

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

No. 18-1218

Lori Birckhead, *et al.*,
Petitioners,

v.

Federal Energy Regulatory Commission,
Respondent,

and

Tennessee Gas Pipeline Company, L.L.C.,
Respondent-Intervenors.

**On Petition for Review of Orders of the
Federal Energy Regulatory Commission**

**BRIEF OF RESPONDENT-INTERVENOR
TENNESSEE GAS PIPELINE COMPANY, L.L.C.**

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Final Brief: March 8, 2019

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1 of the Rules of this Court, Respondent-Intervenor Tennessee Gas Pipeline Company, L.L.C. (“Tennessee”) makes the following disclosure:

Tennessee is a natural gas pipeline company established for the purpose of transporting natural gas. It is 100% owned by Kinder Morgan Operating L.P. “A”, of which Kinder Morgan Energy Partners, L.P. (“KMEP”) owns the 98.9899% limited partner interest and Kinder Morgan G.P., Inc. (“KMGP”) owns the 1.0101% general partner interest. KMGP owns the 1% general partner interest in KMEP, and the limited partner interest in KMEP is owned 0.42% by KMGP and 98.58% by Kinder Morgan Inc. (“KMI”). KMI owns 100% of the common stock of KMGP. KMI is publicly traded on the New York Stock Exchange.

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

A. Parties and *Amici*

All parties, intervenors, and *amici* appearing in this Court are listed in the Brief for Petitioners.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Petitioners.

C. Related Cases

This case has not previously been before this Court or any other court. Respondent-Intervenors adopt the information provided in the Brief for Respondent.

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GLOSSARY

2002 Guidance Manual	FERC, <i>Guidance Manual for Environmental Report Preparation</i> (Aug. 2002), https://www.ferc.gov/industries/gas/enviro/erpman.pdf .
2017 Guidance Manual	FERC, <i>Guidance Manual for Environmental Report Preparation</i> (Feb. 2017), https://www.ferc.gov/industries/gas/enviro/guidelines/guidance-manual-volume-1.pdf .
Antero	Antero Resources Corporation
Application	Abbreviated Application of Tennessee Gas Pipeline Company, L.L.C. for a Certificate of Public Convenience and Necessity (Broad Run Project), Docket No. CP15-77-000 (Jan. 30, 2015) (R. 1; J.A. 1-53).
Approved Site	Site for Compressor Station 563.
CEII	Critical Energy Infrastructure Information
Certificate Order	<i>Tennessee Gas Pipeline Co.</i> , Order Issuing Certificate and Approving Abandonment, 156 FERC ¶ 61,157 (2016) (R. 427; J.A. 457-528).
Columbia Gulf	Columbia Gulf Transmission, LLC
Compressor Station 563	The 60,000 ISO-rated horsepower compressor station located in Joelton, Tennessee.
Concerned Citizens	Concerned Citizens for a Safe Environment
Environmental Assessment	Environmental Assessment for the Broad Run Expansion Project, Docket No. CP15-77-000 (issued Mar. 11, 2016) (R. 385, J.A. 206-421).

Exhibit Gs	Exhibits G and G-II (submitted as CEII). Tennessee’s Exhibit Gs contain: (1) flow diagrams showing the daily design capacity of Tennessee’s system reflecting operation with and without the proposed facilities, including details with respect to each proposed new compressor station; and (2) supporting data, including “assumptions, bases, formulae, and methods used in the development and preparation of such diagrams.
FERC or Commission	Federal Energy Regulatory Commission
ISO	International Organization for Standardization
June 7, 2016 Comments	Comment of William Robertson, Docket No. CP15-77-000 (June 7, 2016) (R. 420; J.A. 451-453).
June 27, 2016 Comments	Comment of William Robertson, Docket No. CP15-77-000 (June 27, 2016) (R. 424; J.A. 454-456).
NEPA	National Environmental Policy Act
NGA	Natural Gas Act
P	Paragraph in a FERC order
Project	Broad Run Expansion Project
Pet’rs’ Br.	Page Proof Brief of Lori Birkhead; Lane Brody (Individually and as CEO of Walden Puddle, a Wildlife Rehabilitation and Education Center); Jim Wright; and Mike Younger, No. 18-1218 (Nov. 26, 2011).
R.	An item in the Certified Index to the Record this case.
Rehearing Order	<i>Tennessee Gas Pipeline Co.</i> , Order Denying Rehearing and Dismissing Clarification, 163 FERC ¶ 61,190 (2018) (R. 572; J.A. 665-710).
Rehearing Request	Petition of Lori Birkhead, Lane Brody, Jim Wright and Mike Younger, Individual Members of the Concerned Citizens for a Safe Environment (CCSE) for Rehearing of Order Issuing Certificat[e] for the Broad Run Expansion Project, Docket No. CP15-77-000 (Oct. 6, 2016) (R. 439, J.A. 546-644).

Supplemental Alternatives Analysis	Supplement to Responses to October 1, 2015 Environmental Information Request, Docket No. CP15-77-000 (Nov. 12, 2015) (R. 346; J.A. 98-145).
Site C1	Alternative compressor station site rejected by the Commission in favor of the proposed site for Compressor Station 563.
Tennessee	Respondent-Intervenor Tennessee Gas Pipeline Company, L.L.C.

STATEMENT OF ISSUES

Tennessee Gas Pipeline Company, L.L.C. (“Tennessee”) adopts and incorporates by reference the Statement of Issues set forth in the Brief of the Federal Energy Regulatory Commission (“FERC” or “Commission”). Although Petitioners raised additional issues in their Statement of Issues submitted on September 7, 2018, Petitioners waived those issues by not addressing them in their opening brief. *See, e.g., Fox v. Gov’t of D.C.*, 794 F.3d 25, 29 (D.C. Cir. 2015) (arguments not raised in opening brief are forfeited).

STATUTES AND REGULATIONS

All applicable statutes and regulations are contained in the Addendum to Petitioners’ Brief and the Addendum to Respondent’s Brief, with the exception of those contained in the Addendum to this Brief.

