic Benefits in NYISO's Wholesale Electricity Market Attributable to Transco's Northeast Supply Enhancement Project (June 27, 2025) ("Levitan Study") (attached to Transco Answer, *supra* note 21).

[55] *In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid*, NYPSC Case 24-G-0248, Notice Establishing Comment Deadline (July 25, 2025), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=366486&MatterSeq=73326 (establishing Sept. 5, 2025 comment deadline).

roll in, including correspondence between Transco and New York State about the Project's Coastal Zone Management Act consistency determination and Transco's application to New Jersey for a preconstruction air permit for the proposed compressor station.[56] Indeed, almost one month after FERC issued the Reissuance Order, Transco submitted additional new information to the docket that the FEIS contained inaccurate information regarding the density of hard-shell claims[57]—information clearly relevant to assessing harm.

The materials submitted by Transco and produced by FERC were voluminous and often highly technical. It would have been extremely challenging for average members of the public to provide meaningful comments on much of what was submitted into the docket with so little time. FERC's truncated process, therefore, failed to produce the required opportunity for interested parties to be heard and failed to allow for a full presentation of the facts necessary.

The Reissuance Order also is arbitrary and capricious because it does not explain why FERC's process here deviated so significantly from the vast majority of Section 7. FERC defends its truncated process by claiming that the 21-day period for comment, intervention, and protest it provided here is consistent with the protest and intervention windows it has provided for new Section 7 applications.[58] But FERC's comparison to the initial comment window it typically provides for new applications is inapt for the reasons described above, *i.e.*, the information deficiencies and the fact that standard Section 7 hearings include far more opportunity for input than just one initial comment window. FERC also appears to justify its actions here by noting that the Reissuance Order addresses comments filed after the close of that comment period.[59] But without the normal schedule and time the Commission usually gives, FERC's responses to the small amount of input the public was able to squeeze into the docket do not cure the defects in the process. While it may have been rational for FERC to somewhat shorten its review process by relying on the still-valid portions of the analysis it did in 2019, nowhere does FERC actually explain why it failed to follow its normal process—even a somewhat compressed one—rendering its decision arbitrary and capricious. 5 U.S.C. § 706(2)(A).

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[56] *Transcontinental Gas Pipe Line Company, LLC,* Docket Nos. CP17-101, CP17-101-007, Correspondence with New York State Department of State re. Coastal Zone Management Act Consistency Determination, Accession Nos. 20250828-5266, 20250828-5267 (Aug. 28, 2025); *Transcontinental Gas Pipe Line Company, LLC,* Docket Nos. CP17-101-007, CP20-49-001, The New Jersey Department of Environmental Protection Submits Transcontinental Gas Pipeline Company's Preconstruction Air Permit Application, Accession No. 20250828-4001 (Aug. 28, 2025).

[57] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Supplemental Information Related to the Final Environmental Impact Statement, Accession No. 20250924-5165 (Sept. 24, 2025).

[58] Reissuance Order at P15.

[59] *Id*.

D. The Commission's Findings that the Project Is Needed and Will Create Benefits Are Arbitrary and Contrary to Law.

Under Section 7 of the NGA, FERC may approve a proposed interstate natural gas pipeline project only if the applicant demonstrates a "present or future public convenience and necessity." 15 U.S.C. § 717f(e). The Commission's decisions under the NGA are reviewed under the Administrative Procedure Act's arbitrary-and-capricious standard, which requires that the decision be "reasoned, principled, and based upon the record." *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 54 (D.C. Cir. 2024) (quoting *Myersville*, 783 F.3d at 1308; *Am. Gas. Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010)) ("*NJCF*"). FERC must fully spell out the basis for its decision by articulating "a rational connection between its factual findings and its decision." *Id.* (citing *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 292, (2016)). FERC's factual findings are conclusive only if they are "supported by substantial evidence." 15 U.S.C. § 717r(b).

In determining whether a proposed interstate natural gas pipeline is needed, FERC may treat precedent agreements as "important evidence of demand," but their mere existence is not dispositive. Where the record contains material contradictory evidence, the Commission must squarely consider that evidence and cannot simply rely on the contracts as conclusive proof of market need. *NJCF*, 111 F.4th at 60–61 (holding that "mere existence of precedent agreements … does not allow [FERC] to disregard contradictory evidence showing a lack of market need" (citing *Env't Def. Fund v. FERC,* 2 F.4th 953, 972 (D.C. Cir. 2021)). In *NJCF*, the court found that FERC acts arbitrarily when it disregards market studies showing that existing capacity is sufficient to meet demand, fails to explain how LDC precedent agreements assure genuine need where costs can be shifted to captive ratepayers, or discounts state policies requiring reduced gas consumption. *Id.* at 58–59 (referencing *Env't Def. Fund,* 2 F.4th at 972). In short, precedent agreements are probative, but they are not dispositive: FERC must grapple with contrary evidence and state policy mandates in assessing market need. Similarly, FERC also may not find that a project will create benefits, such as improvements to reliability, without grappling with contrary record evidence and without providing a rational explanation for its conclusion that a project will produce particular public benefits. *See id.* at 61.

However, as is discussed in the preceding section, FERC failed to undertake a review process here that complied with the NGA and its own regulations and, therefore, based its decision under Section 7 on one-sided record that fails to form a sufficient basis for a rational decision under the NGA. Thus, even if it was permissible for FERC to "reissue" the certificate—which is was not, *supra* Sections II.B & II.C—the Commission's decision also is arbitrary and capricious as it is not supported by a sufficiently developed record. Had the Commission complied with the NGA and undertaken the process that Section 7 requires, Intervenors—and likely others—would have submitted additional evidence about the Project's need and benefits, including what is attached to this rehearing request. The attached materials demonstrate that the evidence the Commission relied upon to find that the Project is inaccurate, as it is based on

outdated design day forecasts, among other analytical flaws. FERC also ignored important evidence that undermines the probative value of the precedent agreements Transco submitted into the record as near-conclusive evidence that the Project is needed. In addition, FERC's conclusions that the Project will provide reliability benefits is not supported and, therefore, does not weigh in favor of finding that the Project is required by the public convenience and necessity.

1. FERC's Finding of Project Need and Benefits Was Based on an Impermissibly One-Sided Record.

In the Reissuance Order, FERC grounded its finding of "need" primarily in newly executed precedent agreements covering 100% of NESE's firm capacity executed with two local distribution companies that are owned by National Grid.[60] FERC drew additional support from National Grid's Final Gas System Long-Term Plan Addendum and outside market studies. The Commission reiterated its position that precedent agreements are the "best evidence" of market demand and that, absent plausible evidence of self-dealing between affiliates, it "does not look behind" such contracts to question individual shippers' business decisions.[61] On that basis, FERC concluded that Transco's precedent agreements for the entirety of the project's firm transportation service provided "significant evidence of market need" for NESE.[62] FERC's reliance on precedent agreements and one-sided reports to the exclusion of contrary evidence squarely conflicts with *NJCF*.

The Long-Term Plan Addendum and one of the market studies FERC cites, the Levitan Study, were not included with Transco's Petition, but were first introduced to the docket as attachments to Transco's Answer to Intervenors' Protests. As discussed above, FERC issued the Reissuance Order even before the time to move to answer Transco's Answer had elapsed, therefore failing to provide almost any opportunity to respond to the key new claims contained in these materials. Notably, FERC also issued the Reissuance Order before the comment deadline in the New York Public Service Commission proceeding in which National Grid filed its Final Gas System Long-Term Plan Addendum and the Levitan Study.[63] At the time FERC published the Reissuance Order, a Motion to Strike the Addendum and Levitan Study remained pending at the Public Service Commission; that motion raised both procedural and substantive objections to those reports.[64]

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[60] *Id.* at PP26–28.
[61] Reissuance Order P26.
[62] *Id.*
[63] Notice Establishing Comment Deadline, Case 24-G-0248, *supra* note 55.
[64] *In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid*, NYPSC Case 24-G-0248, Joint Letter Motion to Strike National Grid Addendum (July 18, 2025), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=366037&MatterSeq=73326.

Because of the process FERC chose to employ here, the Commission has ended up with a one-sided record largely containing only materials submitted by Transco, which unsurprisingly paint a picture that the Project is needed and will provide public benefits. As the attached materials demonstrate and is discussed in more detail below, however, that picture is not an accurate representation of reality. Therefore, the truncated process the Commission employed here created not only procedural violations of the NGA and FERC's regulations, it also caused FERC to behave unlawfully by making its substantive Section 7 determination based on a clearly flawed and insufficient record. FERC may not refuse to engage with contrary record evidence, nor may it employ an unlawful process that ensures that contrary evidence never makes it into the record.