STATEMENT OF THE CASE

I. The Broad Run Project.

Tennessee filed an application on January 30, 2015, pursuant to Natural Gas Act (“NGA”) Sections 7(b) and (c), 15 U.S.C. § 717f(b)-(c), requesting a certificate of public convenience and necessity from FERC to construct and operate interstate natural gas pipeline compression facilities in Kentucky, Tennessee, and West Virginia, and to abandon certain facilities in Kentucky

(“Project”).¹ The Project’s purpose is two-fold: (1) provide up to 200,000 dekatherms per day of firm incremental transportation service to meet the needs of Antero Resources Corporation (“Antero”), the Project’s shipper; and (2) replace older, less efficient compression facilities with new, more efficient facilities. Application at 1-2 (J.A. 2-3). For Compressor Station 563 in Joelton, Davidson County, Tennessee, Tennessee determined that two 30,000 International Organization for Standardization-rated (“ISO-rated”)² horsepower compressor units (60,000 total) would be required to provide the required transportation capacity. Application at 6 (J.A. 7).

Tennessee’s Application included an in-depth Environmental Report consisting of thirteen resource reports that disclosed impacts of the Project on a variety of resources. Resource Report 10 included a robust discussion of alternatives to the Project, including the alternatives’ environmental impacts. Resource Report 10 evaluated 20 site options for the new aboveground compression facilities, including four “study areas” for Compressor Station 563, and summarized the estimated environmental impacts of each site alternative. Application, Resource Report 10 at 10-22–10-27, tbl.10-4 (J.A. 44-49), 10-29

¹ Abbreviated Application of Tennessee Gas Pipeline Company, L.L.C. for a Certificate of Public Convenience and Necessity (Broad Run Project) at 1, Docket No. CP15-77-000 (Jan. 30, 2015) (“Application”) (R. 1; J.A. 2).

² The ISO rating is measured at sea level and 59 degrees Fahrenheit. *See El Paso Nat. Gas Co.*, 10 FERC ¶ 62,171, at p. 63,251 n.2 (1980).

(J.A. 50); *id.*, App. 10A, fig.10A-7 (J.A. 53). Resource Report 10 evaluated environmental factors such as proximity to sensitive environment resources and residential areas, impact on cultural resources and sensitive species and habitat, and existing land use type. Resource Report 10 at 10-23–10-27, tbl.10-4 (J.A. 45-49). In accordance with FERC precedent and guidance, Resource Report 10 also considered site availability and landowner willingness to sell in evaluating and selecting a proposed site for Compressor Station 563. *Id.* at 10-30 (J.A. 51). Based on these criteria, Tennessee ultimately selected a 40-acre area within one of the study areas as the proposed site for Compressor Station 563. *Id.* at 10-30 & tbl.10-5 (J.A. 51). Tennessee noted that the proposed site had several environmental and operational advantages as it had convenient highway access, avoidable surface water features, no existing structures, and contained a forested area that would provide a natural buffer for air, noise, and visual impacts. *Id.* at 10-29 (J.A. 50).

II. FERC's Comprehensive Review.

FERC issued a Notice of Intent to prepare an Environmental Assessment for the Project on May 1, 2015.³ FERC staff issued an Environmental Information Request to Tennessee on October 1, 2015, requesting that Tennessee provide

³ *Tenn. Gas Pipeline Co.*, 156 FERC ¶ 61,157, at P 42 (2016) (“Certificate Order”) (R. 427; J.A. 472), *reh’g denied*, 163 FERC ¶ 61,190 (2018) (“Rehearing Order”) (R. 572; J.A. J.A. 665-710).

additional analysis of alternative site locations, including the site put forward by Petitioners, and discussion of environmental impacts associated with each alternative.⁴

Accordingly, Tennessee submitted a revised site alternatives analysis for Resource Report 10 to FERC.⁵ The Supplemental Alternatives Analysis included eight site locations for Compressor Station 563, in addition to the original four study areas and Tennessee's proposed site, for a total of thirteen locations. *Id.* at 20 (J.A. 118). After a comprehensive analysis and comparison, Tennessee again concluded that the proposed site for Compressor Station 563 was the most preferable location. *Id.* at 29 (J.A. 127).

FERC staff issued an Environmental Assessment for the Project on March 11, 2016, concluding that FERC's approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment" and "recommend[ing] that the Commission's Order contain a finding of no significant impact."⁶ The Environmental Assessment contained a comprehensive analysis of 13 different sites for Compressor Station 563, including Tennessee's

⁴ Environmental Information Request No. 3—Broad Run Expansion Project ¶¶ 25-27, Docket No. CP15-77-000 (Oct. 1, 2015) (R. 334; J.A. 96-97).

⁵ Supplement to Responses to October 1, 2015 Environmental Information Request, Docket No. CP15-77-000 (Nov. 12, 2015) ("Supplemental Alternatives Analysis") (R. 346; J.A. 98-145).

⁶ Environmental Assessment for Tennessee Gas Pipeline Company, L.L.C. at 131, Docket No. CP15-77-000 (Mar. 11, 2016) (R. 385; J.A. 348).

proposed site and Petitioners' preferred site (referred to as Site C1). *Id.* at 127-29 (J.A. 344-346). The Environmental Assessment concluded that "none of the alternatives offer significant environmental advantages over the proposed site for Compressor Station 563." *Id.* at 127 (J.A. 344). The Environmental Assessment also estimated the direct greenhouse gas emissions associated with construction and operation of the Project, and discussed regional climate change impacts. *Id.* at 103 (J.A. 320).

In the Certificate Order, FERC explicitly found that, under NGA Section 7, the public convenience and necessity required approval of the Project. Certificate Order at P 21 (J.A. 463-464). Consistent with the Environmental Assessment, FERC found that approval of the Project would "not constitute a major federal action significantly affecting the quality of the human environment." *Id.* at P 175 (J.A. 517). FERC determined, based on its expert staff's review of Tennessee's system flow diagrams and hydraulic models, that the Project, including Compressor Station 563, was appropriately designed to provide the additional 200,000 dekatherms per day of incremental capacity. *Id.* at P 17 (J.A. 463). With respect to alternative locations for Compressor Station 563, the Certificate Order noted that the Environmental Assessment evaluated 12 alternatives to the site proposed by Tennessee, and concluded that "none of the alternatives offer[ed] significant environmental advantages over the proposed site for Compressor

Station 563.” *Id.* at P 112 (J.A. 497). The Certificate Order concluded that although one site—Site C1 preferred by Petitioners—presented some advantages to the approved Compressor Station 563 location, some factors were less favorable at Site C1. *Id.* at P 111 (J.A. 497). Combined with the fact that the landowner of Site C1 was unlikely willing to sell, the Certificate Order appropriately agreed with the Environmental Assessment that Site C1 “d[id] not have a significant advantage over the proposed site.” *Id.* FERC, therefore, approved the proposed site for Compressor Station 563 (hereinafter, the “approved site”).

Petitioners sought rehearing and stay of the Certificate Order, both of which FERC denied.⁷ FERC affirmed the Certificate Order’s conclusions that Tennessee properly designed Compressor Station 563 to meet the Project’s purpose, and that none of the 12 alternatives to the approved site, including Site C1, offered a significant environmental advantage. Rehearing Order at PP 13, 22 (J.A. 671, 673-674). With respect to greenhouse gas emissions, FERC affirmed that potential impacts related to upstream production or downstream consumption of natural gas are not “indirect effects” of the Project, and FERC is not required to consider them. *Id.* at PP 58, 62 (J.A. 690, 694).

⁷ FERC denied requests for stay on November 29, 2016. *See Tenn. Gas Pipeline Co.*, 157 FERC ¶ 61,154 (2016) (R. 452; J.A. 647-651); *see also* Rehearing Order, 163 FERC ¶ 61,190 (J.A. 665-710).

SUMMARY OF ARGUMENT

Consistent with its statutory obligations under the National Environmental Policy Act (“NEPA”), FERC properly issued the Certificate Order after taking a hard look at a reasonable range of alternatives that satisfied the Project’s purpose. FERC thoroughly evaluated myriad environmental factors and reasonably concluded that no alternative offered a significant environmental advantage over the approved site.

Petitioners attempt to challenge FERC’s finding that the Project, including Compressor Station 563, was appropriately designed to provide the additional 200,000 dekatherms per day of incremental capacity. Petitioners argue that Compressor Station 563’s horsepower at the approved site is excessive and that FERC violated NEPA by failing to consider an alternative with less horsepower at the approved site. Despite being fully aware of the Project’s purpose and Compressor Station 563’s proposed design since the inception of the proceedings at FERC, Petitioners did not raise this issue on rehearing. Failure to do so is a fatal jurisdictional bar to raising that issue now on judicial review.

Even if the Court finds jurisdiction, Petitioners’ argument fails on substantive grounds. Petitioners similarly argue that FERC violated NEPA by failing to consider a lesser-horsepower alternative at Site C1. But less horsepower

at either the approved site or at Site C1 will not meet the Project's purpose of expanding transportation capacity by 200,000 dekatherms per day.

Likewise, Petitioners' argument that FERC impermissibly relied on site ownership in weighing alternatives to the approved site also fails. Consideration of site ownership is reasonable and proper under NEPA and the NGA, and is consistent with FERC's precedent, policy, and guidance. Further, the record demonstrates that site ownership was just one factor in FERC's robust analysis of alternatives. FERC evaluated environmental impacts of 12 different alternatives to the approved site and reasonably determined that none offered a significant environmental advantage.

Last, FERC properly concluded that greenhouse gas emissions from upstream production and downstream consumption are not indirect effects of the Project because they are neither causally connected nor reasonably foreseeable impacts. FERC therefore was not required to analyze such emissions under NEPA.

STANDARD OF REVIEW

Tennessee adopts the Standard of Review set forth in the Brief of Respondent.

ARGUMENT

I. The Court Lacks Jurisdiction Over Issues Relating to FERC's Alleged Failure to Address an Alternative With Less Horsepower at the Approved Site for Compressor Station 563.

Petitioners argue FERC violated NEPA by failing to consider the “reasonable alternative” of constructing a smaller compressor station at the approved site of Compressor Station 563. Pet’rs’ Br. at 29. Because Petitioners failed to raise such an argument in their Rehearing Request, Petitioners are statutorily barred from seeking judicial review of this issue.

To seek judicial review, parties must first have sought timely rehearing before FERC. 15 U.S.C. § 717r(a) (“No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.”); *see also* 18 C.F.R. § 385.713(b) (“A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.”); Rehearing Order at P 5 (J.A. 666) (“Untimely requests for rehearing are barred under NGA section 19 and Rule 713(b) of the Commission’s Rules of Practice and Procedure.”). This Court and others have consistently held that the 30-day filing requirement is a jurisdictional requirement that may not be waived.⁸

⁸ *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 1005 (D.C. Cir. 1987) (“the Commission cannot waive the jurisdictional bar of [section] 19” of the NGA); *Boston Gas Co. v. FERC*, 575 F.2d 975, 979 (1st Cir. 1978) (NGA rehearing

Here, FERC issued the Certificate Order on September 6, 2016. Rehearing requests were due October 6, 2016. Although Petitioners filed a timely Rehearing Request on October 6, 2016;⁹ they did not specifically raise the issue of whether Compressor Station 563 could have been built at the approved site with less horsepower. Rather, Petitioners “reserve[d] the right to submit a supplemental analysis of the need for a 60,000 horsepower facility” at the approved site and to “rebut the Commission’s findings” with respect to the Project being “properly sized to accommodate 200,000 [dekatherms per day] of incremental capacity.” *Id.* at 20-21 (J.A. 565-566).¹⁰ Petitioners never supplemented their Rehearing Request with this missing analysis.¹¹

provision is “a tightly structured and formal provision” and “[n]either the Commission nor the courts are given any form of jurisdictional discretion”); *see also Big Bend Conservation Alliance v. FERC*, 896 F.3d 418, 421 (D.C. Cir. 2018) (“Section 19(a) of the [NGA] bars judicial review of a FERC order unless the person seeking review has first made application to the Commission for a rehearing thereon.”) (quoting *ASARCO, Inc. v. FERC*, 777 F.2d 764, 771 (D.C. Cir. 1985)) (internal quotation marks omitted).