The most appropriate remedy would be to grant rehearing, require that Transco file a new application that complies with the requirements of the NGA and FERC's regulations, and undertake the full process required by the NGA (and NEPA). At a minimum, however, the Commission should accept into the record the additional evidence about Project need that Intervenors attach here and grapple with this contrary evidence on rehearing. Although the Commission does not frequently accept new evidence at the rehearing stage, FERC has recently accepted evidence attached to a request for rehearing that "attempts to rebut the Commission's reliance" on evidence that the Commission asserted demonstrated project need, *Transcontinental Gas Pipe Line Company, LLC*, 192 FERC ¶ 61,134, P33 (Aug. 7, 2025), which is exactly what Intervenors are doing here. Moreover, the fact that Intervenors are seeking to submit this evidence at the rehearing stage is because of Transco's request and FERC's decision to disrupt the finality of the vacatur of the original Certificate. The reasons, therefore, that the Commission typically gives for denying efforts to add new information to the record at the rehearing stage do not apply. *See Nat'l Fuel Gas Supply Corp.*, 155 FERC ¶ 61,227, P6 (finding that accepting new evidence on rehearing typically "is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.") (quoting *Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,117, P39 (2005)). The lack of finality is a problem of FERC's own creation. Accepting the attached materials would not cure the larger problems with the Commission's failure to conduct this proceeding in a manner that is consistent with the requirements of the NGA, provisions of the Commission's regulations, or FERC's past precedent, it would give a somewhat more balanced record upon which to base its ultimate conclusions.

2. The Materials the Commission Relied Upon Do Not Support a Finding that the Project's Capacity Is Needed.

The materials the Commission relied on to find that the Project is needed and will create benefits for the public do not accurately portray the need for or benefits of providing additional capacity to the area the Project would serve. Transco submitted the Long-Term Plan Addendum and Levitan Study to the FERC docket mere weeks before the Commission approved the Project,

and FERC relied on these studies in the Reissuance Certificate. But those reports project a supply-demand imbalance emerging as early as the winter of 2027/28 based on National Grid's 2024 demand day forecast. As the Addendum, which was filed with the New York Public Service Commission ("NYPSC") on July 2, 2025, itself recognized, National Grid's more current 2025 demand day forecast reflects a dramatically slower rate of demand growth, delaying the projected supply gap by fourteen years, until 2041/42.[65] National Grid finalized its 2025 demand day forecast in the 2025–2026 Winter Supply Review that it filed with the NYPSC on July 15, 2025.[66] While Transco introduced the Addendum to the FERC docket, it did not submit the Winter Supply Review.

National Grid's Winter Supply Review expressly concludes that "lower forecasted requirements coupled with recent additions to the supply portfolio indicate no design-day supply need for the next five years" in Downstate New York.[67] National Grid's 2025 forecast also shows no design-day deficit for more than 16 years.[68] Indeed, under National Grid's 2025 forecast, no imbalance would occur for nearly the entire fifteen-year term of the precedent agreements cited by the Commission.[69]

In concluding that the Project's capacity is needed and would provide benefits to the public, however, FERC never addressed the statement in the Long-Term Plan Addendum that the more recent demand curve squarely contradicts the findings in the Addendum and Levitan Study that FERC later relied upon. Because the Commission published the Reissuance Order before the time to move for leave to answer Transco's Answer had elapsed, Intervenors were deprived of the opportunity to put the Winter Supply Review—and its controlling, updated forecast—into the record to rebut the late-filed Long-Term Plan Addendum/Levitan Study materials. And despite the acknowledgement in the Long-Term Plan Addendum that using updated numbers made a material difference to the evaluation of potential shortfalls, FERC never asked Transco for additional information to clarify the statements in the Addendum about the lower 2025 forecast. FERC failed in its duty "to at least attempt to obtain the information necessary to fulfill its statutory responsibilities." *Birkhead v. FERC*, 925 F. 3d 501, 520 (D.C. Cir. 2019); *see also Food & Water Watch v. FERC*, 28 F.4th 277, 286 (D.C. Cir. 2022) (stating that the Court was "'troubled' by the Commission's failure to seek out relevant information," but finding that the

[65] Long-Term Plan Addendum*, supra* note 53, at 13.

[66] National Grid, NYPSC Case 25-M-0183, *Report on the New York State Electric & Gas Supply Readiness for 2025-2026 Winter* (filed July 15, 2025) ("Winter Supply Review"), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=365668&MatterSeq=85714 (attached as Exhibit A).

[67] *Id.* at 2.

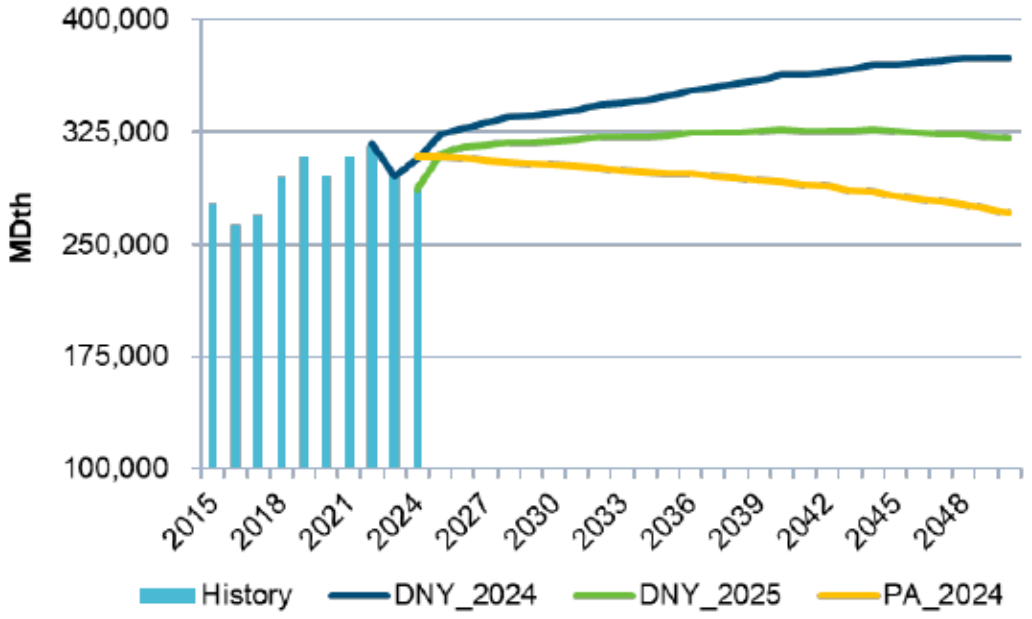
[68] *Id.*

[69] *See* Reissuance Order P10, Ordering ¶ B(1) (noting that Transco's precedent agreements provide for 15-year service terms, and conditioning the certificate on completion within three years of the order, based on National Grid's 2025 forecast, no supply imbalance would arise until 2041/42—after the expiration of the 15-year precedent agreements on which FERC relied to find project need).

Court lacked jurisdiction to address that failure because the issue had not been presented in a rehearing petition to FERC).

In addition, with the benefit of a lawful Section 7 process, Intervenors would have submitted the attached report by PA Consulting on National Grid's Final Gas System Long-Term Plan Addendum, which provides a contemporaneous, expert analysis of National Grid's demand forecast and further undermines the claim that the Project's additional capacity is needed. PA Consulting found that National Grid's 2025 demand forecast is materially lower than the 2024 forecast across all future years, both in absolute level and growth rate.[70] As shown in PA Consulting's Figure 5-1 below, the 2025 Forecast DSNY volumetric forecast (illustrated by the green line) starts at a level that is 8.5% lower than the corresponding level in the 2024 Forecast (illustrated by the dark blue line) and that difference grows to 12.7% by 2030, 17.0% in 2035, and reaches 30.1% by 2050.[71]

Figure 5-1: DSNY Volumetric Forecast



[72]

PA explains that the change is not a short-term anomaly but reflects updated macroeconomic inputs and a revised, data-driven forecasting approach that accounts for post-COVID customer and usage trends—including lower-than-projected meter counts and

[70] PA Consulting, NYPSC Case No. 24-G-0248, *Report on National Grid's Final Gas System Long-Term Plan Addendum*, at 19 (Aug. 6, 2025) ("PA Consulting's Addendum Report"), https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=367263&MatterSeq=73326 (attached as Exhibit B).

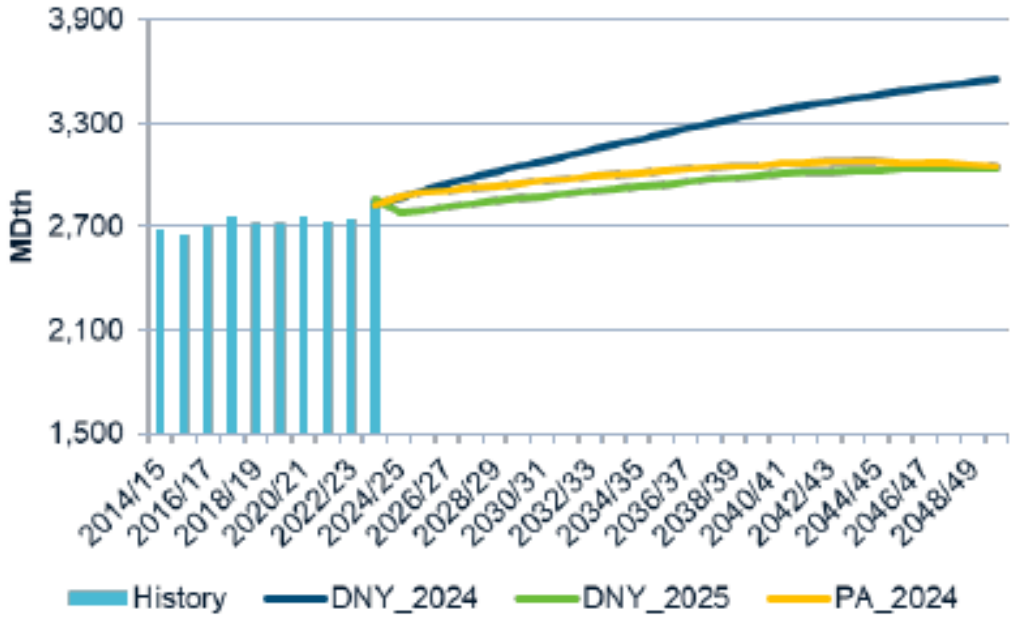
[71] *Id.* at 28.