⁹ Petition of Lori Birckhead, Lane Brody, Jim Wright and Mike Younger, Individual Members of the Concerned Citizens for a Safe Environment (CCSE) for Rehearing of Order Issuing Certificat[e] for the Broad Run Expansion Project, Docket No. CP15-77-000 (Oct. 6, 2016) (“Rehearing Request”) (R. 439, J.A. 546-644).

¹⁰ Petitioners argue that they did “challenge[] the Commission’s findings on rehearing” by “attaching Dr. [William] Robertson’s preliminary calculations showing that the station was overbuilt.” Pet’rs’ Br. at 35. However, the “preliminary calculations” attached to Petitioners’ Rehearing Request relate to Petitioners’ erroneous argument that a smaller compressor station could have been

Petitioners argued in their Rehearing Request that they had “reasonable grounds for failing [to] object to the Commission’s finding” that Compressor Station 563 was appropriately designed, because they lacked information on which FERC relied in making its determination. Rehearing Request at 21 (referencing 15 U.S.C. § 717r(b)) (J.A. 566). Specifically, Petitioners state that Dr. Robertson—a consultant working with Petitioners—filed a request with FERC seeking access to flow diagrams and hydraulic modeling on September 9, 2016, but that at the time requests for rehearing were due, his request was still pending. *Id.* at 20-21 (J.A. 565-566). According to Petitioners, they did not seek access to this information earlier because the Environmental Assessment “did not make a finding on [P]roject need,” and it was not until the Certificate Order that FERC made a finding that the Project was needed to serve the additional 200,000 dekatherms per day. *Id.* at 22 (J.A. 567).

Petitioners’ attempt to explain their failure to timely seek additional information is in vain. First, Petitioners were well aware of the Project’s intended purpose since the filing of the Application. Application at 1 (J.A. 2). The

built at Site C1, not the approved site. Rehearing Request, Ex. 1, Comments 1, 2 (J.A. 608-610, 610-612).

¹¹ Nor would they have been permitted to do so. Rehearing Order at P 11 (J.A. 670) (“[P]arties are not permitted to supplement their rehearing requests after the thirty-day period imposed by NGA section 19(a) has expired.”) (citing 15 U.S.C. § 717r(a)).

Environmental Assessment also explained that the Project’s purpose was to expand system capacity to serve an additional 200,000 dekatherms per day by modifying two existing and constructing four new compressor stations. Environmental Assessment at 2 (J.A. 219). With respect to Compressor Station 563, the Environmental Assessment noted that it would consist of “two 30,000 [horsepower] turbine compressor units.” *Id.* at 14 (J.A. 231). In addition, Tennessee’s Resource Report 10, attached to its Application, stated that “Tennessee conducted a hydraulic analysis and field surveys to determine the optimum horsepower and compression needed to provide the increased capacity necessary to meet the additional 200,000 [dekatherms per day] of throughput.” Resource Report 10 at 10-22 (J.A. 44). Petitioners were fully aware of the Project’s purpose, including Compressor Station 563’s design, well before the Certificate Order. In fact, Concerned Citizens for a Safe Environment (“Concerned Citizens”)—the group to which Petitioners are individual members—filed comments in response to the Environmental Assessment arguing that Compressor Station 563’s 60,000 ISO-rated horsepower size was unnecessary.¹²

¹² Comments of the Concerned Citizens for a Safe Environment (CC[SE]) and Individual Members Urging Rejection of the Draft Environmental Assessment for the Broad Run Expansion Project at 8-10, Docket No. CP15-77-000 (Apr. 11, 2016) (R. 408; J.A. 429-431); *see also* Certificate Order at P 16 and n.13 (J.A. 462) (noting Concerned Citizen’s argument that the “size of [the] compressor station to be built at Station 563 . . . suggests overbuild because ‘only a small percentage of the compressor stations built through 2006 had capacity in excess of 40,000

Petitioners therefore present no reasonable ground for failing to properly raise on rehearing issues relating to Compressor Station 563's horsepower at the approved site.

Likewise, Petitioners may not rely on Dr. Robertson's analysis of the flow diagrams he received from FERC, which he filed on August 7, 2017—ten months after the deadline for rehearing requests.¹³ FERC properly rejected this report “as an untimely request for rehearing by a nonparty.” Rehearing Order at P 11 (J.A. 670). Therefore, Petitioners are statutorily barred from raising this issue now on judicial review.

II. FERC Conducted a Robust Environmental Review in Compliance With NEPA.

Petitioners essentially argue FERC's environmental review was deficient in two purported respects: first, that FERC failed to assess certain alternatives to the Project that involved less compression at both the approved site for Compressor Station 563 and at the Site C1 alternate site; and second, that FERC impermissibly used site availability in its NEPA review when assessing alternative sites for

horsepower”). Concerned Citizens submitted comments on Tennessee's Application in February 2016 arguing the same. *See* Comments by CCSE on TGP Application & Supplemental Filings at 4-7, Docket No. CP15-77-000 (Feb. 26, 2016) (R. 376; J.A. 188-191).

¹³ Instead of relying on Dr. Robertson, Petitioners could have requested copies of Tennessee's flow diagrams directly from Tennessee as permitted by the FERC's regulations. *See* 18 C.F.R. § 388.113(g)(4). However, Petitioners never made such a request.

Compressor Station 563. The record belies Petitioners' arguments. FERC is only required to assess reasonable alternatives that meet the Project's purpose and need. Less compression at the approved site or at Site C1 would not meet the purpose of the Project, which is to create an additional 200,000 dekatherms per day of natural gas transportation capacity. Additionally, FERC's alternatives analysis was robust and included analysis of thirteen sites, including the approved site, for Compressor Station 563. FERC, taking site availability into account as one factor in its analysis, reasonably concluded "that none of the alternatives offer significant environmental advantages over the [approved] site for Compressor Station 563." Environmental Assessment at 127 (J.A. 344); Certificate Order at P 112 (J.A. 497).

A. FERC's Obligation to Consider Alternatives Under NEPA.

NEPA "require[s] that agencies take a "hard look" at environmental consequences,' . . . and . . . provide for broad dissemination of relevant environmental information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). However, NEPA "does not mandate particular results, but simply prescribes the necessary process." *Id.* (citing *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28 (1980) (*per curiam*)). As this Court explained, "[a]n agency's NEPA obligations are 'essentially procedural'" and "NEPA does not require any particular substantive result." *Myersville Citizens for*

a Rural Cmty., Inc. v. FERC, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (quoting *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978)). Instead, NEPA requires federal agencies to “consider fully the environmental effects of their proposed actions.” *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 68 (D.C. Cir. 2011) (citation omitted). This means that “[i]f the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” *Methow Valley*, 490 U.S. at 350. In other words, FERC is not required to adopt the most environmentally benign option.

Under NEPA, an agency may prepare either an environmental impact statement or environmental assessment. *See Myersville*, 783 F.3d at 1322. Relevant here, an environmental assessment is intended to be a “concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact,” or to “aid an agency’s compliance with [NEPA] when no environmental impact statement is necessary.” 40 C.F.R. § 1508.9(a). An environmental assessment “must include a brief discussion of reasonable alternatives to the proposed action.” *Myersville*, 783 F.3d at 1323 (internal alterations omitted) (noting that “the consideration of alternatives in an [e]nvironmental [a]ssessment need not be as rigorous as the consideration of

alternatives in an [environmental impact statement]”). Among other things, an agency’s alternative analysis must “[i]dentify the agency’s preferred alternative or alternatives, if one or more exists.” 40 C.F.R. § 1502.14.

Critically, FERC’s alternatives analysis cannot be considered in isolation; rather, it must be considered within the context of its responsibilities under the NGA for the siting of natural gas infrastructure. “[A]n agency bears the responsibility for deciding which alternatives to consider in an environmental impact statement.” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991). Further, “[A]n agency need follow only a ‘rule of reason’ in preparing an [environmental impact statement] . . . and that this rule of reason governs ‘both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them.’” *Id.* (citing *Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978)). Importantly, “an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives.” *Id.* at 196 (citing *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743-45 (2d Cir. 1983)). An agency is not required to “pursue alternatives that are contrary to the goals of the statute.” *Friends of Boundary Waters Wilderness v. Dombeck*, 164 F.3d 1115, 1129 (8th Cir. 1999). Therefore, FERC may exercise its discretion in defining a reasonable range of alternatives that satisfy the Project’s purpose and

need, taking key factors and agency objectives—such as site availability and avoiding the unnecessary use of eminent domain—into consideration.

B. FERC Was Not Required to Assess Alternatives That Do Not Meet the Purpose and Need of the Project.

FERC staff clearly defined the Project's purpose and need in the Environmental Assessment: to expand capacity on Tennessee's pipeline system for the Project shipper, Antero, that has fully subscribed to the Project's entire capacity of up to 200,000 dekatherms per day of firm incremental transportation services. The Environmental Assessment noted that in considering alternatives, the following criteria were evaluated: technical feasibility and practicality; whether the alternative offered a significant environmental advantage over the proposed action; and its ability to meet the Project's purpose. Environmental Assessment at 121 (J.A. 338). Accordingly, the Environmental Assessment considered a reasonable range of alternatives, including the no-action alternative, system alternatives, and compressor station site alternatives. *Id.* However, if an alternative could not meet the Project's objectives, it was no longer considered. *Id.*

1. FERC Was Not Required to Consider an Alternative With Less Horsepower at the Approved Site Because It Would Not Meet the Project's Purpose.

As explained above, Petitioners are statutorily barred from raising issues relating to an alternative with less horsepower at the approved site. Nevertheless, FERC was not required to consider such an alternative because it would not meet

the Project's purpose of expanding transportation capacity on Tennessee's system to accommodate an additional 200,000 dekatherms per day. Prior to submitting the Application, Tennessee conducted a hydraulic analysis and field surveys to determine the necessary horsepower and potential compressor station locations to meet this additional demand. Resource Report 10 at 10-22 (J.A. 44). Tennessee determined that two 30,000 ISO-rated horsepower compressor units would be necessary at Compressor Station 563 to effectuate the increased transportation capacity. Application at 6 (J.A. 7).

Tennessee corroborated this determination by submitting flow diagrams and hydraulic modeling data. *See id.*, Exs. G and G-II (submitted as Critical Energy Infrastructure Information ("CEII") (R. 3; J.A. 54); Revised Exhibit G and Hydraulic Flow Models (Dec. 2, 2015) (R.R. 348-349; J.A. 148-151) (collectively, "Exhibit Gs"). Tennessee's Exhibit Gs contain: (1) flow diagrams showing the daily design capacity of Tennessee's system reflecting operation with and without the proposed facilities, including details with respect to each proposed new compressor station; and (2) supporting data, including "assumptions, bases, formulae, and methods used in the development and preparation of such diagrams." 18 C.F.R. § 157.14(a)(8), (10). Collectively, Tennessee's Exhibit Gs fully substantiate Tennessee's determination that two compressor units totaling

60,000 ISO-rated horsepower is required at the Compressor Station 563 site to support the Project's required additional 200,000 dekatherms per day.