[72] *Id.* at 29.

declining use per customer across the National Grid service territories that would be served by the Project.[73] PA's review of 2023–2024 actuals confirms significantly lower volumes across all customer segments than the levels embedded in the 2024 forecast.[74]

Consistent with these findings, as shown in Figure 5-16 below, PA found that the Design Day Peak trajectory is also considerably lower than previously assumed (with the new 2025 starting level approximately 120 MDth below the prior projection and a materially slower growth path thereafter).[75] Average annual growth rates drop to 0.54% (2025–2035) versus 1.05% previously, and to 0.29% (2035–2045) versus 0.75% previously—providing further evidence that the earlier forecast structurally overstated demand.[76] PA also observed that these 2025 results align with its earlier critique of the 2024 forecast as overly optimistic and confirms that the updated forecast is more consistent with historical trends.[77]

Figure 5-16: DSNY Design Day Forecast[77]



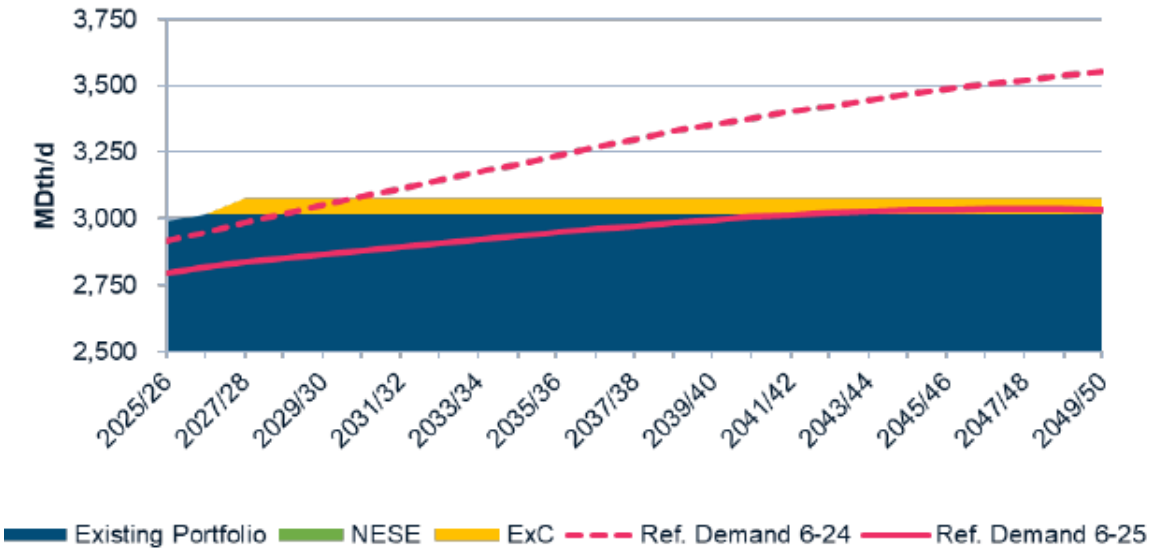
[78]

While PA recommends continued refinement through hydraulic modeling, nothing in PA's assessment restores a near-term shortfall. PA's supply-stack scenarios further show that, under the 2025 Forecast Reference Case, design-day demand is fully met throughout the

[73] *Id.* at 28.
[74] *Id.*
[75] *Id.* at 38.
[76] *Id.*
[77] *Id.* at 39.
[78] *Id.* at 38.

planning horizon with the existing supply portfolio together with the imminent Iroquois Enhancement by Compression (ExC).[79] The Addendum's 2041/42 "need" arose only in a sensitivity that assumes a 52.8 MDth/d reduction in CNG capacity (the equivalent of three facilities) beginning in 2027–28[80] (compare PA Consulting's Figure 3-4: Design Day Supply-Demand – NESE Not In-Service, and Figure 3-5: Design Day Supply-Demand – NESE In-Service, found below). Had PA's Addendum Report been admitted on a fair schedule that enabled response to newly submitted information Transco provided with its Answer, it would have directly rebutted the late-filed Long-Term Plan Addendum and confirmed that there is no basis for a near-term "need" finding.

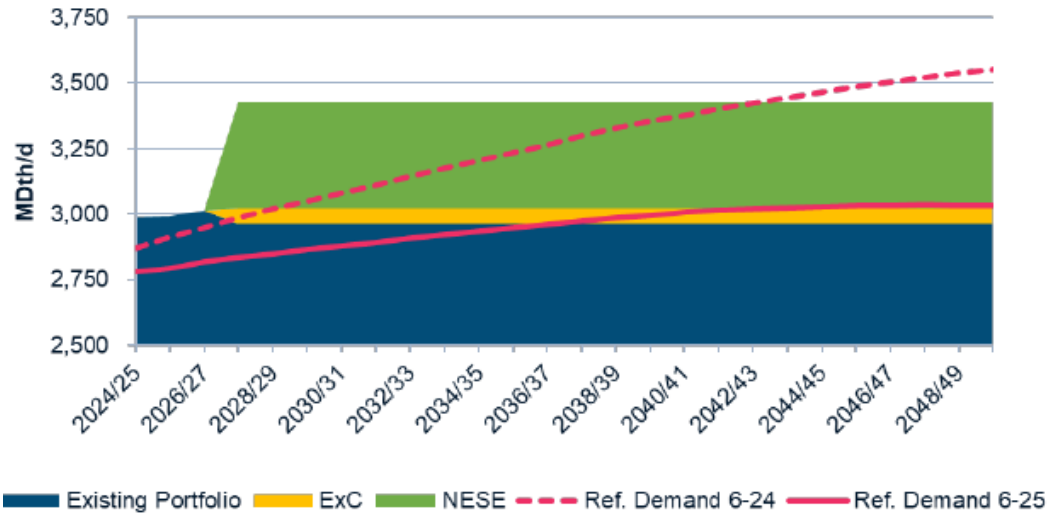
Figure 3-4: Design Day Supply-Demand – NESE Not In-Service



[81]

[79] *Id.* at 19.
[80] *Id.* at 20.
[81] *Id.* at 19.

Figure 3-5: Design Day Supply-Demand – NESE In-Service[39]



[82]

Complementing PA's conclusions, Synapse Energy Economics' Analysis of National Grid's Long-Term Plan Addendum ("Synapse's Addendum Analysis")—filed in the NYPSC gas-planning proceeding concerning the Addendum and Levitan Report on September 8, 2025—demonstrates that the Addendum's 2024 demand forecast embeds upward biases that are inconsistent with observed trends and New York policy, and that these biases artificially create the appearance of a capacity shortfall.[83] Had the Commission not issued the Certificate Order before the time to move for leave to answer had elapsed and followed the process required by Section 7, this Synapse analysis likewise might have been placed into the FERC record to rebut the Addendum/Levitan claims, but was foreclosed by the truncated schedule.

Specifically, Synapse shows that the Addendum's 2024 forecast assumes continued oil-to-gas conversion volumes well into the 2030s and 2040s, despite clear evidence that those conversions are already declining[84] and may soon be less affordable based on recently passed

[82] *Id.* at 21.

[83] *In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid*, NYPSC Case 24-G-0248, Synapse Analysis of National Grid LTP Addendum, at 10 (Sept 8, 2025), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=369342&MatterSeq=73326 ("Synapse's Addendum Analysis") (attached as Exhibit C).

[84] *Id.*

state legislation eliminating gas system extension allowances.[85] By projecting conversion-driven growth that cannot reasonably materialize under state policy and economics, the Addendum inflates future load and manufactures a supply gap that the 2025 forecast does not support.

Synapse next explains that the Addendum relies on problematic outlier Heating Degree Day ("HDD") selections. The Company anchors its forecast to 2018 weather-year conditions, including the exceptionally cold late-December 2017 to early-January 2018 period—the coldest consecutive 14-day stretch in the 1993–2023 record.[86] Using HDD values that are more than five percent above the Long Island 10-year average artificially elevates design-day demand and pulls forward the onset of constraints, thereby exaggerating the supposed benefits of NESE.[87]

Synapse also identifies an unrealistic 30°F switchover temperature for partially electrified customers.[88] Modern cold-climate heat pumps maintain efficient operation at 10°F and even down to -5°F, making a 10°F switchover both feasible and consistent with existing utility incentive programs in New York requiring cold-climate technologies; setting the switchover at 30°F overstates winter gas usage and fails to capture demonstrated electrification performance.[89] Calibrating the switchover to documented equipment capabilities materially reduces the projected gas load.