Tennessee also filed hydraulic flow models with FERC. Based on its detailed review of Tennessee's flow diagrams and hydraulic models, FERC properly dismissed Petitioners' over-generalized and unsupported argument that because "only a small percentage of the compressor stations built through 2006 had capacity in excess of 40,000 horsepower," Compressor Station 563 was unnecessarily large. Certificate Order at P 16 (J.A. 462) (citation omitted). In the Certificate Order, FERC explained that "[s]imulations of Tennessee's system show that the [Project], including Compressor Station 563, has been properly designed to provide the additional 200,000 [dekatherms per day] of incremental capacity proposed for the [P]roject." *Id.* at P 17 (J.A. 463). Nothing submitted by Petitioners, or Dr. Robertson, altered FERC's conclusion.

On rehearing, FERC explained that its engineering staff reviewed Tennessee's flow diagrams and "found them to be entirely consistent with [Tennessee's] hydraulic models." Rehearing Order at P 13 (J.A. 671). Further, FERC staff utilized "an industry standard hydraulic pipeline simulation software package to evaluate whether the [] [Project] [was] . . . designed to meet existing and proposed system delivery requirements." *Id.* Based on this analysis, FERC

concluded that the Project was “properly designed to provide the additional 200,000 [dekatherms per day] of incremental capacity.” *Id.* (citation omitted).

FERC rejected Dr. Robertson’s untimely August 2017 analysis of Tennessee’s flow diagrams, finding that Dr. Robertson “misunderstands the flows and data” and “draws incorrect conclusions.” *Id.* at P 14 (J.A. 671).¹⁴ FERC explained that while flow diagrams “generally illustrate how a system operates,” they lack underlying design assumptions. *Id.* As a result, FERC appropriately rejected Dr. Robertson’s August 2017 comments as “an over-simplified analysis of Tennessee’s proposal that lacks many of the design assumptions underlying the [P]roject.” *Id.* A fundamental flaw in Dr. Robertson’s comments is his apparent assumption that the 30,000 ISO-rated horsepower compressor units can create 30,000 horsepower at Compression Station 563. This is incorrect. Tennessee’s Exhibit G-II explained “that gas turbine horsepower output decreases with increased ambient temperature.” Ex. G-II at 1 (J.A. 54).¹⁵ Tennessee, therefore, modelled its compressor units at Compressor Station 563 based on, among other things, the summer ambient temperatures in Joelton, Tennessee, which can reach

¹⁴ Dr. Robertson is not an engineer nor does he work in the natural gas pipeline industry. Rather, Dr. Robertson is a professor in the Department of Physics and Astronomy at Middle Tennessee State University. *See* <https://www.mtsu.edu/faculty/william-robertson> (last visited Mar. 8, 2019).

¹⁵ As indicated above, ISO ratings are measured at sea level and 59 degrees Fahrenheit. *See* note 2, *supra*.

100 degrees Fahrenheit. Consequently, Tennessee calculated that each unit would create 23,020 horsepower, or 46,040 horsepower total, under those conditions. Ex. G, Sheet 1 (J.A. 151). Therefore, FERC reasonably found Tennessee properly designed the Project.

2. FERC Was Not Required to Consider an Alternative With Less Horsepower at Site C1 Because It Would Not Meet the Project's Purpose.

In a twist on the same argument, Petitioners argue that FERC failed to consider a lesser-horsepower compressor station at alternative Site C1. Pet'rs' Br. at 31. According to Petitioners, Site C1 would allow Tennessee to downsize Compressor Station 563 due to its "location midway between two existing compressor stations." *Id.* at 32 (citing Comment of William Robertson at 2, Docket No. CP15-77-000 (June 7, 2016) ("June 7, 2016 Comments") (R. 420; J.A. 452)). As with the lesser-horsepower argument at the approved site, FERC was not required to consider such an alternative because it would not meet the Project's purpose.

Petitioners rely on a series of comments submitted by Dr. Robertson to support their assertion that Site C1 would have allowed a smaller-sized compressor station to be built. In June 2016, Dr. Robertson submitted two separate filings

relating to alternative sites for Compressor Station 563.¹⁶ Dr. Robertson's first June 2016 filing relates primarily to the Environmental Assessment's conclusions with respect to environmental impacts at the approved site versus Site C1. June 7, 2016 Comments at 1 (J.A. 451). Dr. Robertson asserts without support that Site C1 would allow a reduced compression because it "better splits the distance between the two adjacent compressor stations . . . making it a better engineering choice . . . in terms of power required to move the same fixed volume of gas," concluding that "a reduced size facility is a strong possibility" at Site C1. *Id.* at 2 (J.A. 452).

Dr. Robertson's makes this same assertion again in his second June 2016 filing. June 27, 2016 Comments at 1 (J.A. 454). To support this conclusion, Dr. Robertson explained that he relied on (outside-the-record) conversations with engineers for Columbia Gulf Transmission, LLC ("Columbia Gulf") and his comparison of Compressor Station 563 to Columbia Gulf's Cane Ridge Compressor Station. *Id.* According to Dr. Robertson, Columbia Gulf engineers stated that the 41,000 horsepower Cane Ridge Compressor Station is located halfway between two adjacent compressor stations, and that moving the station one mile in either direction "would require an increase in turbine horsepower to realize

¹⁶ See June 7, 2016 Comments (J.A. 451-452); Comment of William Robertson, Docket No. CP15-77-000 (June 27, 2016) ("June 27, 2016 Comments") (R. 424; J.A. 454-456).

the targeted increase in gas capacity.” *Id.* From this, Dr. Robertson makes the unsubstantiated inferential leap that relocating Compressor Station 563 “closer to the midpoint” would allow a reduction in horsepower from 60,000 to 41,000. *Id.* Dr. Robertson’s third filing is equally unavailing, purportedly providing a quantitative thermodynamic analysis that “illustrates conclusively” that Compressor Station 563’s horsepower could be reduced by moving the site to a midway point, as with the Cane Ridge Compressor Station.¹⁷

FERC rejected Dr. Robertson’s “over-simplified analysis,” Rehearing Order at P 14 (J.A. 671), finding that that Compressor Station 563 was appropriately designed to satisfy the Project’s purpose—and that a smaller compressor station would not satisfy that purpose. *Id.* at P 13 (J.A. 671); Certificate Order at P 17 (J.A. 463). Specifically with respect to Dr. Robertson’s comparison of Compressor Station 563 to Columbia Gulf’s Cane Ridge Compressor Station, FERC noted that “[t]he only similarities between the compressor stations are that they are both in the State of Tennessee and they both involve the use of Solar gas-turbine compressor units, though of different sizes.” Rehearing Order at P 15 (J.A. 671-672). FERC’s criticism of Dr. Robertson’s report continued, explaining that Dr. Robertson’s analyses amount to “a stand-alone theoretical comparison of compressor stations without any context,” lacking “specific operating parameters

¹⁷ See Comment of William Robertson, Docket No. CP15-77-000 (Sept. 5, 2016) (R. 428; J.A. 529-532).

and configurations” of the respective pipeline systems. *Id.* FERC explained that an exact comparison of the compressor stations is not feasible because the upstream and downstream flow characteristics vary by system.¹⁸ Accordingly, FERC affirmed its conclusion that the Project, including Compressor Station 563, was “properly designed to accommodate the new proposed service.” *Id.*; *see also id.* at P 26 (J.A. 675-676). Nothing submitted by Petitioners, or Dr. Robertson’s unsubstantiated analyses, altered this conclusion.¹⁹

C. FERC Properly Considered Site Ownership in Approving the Compressor Station 563 Site.

1. Consideration of Site Ownership Is Proper Under NEPA, the NGA, and Consistent With FERC Guidance and Precedent.

Petitioners argue that FERC impermissibly relied on site ownership in weighing alternatives to the approved site. Pet’rs’ Br. at 24-29. According to Petitioners, site ownership is not only irrelevant to the environmental review process—it is “incompatible with NEPA.” *Id.* at 26, 29. As explained below,

¹⁸ The differing characteristics include “gas volumes transported, system design operating pressure before and after the compressor station, compression ratio, design operating temperatures, gas flow velocities, and operational efficiencies for the compressor units.” *Id.*

¹⁹ FERC even went so far as to assume that horsepower could have been reduced at Site C1. It nevertheless reiterated that Site C1 would still not present a significant environmental advantage, even if emissions were capable of being reduced, because Compressor Station 563 as approved would not have a significant impact on regional air quality. *Id.* at P 26 (J.A. 675-676).

FERC's consideration of the availability of certain alternative sites as part of its environmental review is fully consistent with NEPA and the NGA.

It is well settled that NEPA does not require specific substantive results, but rather sets forth the process for environmental review. *Methow Valley*, 490 U.S. at 350. Provided that FERC sufficiently identifies and evaluates adverse environmental effects of a proposed action, FERC "is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Id.*; *see also Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 968 (D.C. Cir. 2000). FERC was merely required to identify reasonable alternatives to Compressor Station 563, and take a "hard look" at the environmental effects of each. Having considered twelve alternatives to the approved site for Compressor Station 563 against myriad environmental factors, and ultimately concluding "none of the alternatives offer[ed] significant environmental advantages over the [approved] site for Compressor Station 563," Certificate Order at P 112 (J.A. 497), FERC took the requisite hard look at a reasonable range of alternatives.

FERC's consideration of site availability and ownership is consistent with its precedent and policy. In *Florida Gas Transmission Co.*, 100 FERC ¶ 61,282 (2002), FERC made clear that "[a]lthough a certificate confers the power of eminent domain on the certificate holder, the Commission much prefers that pipelines acquire sites for permanent, aboveground facilities from willing sellers

without the need to rely on condemnation proceedings.” *Id.* at P 27 n.16. In that case, the pipeline company proposed a site for a new compressor station but noted that the landowner was unwilling to sell. *Id.* at P 4. During the course of its environmental review, FERC staff recommended that if the pipeline company were unable to reach an agreement with the landowner of the proposed site, it should construct the compressor station at an equally environmentally acceptable alternative site. *Id.* at P 8. FERC issued an order agreeing with staff’s conclusions in the environmental document. *Id.* On rehearing, FERC explained that NEPA requires the agency “to analyze the environmental consequences of alternatives that are feasible, practical, and effective.” *Id.* at P 26. FERC explained that it had “determined that the availability of property for permanent aboveground facilities was an appropriate factor in the consideration of alternative sites, all other environmental factors being equal.” *Id.* Because the proposed site’s landowner was not willing to sell, the proposed site was not “feasible.” Approving the alternative site thus “met NEPA’s requirement to adequately consider alternatives,” as it was “the only alternate site that was feasible, practical, and effective.” *Id.* at P 27. FERC’s consideration of site ownership in this case is further consistent with its Policy Statement in which FERC balances the demonstrated need and benefits of a pipeline project against, among other things, impacts on landowners, one goal of which is to consider “the unneeded exercise of

eminent domain.”²⁰ It is entirely appropriate for FERC to take into account its Congressionally mandated “authorization to act” in its NEPA review. *Citizens Against Burlington*, 938 F.2d at 196.

Consideration of ownership in the siting of compressor stations also is consistent with NEPA regulations. The Council on Environmental Quality’s regulations require that agencies in performing an alternatives analysis “[i]dentify the agency’s preferred alternative or alternatives.” 40 C.F.R. § 1502.14(e). FERC’s *Guidance Manual for Environmental Report Preparation*²¹ expresses some of FERC’s preferences with respect to alternatives. Specifically, the Guidance recommends that when applicants identify and consider alternative sites for above-ground facilities that they analyze factors like footprint, existing site use, site availability, access roads, engineering constraints, and environmental. See *2002 Guidance Manual* at 3-115–3-3115. In the *2017 Guidance Manual*, FERC further explained its preference with respect to site availability: “Although

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at p. 61,737 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