Synapse further found the Addendum's Reference Case inconsistent with the New York State Climate Leadership and Community Protection Act's ("CLCPA") electrification trajectory. National Grid's 2024 forecast assumes continued growth in gas demand through 2050. Given the state's mandate to drastically reduce emissions by 2050, National Grid's gas load forecast is likely overstated, and its supply constraint calculation is likely premature.[90] When the modeling is better aligned with policy and empirical trends—as in the policy-aligned scenarios in National Grid's Final Long-Term Plan—no near-term capacity need emerges. In combination with PA's analysis, Synapse's findings confirm that the Addendum's methodology overstates demand and fabricates a need case that does not exist.

Importantly, the NYPSC has already weighed in on the competing forecasts and adopted the 2025 forecast. In its Order on National Grid's Final Long-Term Plan and the Addendum, issued September 18, 2025, the NYPSC found "questionable results" in the 2024 demand forecasts underlying those filings. It further determined that the updated 2025 forecast identified in the Supplement "provides a more accurate projection of the Downstate gas system's supply

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[85] New York State Legislature Bills S.8417, A. 8888 were passed in the 2025 legislative session. *See* Legislature Repeals Outdated Requirement To Stop Continued Expansion of Costly Fracked Gas Infrastructure, THE NEW YORK STATE SENATE (June 16, 2025), https://www.nysenate.gov/newsroom/articles/2025/liz-krueger/legislature-repeals-outdated-requirement-stop-continued.

[86] Synapse's Addendum Analysis, *supra* note 83, at 10.

[87] *Id.* at 11.

[88] *Id.*

[89] *Id.*

[90] *Id*.

needs" and therefore "will rely on the updated demand forecast" going forward.[91] At the same time, the NYPSC directed methodological improvements—most notably, using three years of data rather than a single year to capture trends, and incorporating PA's recommendations on macroeconomic, fuel-conversion, and electrification assumptions—requiring National Grid to file, within 90 days, a report detailing those improvements and to submit updated design-day and annual forecasts for its downstate service territories using data through November 2025.[92]

Precedent agreements are important evidence of need, but as FERC's own findings here confirm, more is often needed to provide an accurate picture of whether there is a genuine public need for additional gas capacity. Here, the materials FERC relied upon to establish that existence of that need were outdated and inaccurate. The Commission failed to ask for additional information to address the discrepancies in the record and to follow the lawful process that would have allowed for sufficient opportunity for public input to create a more complete record. Both failures violate the principles articulated in D.C. Circuit case law interpreting the Commission's duties under the NGA. *See, e.g.*, *NJCF*, 111 F.4th at 58–59; *see also Birkhead*, 925 F. 3d at 520. National Grid's 2025–2026 Winter Supply Review, PA Consulting's contemporaneous analysis of the Long-Term Plan Addendum, Synapse Energy Economics' independent critique, and the NYPSC's subsequent Order adopting the 2025 forecast all fundamentally undercut the Addendum's outdated 2024 demand projections on which FERC relied in approving the Project. The Commission repeated the precise error condemned in *NJCF*: elevating precedent agreements and utility submissions while arbitrarily ignoring contradictory forecasting evidence and state policy determinations.

3. FERC's Conclusion that the Precedent Agreements Demonstrate Need Is Arbitrary and Capricious Because it Does not Consider the Effect of Capacity Release and Off-System Sales "Optimization."

When evaluating the extent to which precedent agreements demonstrate market need, FERC must consider plausible evidence of incentives for LDCs to exploit their captive ratepayers by purchasing capacity ratepayers will not use but will be required to subsidize. *NJCF*, 111 F.4th at 60–61. The record materials that FERC credited show that National Grid plans to "utilize capacity release and/or off-system sales transactions for optimization when possible."[93] The 2025–2026 National Grid Winter Supply Review and PA Consulting's review confirm materially lower demand under the 2025 forecast and, by implication, greater risk that

[91] *In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid*, NYPSC Case 24-G-0248, Order Regarding Long-Term Natural Gas Plan and Requiring Further Actions, at 51 (issued, Sept. 18, 2025), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=369926&MatterSeq=73326 (attached as Exhibit D).

[92] *Id.*

[93] Long-Term Plan Addendum, *supra* note 53, at 31.

subscribed capacity will far outstrip the actual need of National Grid's captive ratepayers.[94] The incentive and opportunity, therefore, to monetize surplus rights via releases and off-system sales is heightened. Indeed, PA explains that National Grid can monetize excess year-round capacity through short-term, recallable capacity releases or asset management agreements under which a marketer resells capacity to generators, cogeneration, or industrial users and shares profits that are credited back to customers.[95]

The potential for National Grid to monetize the significant excess year-round capacity from the Project deserves heightened scrutiny by FERC, and the Commission's failure to examine this is arbitrary and capricious and in violation of the NGA. First, the Commission should consider the likelihood of cross-subsidization given that the Long-Term Plan Addendum and Levitan Study premise the quantifiable benefits of the Project on the wholesale electric power cost savings that flow through New York Independent Service Operator ("NYISO") markets to load statewide. Second, FERC should review the nature of the affiliate relationships between National Grid's regulated gas LDCs and its other subsidiaries' gas generation assets across Long Island.

Synapse's Addendum Analysis identified that the Project imposes a net energy-cost increase on downstate gas customers across New York City and Long Island and creates an unreasonable cross-subsidy. Per the benefit-cost analysis ("BCA") put forth in the Addendum and Levitan Study, the overwhelming bulk of modeled "benefits" accrue to the electric market statewide, while 100% of the Project's fixed costs would be borne by National Grid's captive downstate gas customers.[96]

The Synapse Addendum Analysis quantifies a pronounced allocational imbalance: National Grid's BCA allocates $1,375 million of $6,013 million in wholesale market benefits to its gas customers and $4,638 million to distinct electric customers. When avoided compressed natural gas purchases are included (adding $520 million to gas-side benefits), National Grid's gas customers' share rises to $1,895 million against $4,638 million for the distinct electric customers—roughly 29% to gas customers and 71% to electric consumers outside of the gas territory. This outcome suggests National Grid downstate ratepayers will subsidize Project costs that primarily accrue to the electric sector. It also undermines the Commission's statement in the Reissuance Order that "there is nothing inconsistent with citing the need for power generation when discussing LDC shippers."[97] While FERC might be right in some circumstances, there plainly is an inconsistency when the captive ratepayers of LDC shippers are being forced to pay for a benefit that they will not enjoy. This is precisely the kind of arrangement that the D.C.

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[94] Winter Supply Review, *supra* note 66, at 2; PA Consulting's Addendum Report, *supra* note 70.

[95] PA Consulting's Addendum Report, *supra* note 70, at 21–22.

[96] *See* Long-Term Plan Addendum, *supra* note 53, Figure 4-1: 2028-2042 Estimated Benefits & Costs Summary Table, at 32.

[97] Reissuance Order P31.

Circuit has held that FERC cannot ignore and that could undermine the probative value of precedent agreements. *NJCF*, 11 F.4th at 60–61. At a minimum, it is the kind of cost that FERC must consider in its NGA determination as a potential offset to the benefits to power generation customers, as the statute was designed to ensure that consumers are protected. *Fed. Power Comm'n v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 19 (1961) (finding that Congress adopted the NGA to "protect consumers against exploitation at the hands of natural gas companies") (quoting *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 147 (1960)).

Synapse's Addendum Analysis also highlighted that National Grid's existing affiliate relationships warrant closer scrutiny.[98] According to its website, National Grid Generation ("GENCO") operates three large steam turbine generating plants in the Long Island generation fleet—Barrett, Port Jefferson, and Northport. In total, the fleet capacity is almost 4GW, which is about 65% of the peak generating capacity on Long Island.[99] National Grid anticipates that these gas generators will be able to access additional capacity provided by the Project, if its firm customers are not using the capacity.[100] GENCO has a Power Supply Agreement with the Long Island Power Authority, the term of which ends on April 30, 2028,[101] providing for the purchase of capacity and related energy from approximately 3,513 MW of oil- and gas-fired generating plants on Long Island.[102] Currently, the gas generators have interruptible service (*i.e.*, are interrupted when required for system reliability or others operational considerations).[103] However, fuel sourcing for the GENCO fleet could shift in response to NYISO's recently approved revisions to capacity accreditation, which assign higher credit to generators with firm-fuel arrangements. *New York Independent System Operator, Inc.,* Order Modifying Tariff Changes and Dismissing Waiver Request, 192 FERC ¶ 61,049 (July 14, 2025).

Accordingly, while the Project may put downward pressure on electricity prices, the overwhelming majority of the Project benefits accrue to the statewide electric sector, while the entirety of the Project's costs fall on National Grid's downstate gas customers. This mismatch creates an unreasonable cross-subsidy, and the affiliate relationships between National Grid's gas utilities and its gas-fired generators on Long Island warrant heightened scrutiny and potentially additional guardrails, especially given that the need for the NESE Project is doubtful given the dramatically reduced 2025 gas load forecast.

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[98] *See* Synapse's Addendum Analysis, *supra* note 83, at 15-16.

[99] *Conventional generation*, NATIONAL GRID, https://www.nationalgrid.com/national-grid-ventures/what-we-do/conventional-generation (last visited Sept. 26, 2025).

[100] Synapse's Addendum Analysis, *supra* note 83, at 16.

[101] *Amended and Restates Power Supply Agreement between Long Island Lighting Company d/b/a LIPA and National Grid Generational LLC* (Oct. 10, 2021), *available at* https://www.lipower.org/wp-content/uploads/2016/10/A-and-R-PSA-effective-28-May-13.pdf.

[102] *See Annual Disclosure Report of the Long Island Power Authority (FY2023)*, LONG ISLAND POWER AUTHORITY, at 4 (June 2024), *available at* https://www.lipower.org/wp-content/uploads/2024/06/LIPA-Annual-Disclosure-Report-including-financials-FY-2023_FINAL.pdf.

[103] Synapse's Addendum Analysis, *supra* note 83, at 16.

Where a corporate family can (i) subscribe firm transportation through regulated LDCs with captive rate recovery, (ii) over-procure relative to realistic demand, and (iii) then "optimize" the surplus through capacity releases or off-system sales that can advantage an affiliated generation business or corporate shareholders while gas customers carry the fixed demand charges, the risk of cross-subsidization is not theoretical. The Long-Term Plan Addendum's own statement that National Grid will employ releases/off-system sales "when possible" during off-peak periods, combined with the lower-demand 2025 forecast identified in the Addendum and further documented by PA, Synapse, and the NYPSC's directive to correct forecasting methods, provides concrete, "plausible evidence" that triggers the need for heightened scrutiny of the precedent agreements. FERC's failure to do so undermines its finding of Project need and renders its NGA decision arbitrary and capricious.

4. The Commission's Finding that the Project Will Help Address Shortfalls During Winter Events Is Arbitrary and Capricious.

Despite FERC's own admission that increasing capacity supply will not address gas system shortfalls during extreme winter events, the Commission partially bases its approval of the Project under the NGA on claims that the Project's increased capacity will provide a reliability benefit during storms.[104] FERC's rejection of Intervenors' arguments that events like those that occurred during Winter Storm Elliott will not be addressed by the addition of the Project's capacity[105] is cursory and fails to explain how, on this record, the Project would help to increase winter reliability in the event of a future similar storm.

Intervenors had argued that additional gas transmission capacity would not help to prevent future issues like those that occurred during Winter Storm Elliott, in which the primary problem was upstream production and delivery failures rather than a lack of certificated downstream capacity.[106] FERC admits that "[t]he Elliot Inquiry did not cite inadequate transmission capacity for supply disruptions during the extreme weather event because upstream issues largely meant that there was not enough natural gas available to determine whether a pipeline capacity constraint existed."[107] FERC points out that, in addition to the low supply of gas during the storm, there was greatly increased demand, which led to low pipeline pressure in some instances.[108] FERC then says that "[i]f growing demand creates a market need for new transmission capacity, it is unreasonable to presume that production declines during extreme weather will preclude it from being used to its maximum capacity and therefore render it wholly unnecessary."[109] But a conditional assertion that, in some future event without upstream failures,

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[104] *See* Reissuance Order PP34–36.
[105] *Id*.
[106] FERC et al., *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, at 7 (Oct. 2023), *available at* https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-duringdecember-2022.
[107] Reissuance Order P34.
[108] *Id*. at PP34–36.
[109] *Id*. at P36.

the Project "might" run full is not a finding—supported by substantial evidence—that NESE would materially improve reliability during Winter Storm Elliott-type events. The Commission must articulate a rational connection between record facts (which identify upstream freeze-offs and gas-electric operational issues) and its conclusion that new downstream capacity would remedy those causes. *State Farm*, 463 U.S. at 43. Because it has not done so, this conclusion is arbitrary and capricious. On this record, the causes of curtailments were not a shortage of pipeline capacity into Downstate, but producer under-performance and upstream delivery disruptions.

In fact, during Winter Storm Elliott, National Grid had procured sufficient gas for the demand created by the storm prior to the event; however, deliveries did not reach New York due to upstream failures. As the Long-Term Plan Addendum confirms, "*[t]emperatures were not near design conditions* and the Company had not planned to utilize its LNG facilities, leaving them available as a critical buffer."[110] The 2023–2024 National Grid Winter Supply Review, submitted to the NYPSC the summer following Winter Storm Elliott, confirms National Grid's portfolio readiness and that Downstate usage during Winter Storm Elliott was within National Grid's design-day planning criteria.[111] Specifically, National Grid's filing shows that Downstate design-day criteria of 65 HDD versus actual peak of ~51 HDD during the 2022-23 winter, *i.e.*, actuals were only 78.5% of the design day, well within the Company's procured capacity.[112] That is decisive for the Project: when the event's observed load sits comfortably below the LDC's design day, expanding capacity from a new interstate lateral is not a reasonable or necessary reliability fix.

In addition, bulk-power reliability during Winter Storm Elliott does not support the Project. NYISO did not enter an energy emergency and, despite the extreme cold, was able to assist neighboring balancing authorities.[113] That performance undermines the notion that NESE is necessary as an electric-system hedge, especially given the levels of dual fuel capacity in New York and the NYISO's new rules differentiating the capacity accreditation of traditional generation with and without firm fuel supply. *See* 192 FERC ¶ 61,049.

The Commission's Winter Storm Elliott rationale, therefore, fails the APA's "reasoned decisionmaking" standard. The Reissuance Order concedes that the Elliott Inquiry did not find downstream transmission inadequacy; rather, it identified upstream gas availability failures.[114] Bridging from those facts to a conclusion that a new downstream delivery lateral would

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[110] Long-Term Plan Addendum, *supra* note 53, at 19 (emphasis added).

[111] *Report on the New York State Electric & Gas Supply Readiness for 2023-2024 Winter*, NYPSC Case 23-M-0230, 2023-2024 National Grid Winter Supply Review, at 1–2 (filed July 19, 2023), *available at* https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=310166&MatterSeq=70634 (attached as Exhibit E).

[112] *Id.* at 2.

[113] *Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott*, *supra* note 106, at 72.

[114] Certificate Order PP34.

materially change outcomes requires evidence the Commission lacks. Where the LDC's most current demand forecast shows no supply-demand imbalance, where the LDC's usage was below its design day, where the LDC had procured adequate capacity and supply ex ante, and where NYISO maintained reliability and even aided neighbors, the assertion that the Project would "increase winter reliability" is speculative and unsupported by the record.

E. FERC's Assessment of the Project's Harms Is Inconsistent with the National Environmental Policy Act and the Natural Gas Act.

FERC's analysis of the Project's environmental effects in the Reissuance Order violates NEPA, 42 U.S.C. §§ 4321 *et seq.*, and the NGA, 15 U.S.C. § 717f(c), and is arbitrary and capricious. 5 U.S.C. § 706(2)(A). FERC issued the FEIS for the Project in 2019, concluding that the Project would have significant adverse environmental effects, but that these effects could be mitigated to less-than-significant levels.[115] Based on that conclusion, FERC approved the Project under the NGA, finding that the Project was an "environmentally acceptable action" and in the public convenience and necessity.[116] In reissuing the Project's certificate more than six years later, FERC did almost no additional review of the Project's environmental harms and had no additional NEPA process. It decided to forgo any re-evaluation of the Project's harms based on the conclusion that the 2019 FEIS satisfied its obligations under NEPA. FERC, however, is wrong: it was improper for FERC to rely on the Environmental Assessment Report ("EAR"), the substantive conclusions in the FEIS have been undermined since its publication in 2019, and the Commission was required to conduct at least a supplemental EIS to evaluate the Project's harms based on the information available in 2025.

1. The EAR Is Procedurally Improper and Insufficient to Satisfy NEPA.

Rather than conduct a new—or at least supplemented—evaluation of the Project's environmental harms to satisfy NEPA, FERC relied on only a one-page EAR in which FERC summarily concluded that the Commission could rely on the 2019 FEIS "to satisfy NEPA requirements for Transco's petition to reissue certificate authority for the Project."[117] FERC based this conclusion on the assertion that the "purpose, need for, scope, and impacts of the Project have not changed" and its conclusions that the comments on the Petition "reiterate environmental resource concerns identified and addressed in the final EIS."[118] FERC echoed the same conclusions in the Reissuance Order.[119] But FERC's use of an EAR here violates its own regulations and, even if it were procedurally permissible, the rationale contained in the EAR is

[115] FEIS at ES-14.
[116] Reissuance Order P91.
[117] *Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, EAR, Accession No. 20250711-3024 (July 11, 2025).
[118] *Id.*
[119] Reissuance Order P56.

insufficient to sustain FERC's refusal to conduct a more thorough evaluation of the Project's harms under NEPA.

FERC's regulations require that FERC prepare at least an Environmental Assessment for pipeline authorizations under Section 7, except when the facility falls into a categorical exclusion under 18 C.F.R. § 380.4, is an auxiliary installation or replacement facility under § 2.55, or requires an EIS pursuant to § 380.6(a)(3) because it is a "[m]ajor pipeline construction project[]….using rights-of-way in which there is no existing natural gas pipeline." 18 C.F.R. § 380.05(b)(1). FERC has not found that one of the categorical exclusions in § 380.4 applies here, and there is no basis for claiming that the Project falls under § 2.55, but FERC still did not prepare an Environmental Assessment or EIS for the Project.[120]

The EAR for the Project is a one-page form that includes a brief description of the facilities, a brief section on "environmental considerations or comments," and requires checking one of three options: "categorical exclusion"; "environmental not involved"; or "environment complete."[121] FERC staff selected the third option, "environment complete," for the NESE Project.[122] In other dockets in which FERC has relied on the third option, indicating that environmental review is complete, staff have provided more reasoning for that conclusion and the projects have typically been ones completed under a blanket certificate. *See, e.g.*, *Northwest Pipeline, LLC*, Docket No. CP24-87-000, EAR, Accession No. 20240517-3008 (May 17, 2024) (environmental assessment report attaching 18 pages of staff's "environmental comments" to substantiate determination of "environmental review complete" for project under a blanket certificate, 18 C.F.R. § 157.208(c)); *Rockies Express Pipeline LLC*, Docket No. CP13-539-00, EAR, Accession No. 20130925-4001 (Sept. 25, 2013) (report attaching 5 pages of staff analysis confirming that application was in compliance with environmental conditions applicable to projects completed under blanket certificates, 18 C.F.R. § 157.206). Nothing in FERC's regulations or prior decisions supports FERC's failure to prepare at least an Environmental Assessment for the Project, which was not completed under a blanket certificate, does not fall into a categorical exclusion, and does involve environmental disturbance.

Even if its regulations and precedent supported the use of an EAR here—which they do not—the conclusory paragraph in the EAR does not provide a sufficient basis for relying on the 2019 FEIS and failing to conduct at least an updated NEPA review. *See Arizona Pub. Serv. Co. v. F.P.C.*, 490 F.2d 783, 785 (D.C. Cir. 1974) (requiring that an agency making a determination that an environmental impact statement is unnecessary must supply a statement of reasons for that conclusion). FERC partially justifies its use of the EAR on the claim that the purpose, scope, and need for the Project are unchanged.[123] But even accepting that these three factors have

[120] EAR, *supra* note 117.
[121] *Id.*
[122] *Id.*
[123] *Id.*

remained static does not answer the key question of whether the Project's environmental harms also are the same as in 2019. The Project's purpose, scope, and need could all be unaltered, while the extent of the harms could have changed dramatically. For example, species in the area could have become more imperiled, air or water quality standards could have changed, or new science could have emerged on previously unknown environmental harms from the exact same Project. Thus, a substantial portion of even the thin rationale FERC provided in the EAR is irrelevant.

FERC also gives no indication that it conducted any independent evaluation of whether the findings in the FEIS remain valid. Rather, the EAR simply asserts, without discussion or explanation, that the impacts are the same as those analyzed in the FEIS. FERC also appears to shift the burden to the public to identify ways the 2019 FEIS may no longer be valid, claiming that the concerns raised in comments on Transco's Petition "reiterate environmental resource concerns identified and addressed in the final EIS."[124] But this assertion does not support FERC's failure to go beyond an EAR here for at least three reasons.

First, the burden of complying with NEPA and collecting the information needed to make a rational determination under the NGA lies with FERC, not the commenting public. *See, e.g.*, *Birkhead*, 925 F. 3d at 520. FERC has an independent obligation to fulfill its NEPA duties to the fullest extent possible. *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014). And the EAR gives no indication that FERC did anything more than accept at face value Transco's assertion that nothing has changed since 2019.

Second, FERC sought comment only on Transco's Petition and provided only 21 days to do so. In their Protests, Intervenors primarily and necessarily focused on the procedural impropriety of granting the Petition and the fact that Transco was incorrect that nothing had changed since 2019 that would require FERC to reevaluate the need for the Project and its harms.[125] Because additional critical details, including the company's Clean Water Act Section 401 applications, were not even publicly available during that window, the level of detail Intervenors could provide at that time was limited. That the full extent of the problem of relying on the 2019 FEIS was not raised during the comment window on the Petition—or at any point in the FERC docket—is a reflection of the inadequacies in the FERC process, *see supra* Section III.C, not proof that the findings in the 2019 FEIS were sufficient.

Third, FERC is simply wrong that Intervenors and others only raised issues that the 2019 FEIS addressed. In their comments, Intervenors highlighted that, since the 2019 FEIS, both New York and New Jersey denied Transco's applications for Clean Water Act Section 401 water quality certifications on the grounds that the Project, as proposed, would violate water quality

[124] *Id*.
[125] Joint Protest*, supra* note 5, at 2–11; NRDC Protest*, supra* note 15, at 2–6.

standards.[126] Intervenors also stated that Transco's Petition emphasized that *nothing* about the Project had changed, meaning that there was no reason to believe that Transco was making the changes necessary to avoid the water quality violations New York and New Jersey found.[127] FERC's conclusions from 2019, therefore, are no longer valid. In addition, Intervenors pointed out that other factors bearing on the extent of the Project's environmental harms also had changed, including changes to New Jersey air and water quality standards and requirements.[128]

Finally, as discussed in the next section, had FERC followed the appropriate process and afforded the public additional time, it would have become even more apparent that key findings in the FEIS are invalid and cannot be relied upon. Intervenors reviewed the materials Transco provided to New York and New Jersey—but never submitted in the FERC docket[129]—and confirmed that the company has not provided any additional details on how it intends to avoid the same violations New York found precluded it from certifying the Project under Section 401 of the Clean Water Act.[130] The conclusions in the 2019 FEIS have, therefore, been undermined. For all the foregoing reasons, the EAR did not discharge FERC's duties under NEPA and did not provide a reasonable evaluation of the Project's harms for use in FERC's Section 7 determination under the NGA.

2. The FEIS's Substantive Conclusions on the Project's Environmental Harms Have Been Undermined.

Key substantive findings in the 2019 FEIS have been invalidated since its publication. FERC's duty under the NGA is to "issue a certificate of public convenience and necessity only if a project's public benefits (such as meeting unserved market demand) outweigh its adverse effects (such as deleterious environmental impact on the surrounding community)." *City of*

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[126] Joint Protest*, supra* note 5, at 10–11.

[127] *Id*. at 10–11.

[128] *Id*. at 8–9.

[129] Transco provided FERC with documentation that it had re-applied for water quality certifications, but it did not submit the actual contents of those applications on the FERC docket. *See Transcontinental Gas Pipe Line Company, LLC*, Docket Nos. CP17-101-007, CP20-49-001, Transcontinental Gas Pipe Line Company, LLC submits supplemental information to the 05/29/2025 Petition for Expedited Reissuance of Certificate Authority*,* Accession No. 20250606-5140 (June 6, 2025).

[130] Natural Resources Defense Council, Sierra Club, Surfrider Foundation, Food & Water Watch, and the NYNJ Baykeeper, *Comments on the Water Quality Certification Application of the Northeast Supply Enhancement (NESE) Project*, New York Department of Environmental Conservation ID No. 2-9902-00109/00009 (Aug. 15, 2025) ("NRDC et al. NY 401 Comments") (attached as Exhibit F); Food & Water Watch, Sierra Club, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, and Central Jersey Safe Energy Coalition, *Public Comment Opposing Williams/Transco's Permit Applications, Water Quality Certification Requests, And Requests For Tidelands Instruments For The Northeast Supply Enhancement Project*, New Jersey Department of Environmental Protection Reference No.: 0000-25-0012.1-LUP-250001 (Sept. 25, 2025) ("FWW et al. NJ 401 Comments") (attached as Exhibit G); Natural Resources Defense Council, *Comments on Request for Freshwater Wetlands Individual Permit with 401 WQC; Flood Hazard Area Individual Permit; and Waterfront Development Individual Permit with 401 WQC and Coastal Zone Consistency Determination*, New Jersey Department of Environmental Protection Reference No.: 0000-25-0012.1-LUP-250001 (Sept. 25, 2025) ("NRDC NJ 401 Comments") (attached as Exhibit H).

Oberlin, Ohio v. FERC, 937 F.3d 599, 602 (D.C. Cir. 2019) (citing *Certification of New Interstate Natural Gas Pipeline Facilities,* 90 FERC ¶ 61,128, 61,396 (Feb. 9, 2000)). One of the main purposes of NEPA review is to ensure that an agency's substantive decisionmaking is fully informed. *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983). FERC's substantive decision under the NGA is not properly informed when it relies on invalidated conclusions about the Project's harms. Therefore, FERC's reliance on the FEIS's conclusions in the EAR and Reissuance Order is arbitrary and capricious, 5 U.S.C. § 706(2), and unlawful under both NEPA and the NGA.

The Project would entail construction of the offshore Raritan Bay Loop, a more than 17-mile underwater segment of pipeline through the bed of Raritan Bay, Lower New York Bay, and the New York Bight. "Construction of the pipeline would directly disturb approximately 87.8 acres of ocean floor" and indirectly disturb 947.4 acres of the seafloor because of suspension and redeposition of the sediments disturbed by Transco's construction activity.[131] To install the pipeline in the seafloor, Transco proposed to excavate using a combination of construction techniques, primarily relying on jet trenching and clam dredging.[132]

The 2019 Certificate Order was conditioned on Transco obtaining Clean Water Act Section 401 water quality certifications from New York and New Jersey.[133] Indeed, any conditions adopted in Section 401 certifications by the state must be incorporated into the federal permit. 33 U.S.C. § 1341(d); *see also Sierra Club v. U.S. Army Corps of Engineers*, 909 F.3d 635, 645 (4th Cir. 2018). In addition, FERC's FEIS concluded that significant water quality impacts would occur absent additional conditions, which it assumed the states would impose.[134] The Commission's Certificate Order expressly found that "[New York State] will require, and Transco has committed to, monitoring of the water column for chemical contaminants in New York State waters to ensure compliance with state water quality standards as part of the project's New York State DEC Water Quality Certification."[135]

However, after FERC issued the FEIS in 2019, both New York and New Jersey found that the Project could not be certified under Section 401 of the Clean Water Act because it would cause unavoidable violations of water quality standards.[136] The conclusions in the 2020 Denials undermine the FEIS's findings in at least four key ways: (1) FERC's assessment of the impacts of jet trenching was wrong; (2) FERC's assessment of the impacts of clamshell trenching was wrong; (3) FERC's determination that a 500-foot mixing zone was appropriate was wrong; and (4) FERC's conclusion that the Project's significant impacts to water quality can be mitigated was wrong. In addition, Transco's water quality certification applications make clear that, to the

[131] FEIS at 4-106.
[132] *Id.*
[133] Certificate Order, Appx. A, Environmental Condition 10.
[134] FEIS at 4-106–4-138.
[135] Certificate Order P49.
[136] NY 401 Denial, *supra* note 5; NJ 401 Denial, *supra* note 5.

extent that the company has changed its plans since 2019, it has done so in a way that will make the Project's impacts to water quality worse and less likely to be cured via mitigation. The conclusions in the 2019 FEIS on the Project's water quality impacts are no longer valid and cannot form the basis of FERC's compliance with NEPA. In addition, FERC's reliance on the 2019 FEIS infects its assessment of Project harms and meaningful balancing of those harms under the NGA. *See NJCF*, 111 F.4th at 63.

a. The FEIS's Conclusions on Jet Trenching Are Wrong.

Transco would use a jet trencher to bury 14.9 miles or 64% of the Raritan Bay Loop.[137] To conduct jet trenching, the pipeline is laid on the ocean floor, and a jet trencher straddles the pipeline to dig the trench where the pipeline will be installed. The jet trencher:

> is equipped with two retractable cutting swords, one on each side of the pipeline. During operation, the cutting swords are extended into the seafloor and high-pressure sea water is pumped through a series of small-diameter nozzles on the front/forward side of the swords to loosen sediments beneath the pipeline. Simultaneously, low-pressure sea water is pumped through larger-diameter nozzles on the back/trailing side of the swords, fluidizing the sediments and allowing the pipeline to settle beneath the bottom under its own weight, without excavating a traditional trench. As the trencher advances, the fluidized sediments flow back and cover the pipeline; the trencher can also be equipped with a drag beam to reinstate pre-existing contours. Transco anticipates that it will require two passes with the jet trencher to achieve the 4-foot minimum cover over the pipeline where the trencher would be deployed.[138]

One of the biggest concerns with jet trenching is sediment resuspension, or how much of the sediment that is blasted out from under the pipeline fails to resettle back into the trench. Sediment that does not end up back in the trench contaminates the water and ultimately resettles on the surrounding ocean floor. The more sediment is lost, the greater the potential for violating water quality standards such as turbidity.[139] The sediment that is lost also ends up being redeposited down-current on ocean floor habitats. The greater the sediment loss, the greater the potential for contaminants like copper and mercury that are present in the sediment to be dispersed into the water column.[140] In addition, the more sediment escapes, the more Transco would need to do to rebury the pipe in the trench. Therefore, the greater the rate of sediment loss, the more significant the impacts to water quality and aquatic habitats.

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[137] FEIS at 2-46.
[138] *Id.*
[139] *Id*. at 4-113.
[140] *See id*. at 4-121.

The FEIS assumed that only 5% of the sediment displaced by jet trenching would be lost.[141] Based on that assumption, it concluded that the extent of sedimentation and the likelihood of a suspended sediment plume in both the upper and lower water column was low.[142]

In the 2020 Denial, New York expressly repudiated FERC's findings in the FEIS. It concluded that it could not "accept the modeled sediment loss of rate of 5%, which was used to project sediment loss due to jet trencher activities."[143] New York found that the Table in which FERC listed the sediment loss rate did not provide any citation for the 5%, unlike other rates FERC included in that Table.[144] Therefore, "there is no basis for the jet trencher dispersed rate listed in this table."[145] While Transco's modeling also assumed a 5% sediment loss, NYSDEC found that "[m]odeling results from other comparable jetting installation projects that NYSDEC has reviewed have assumed a 25% to 30% sediment loss rate for jetting installation activities. Without a reference to the basis for the 5% loss rate assumed for jet trenching, it is not possible to verify this 5% loss rate assumption."[146] Because it could not rely on the rate of sediment loss, NYSDEC concluded that it also could not rely on "the water quality projections contained in Transco's Contaminant Transport Modeling Results and associated addenda."[147] Recent studies also confirm that the sediment rate loss that FERC assumed in the FEIS is far too low.[148]

The fact that FERC got this critical assumption wrong means that, contrary to FERC's conclusion in the Reissuance Order, the evaluation of the Project's impacts has changed and the subsequent findings by NYSDEC demonstrated that the findings in the FEIS are unsupported and incorrect. Nothing in the record addresses this issue, and FERC's failure to acknowledge, let alone address, this discrepancy is arbitrary and capricious. The FEIS, therefore, does not satisfy FERC's obligations under NEPA and cannot be used as the basis for FERC's assessment of the Project's harms in the Reissuance Order under the NGA.

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[141] *Id*. at 3-44.
[142] *Id.*
[143] NY 401 Denial, *supra* 5, at 7.
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] Atlantic Shores Offshore Winds, *Appendix II-J3: Sediment Dispersion Modeling Report* in ATLANTIC SHORES OFFSHORE WIND CONSTRUCTION AND OPERATIONS PLAN FOR COMMERCIAL LEASE OCS (OCS-A 0499), at 31 (Dec. 16, 2021), *available at* https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Appendix%20II-J3_Sediment%20Dispersion%20Modeling%20Report.pdf.; SouthCoast Wind, *Appendix F1. Sediment Plume Impacts from Construction Activities* in SOUTHCOAST WIND CONSTRUCTION AND OPERATIONS PLAN, at 6 (Feb. 2021), *available at* https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Appendix%20F1_Sediment%20Plume%20Impacts%20from%20Construction%20Activities.pdf (assuming a 25% sediment loss rate for excavation using mechanical plow or jetting, but noting that "Jetting typically releases more turbidity than other installation methods and is herein considered as the worst-case installation method.").

b. The FEIS's Conclusions on the Water Quality Impacts of Clamshell Dredging Have Been Undermined.

The other primary method of construction Transco plans to use is clamshell dredging.[149] Thirty-one percent of the Raritan Bay Loop would be installed using this method,[150] which "consists of two hydraulically powered buckets that open and close together to excavate material."[151] Clamshell buckets release seabed material as they are raised and lowered, causing turbidity and sedimentation throughout the water column.[152]

One of the key factors in how much material is released during clamshell dredging is how fast the company intends to go. Transco claimed that it would be clamshell dredging at rates between 2,840 and 8,450 cubic feet per hour.[153] The FEIS modeled the impact of dredging at 7,500 cubic feet per hour and found that going at this speed would lead to exceedances of water quality standards.[154] FERC, therefore, concluded that Transco would have to go slower than 7,500 cubic feet per hour to avoid Clean Water Act violations, but never determined how much slower.[155]

In its denial of Transco's water quality certification application, however, NYSDEC pointed out that even if Transco were dredging at a rate of 4,800 cubic feet per hour, there would be violations of water quality standards for mercury and copper, unless Transco assumed the 500-foot mixing zone that NYSDEC had determined was inappropriate.[156] The record, therefore, failed to establish that Transco would actually do clamshell dredging at a rate that would not result in water quality violations.

Indeed, the FEIS acknowledged and NYSDEC found that it might not be possible for Transco to go slowly enough to avoid violating water quality standards and also comply with time-of-year construction restrictions.[157] But FERC nowhere analyzed what, if any, slower speed was possible given these timing restrictions, nor did it assess the potential harms that would result from Transco's failure to slow down. NYSDEC's denial provides a clear repudiation of the Commission's approach, which nothing in the record before FERC addresses. In addition, Transco now proposes an accelerated construction and in-service schedule.[158] It is exceedingly unlikely that the company can simultaneously adhere to this timeline and dredge slowly enough

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[149] *Id*. at Table 2-36.
[150] *Id*. at 2-34,
[151] *Id*. at 2-37.
[152] *See* FEIS 2-37.
[153] *Id*. at 4-122.
[154] *Id*.
[155] *Id.*
[156] NY 401 Denial, *supra* note 5, at 6–7.
[157] FEIS at 2-34; NY 401 Denial, *supra* note 5, at 11–12.
[158] *Appendix F – Coastal Zone Consistency Assessment New York and New Jersey* in TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC JOINT APPLICATION TO THE UNITED STATES ARMY CORPS OF ENGINEERS ("NY 2025 Application"), at 1-3, Tbl.1-2 (May 2025).

to adhere to water quality standards. This again is not something FERC has addressed and makes the likelihood of water quality violations even higher than the Commission previously assessed. The conclusions in the FEIS on clamshell dredging, therefore, are invalid and cannot be relied upon to discharge FERC's NEPA obligations or as a basis for its Natural Gas Act determination.

c. The FEIS's Conclusions on the Appropriateness of a 500-Foot Mixing Zone Have Been Undermined.

The FEIS also accepted Transco's use of a 500-foot mixing zone, which NYSDEC subsequently found to be inconsistent with adherence to New York's water quality standards. New York's guidance defines a "mixing zone" as "an area in a water body, defined by [NYSDEC], within which the Division of Water will accept temporary exceedances of water quality standards resulting from short-term disruptions to the water body caused by dredging."[159] NYSDEC guidance expressly prohibits using the default 500-foot mixing zone in areas where a critical water use area or sensitive habitat is within 500 feet,[160] which is the case with the Project. The Project would be located in an area that is essential fish habitat for over 30 species[161] and proximate to a sensitive habitat for the hard clam.[162] In its denial, NYSDEC rejected the use of the 500-foot mixing zone for the Project based on a case-specific evaluation of the risks posed to species and water usage from the turbidity and sedimentation that would be caused by the Project.[163] It highlighted the particular risk the Project would pose to hard clam habitats, noting that "[g]iven the severity of the potential adverse impact to the unique natural resource of the hard clam critical resource area, Transco's proposed use of a default 500-foot mixing zone is not appropriate in this location."[164]

New Jersey also prohibits the use of a regulatory mixing zone in "shellfish harvesting areas, threatened or endangered species habitat, and other important biological or natural resource areas," N.J. Administrative Code 7:9B-1.5 (h)1.viii, or for new discharges of various pollutants, including 4,4'-DDE, mercury, and PCBs. N.J. Administrative Code 7:9B-1.5 (h)(5)vii. Transco's dredging would result in discharge of 4,4'-DDE, mercury and PCBs into New Jersey waters, and Transco's proposed discharge of 4,4'-DDE would still exceed New Jersey's human health criterion at the edge of the 500-foot mixing zone.[165] New Jersey previously denied the water quality certification for NESE in 2019 because sampling results for toxic substances, including bis (2-ethylhexyl) phthalate, phenanthrene, arsenic, manganese,

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[159] New York State Dep't of Env't Conservation, *Technical & Operational Guidance Series (TOGS) 5.1.9, In-Water and Riparian Management of Sediment and Dredged Material* at 35–36 (Nov. 2004), *available at* https://extapps.dec.ny.gov/docs/water_pdf/togs519.pdf (attached as Exhibit I).

[160] *Id.* at 36–37.

[161] FEIS at 4-140–4-143, Tbl. 4.5.3-1.

[162] *Id*. at 4-101.

[163] NY 401 Denial, *supra* 5, at 8.

[164] *Id.* at 11.

[165] FWW et al., NJ 401 Comment, *supra* note 130, at 35.

mercury, PCBs and 4,4'-DDE, "indicate the proposed dredging for the Raritan Loop may exceed the applicable surface water criteria for toxic substances."[166]

Nothing in FERC's past evaluation of the Project considered that the use of a 500-foot mixing zone was inappropriate. Transco has not submitted to FERC—or any other entity—modeling of a smaller mixing zone or any updated analysis to demonstrate that it can comply with New York's water quality standards without relying on the impermissibly-sized mixing zone. Moreover, Transco's 2025 application concedes that it would violate water quality standards for Total Suspended Solids ("TSS") well beyond the default 500-foot mixing zone.[167] Transco's proposed solution is to triple the size of the default mixing zone so that it can meet the standards at the mixing zone edge, an approach that NYSDEC cannot accept. FERC's conclusion that nothing has changed since its analysis of the impacts of the Project in 2019 is, therefore, incorrect, and its reliance on its past analysis is arbitrary and capricious, and unlawful under both NEPA and the NGA.

d. The FEIS's Conclusion that the Project's Significant Impacts to Water Quality Can Be Mitigated Has Been Undermined.

The deficiencies noted above are not minor problems that the state agencies would be able to address through conditions to the 401 certifications, as FERC assumed in 2019. Both states determined that it was not possible to certify the Project's compliance with the Clean Water Act, making it clear that mitigation measures would be insufficient to reduce the Project's impacts to less-than-significant levels. As Intervenors have commented to the states, Transco has not proposed any new construction plans to address the Project's shortcomings.[168] And Transco's proposed timeframe for construction will likely make the Project's impacts on water quality worse. The Commission's past conclusion that the Project's harms could be addressed through mitigation and that the Project was "environmentally acceptable" are no longer valid and cannot be used to fulfill FERC's NEPA obligations or as the basis for its decision to reissue the Project's certificate under the Natural Gas Act.

3. FERC Should Have Completed a New EIS or a Supplemental EIS.

In light of what has become apparent over the course of even the short time since Transco filed its Petition, it was unlawful for FERC to skip any meaningful NEPA process and rely entirely on the EAR's unsupported and incorrect conclusion that the analysis in the 2019 FEIS is still valid. FERC should have undertaken a full NEPA process and produced a complete NEPA document. FERC's own regulations require the preparation of an EIS for projects defined under

[166] Letter from Diane Dow, Div. Land Use Regul., N.J. Dep't Env't Prot., to Sara Mochrie, Transco (June 5, 2019) (Exhibit D to Joint Protest, *supra* note 5).

[167] NY 2025 Application, *supra* note 158, at 1-70 (attached as Exhibit J).

[168] NRDC et al., NY 401 Comments, *supra* note 130, at 8; NRDC NJ 401 Comments, *supra* note 130, at 10–11; FWW et al., NJ 401 Comments, *supra* note 130, at 33–34.

§ 380.6(a)(3) as "[m]ajor pipeline construction project[]….using rights-of-way in which there is no existing natural gas pipeline." 18 C.F.R. § 380.05(b)(1). NEPA also requires preparation of an EIS when a project will cause significant impacts, 42 U.S.C. § 4336(b)(1), as FERC already has found the Project will do in the absence of multiple mitigation measures.[169]

To the extent that FERC wanted to tier off its prior analysis, it could prepare a supplemental EIS, to address how the new information described above "'will affect the quality of the human environmental in a significant manner or to a significant extent not already considered'" and how the "new information 'provides a seriously different picture of the environmental landscape.'" *Friends of Cap. Crescent Trail*, 877 F.3d at 1051 (quoting, first, *Marsh v. Oregon Nat. Res. Council*, 490 U.S. at 373–74, then *Nat'l Comm. for the New River*, 373 F.3d at 1330).

FERC's failure to conduct even a supplemental EIS here violates NEPA, because the decision to undertake or forgo a supplemental EIS must be a function of the agency's informed discretion. *See Marsh*, 490 U.S. at 366–77; *Mayo*, 875 F.3d at 16. Here, FERC has not provided any rational basis for its decision not to complete at least a supplemental EIS. There was no discussion of the water quality issues described *supra*, Section III.E.1, in FERC's EAR. The few paragraphs of discussion about water quality in the Reissuance Order merely make the conclusory assertion that those issues were already addressed in the FEIS and claim that contamination of sediment has not meaningfully changed since the FEIS was published.[170] FERC's determination not to prepare a supplemental EIS or any other supplemental environmental review was unreasonable and therefore arbitrary and capricious.

IV. Conclusion

For the reasons explained above, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, Surfrider Foundation, and Natural Resources Defense Council respectfully request that the Commission: (1) grant rehearing and rescind its August 28, 2025 Certificate Order for the Northeast Supply Enhancement Project; (2) require Transco to file a new application for the project under Section 7 of the Natural Gas Act; (3) prepare a new EIS, or at least a supplemental EIS, evaluating the Project's environmental harms. In the alternative, and at a minimum, while doing so would not be sufficient to cure the full extent of FERC's unlawful actions, FERC must include the materials attached to this rehearing request in the record.

Dated: September 29, 2025

[169] FEIS at ES-14.
[170] Reissuance order PP58–61.

Respectfully submitted,

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