²¹ FERC, *Guidance Manual for Environmental Report Preparation* (Aug. 2002), <https://www.ferc.gov/industries/gas/enviro/erpman.pdf> (“2002 Guidance Manual”). FERC updated its *Guidance Manual* in 2017, which also instructs applicants to include an analysis of environmental factors, including land availability. FERC, *Guidance Manual for Environmental Report Preparation* at 4-146 (Feb. 2017) (“2017 Guidance Manual”), <https://www.ferc.gov/industries/gas/enviro/guidelines/guidance-manual-volume-1.pdf>.

section 7(h) of the NGA grants a Certificate holder the right of eminent domain, we prefer that the site be available”²² Based on this stated preference in the *Guidance Manuals*, and consistent with FERC precedent and policy, Tennessee and FERC reasonably included site availability as a factor in their analysis.²³

Petitioners also allege that the record does not support FERC’s “speculative assumption” that the Site C1 landowner was unwilling to sell. Pet’rs’ Br. at 26 n.21. FERC’s determination was neither speculative nor an assumption, but was supported by information provided by Tennessee in the Supplemental Alternatives Analysis that “indicated that the landowner would be unlikely willing to sell.” Certificate Order at P 111 (J.A. 497); Rehearing Order at P 25 (J.A. 675). The Environmental Assessment explained that Tennessee had identified a landowner willing to sell property at the approved site. Environmental Assessment at 127 (J.A. 344). Further, Tennessee’s Supplemental Alternatives Analysis noted that Tennessee had contacted some, but not all, landowners of the alternative sites. Supplemental Alternatives Analysis at 29 (J.A. 127). Specifically, on a scale of

²² See 2017 *Guidance Manual* at 4-145.

²³ Petitioners argue that the cases on which FERC relies to support its consideration of site ownership are “readily distinguishable” because in those cases, “site ownership was a secondary rather than dispositive factor.” Pet’rs’ Br. at 28 (citing *Nat’l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 101 (2017) and *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 241 (2016)). However, as described in Section C(2) below, site ownership was just one factor among many that informed its conclusion that Site C1 did not offer a significant advantage over the approved site.

1 (most preferred) to 13 (least preferred), Tennessee ranked Site C1 as a “12” with respect to the landowner’s willingness to sell, indicating that the landowner was *not* willing to sell the property. *Id.* at 28 tbl.10S-1C (NEW), CS 563 Site Option Ranking (J.A. 126). By contrast, Tennessee already owned property at the approved site, negating any need to exercise eminent domain. *Id.* at 29 (J.A. 127). Thus, record evidence supports FERC’s conclusion that availability of sites weighed more favorably for the approved site. FERC appropriately applied its precedent, policy, and guidance with respect to consideration of site availability and ownership while taking the requisite “hard look” at alternative compressor station locations.

2. FERC Did Not Rely Solely on Site Ownership in Determining That Site C1 Did Not Offer a Significant Environmental Advantage.

Petitioners assert that FERC violated NEPA by relying solely on site ownership in weighing alternatives. Pet’rs’ Br. at 17. According to Petitioners, the record evidence demonstrates that Site C1 “was environmentally superior on every metric considered in the [Environmental Assessment].” *Id.* at 18. Relying on this incorrect conclusion, Petitioners argue that FERC must have preferred the approved site for no other reason than Tennessee represented that the owner of the approved site was willing to sell. *Id.* However, the record does not support Petitioners’ assertions, many of which are factually incorrect or otherwise misrepresent record evidence. Rather than “environmentally superior on every

metric,” FERC properly concluded based on a thorough evaluation of record evidence that Site C1 did not offer a significant environmental advantage. Certificate Order at P 111 (J.A. 497); Rehearing Order at P 22 (J.A. 673-674). Further, as described above, FERC’s consideration of the availability of Site C1 and the approved site and the unnecessary exercise of eminent domain is fully consistent with FERC’s obligations under NEPA, the NGA, and FERC guidance and precedent.

FERC’s evaluation of alternatives was comprehensive, including 12 alternative site locations for Compressor Station 563, both within and outside of Davidson County, Tennessee. Rehearing Order at 21 (J.A. 673); Environmental Assessment at 127-29 (J.A. 344-346). Although FERC recognized that some factors were more favorable at Site C1 as compared to the approved site, FERC also explained that other factors were less favorable. Certificate Order at P 111 (J.A. 497). In particular, FERC explained that although Site C1 would affect less prime farmland, contained no high seismicity areas or faults within 10 miles, and included 12 fewer residences within 0.5 mile, Site C1 would affect a similar amount of forested acres, crossed an intermittent waterbody, and contained greater steep slope areas. *Id.* Based on these factors, which FERC noted do not carry equal weight, and the fact that the owner of Site C1 was likely unwilling to sell,

FERC reasonably concluded that Site C1 did not offer a significant environmental advantage over the approved site. *Id.*

In an attempt to prove FERC wrong, Petitioners created their own table summarizing what they view as a more accurate comparison of the approved site for Compressor Station 563 and Site C1, as opposed to the comparative analysis FERC completed in the Environmental Assessment. Pet'rs' Br. at 20. However, Petitioners' table contains several inaccuracies and misrepresentations.

First, Petitioners list the approved site as crossing one intermittent waterbody (*see id.*), despite the fact that Tennessee's resource reports and the Environmental Assessment demonstrated that the approved site would not cross any intermittent waterbodies. Environmental Assessment at 128 tbl.3-4 (J.A. 345). In support, Petitioners rely on a separate table in the Environmental Assessment—Table 2-2—which reveals that a *fence* at the boundary of the approved site would cross an intermittent waterbody. Pet'rs' Br. at 20 n.11 (citing Environmental Assessment at 38 tbl.2-2 (J.A. 255)). Tennessee's Resource Report 2 demonstrates that the intermittent stream affected by the approved site is not within the construction or operation footprint and is only minimally affected by a fence, not the facility itself. Resource Report 2, App. 2A, figs.2A-6a, 2A-6b (J.A. 41, J.A. 42); *see also* Tennessee's Response to Environmental Information Request No. 2 at Q7 (July 22, 2015) (R. 240; J.A. 77) (confirming that fence installation “will not

impede the flow of or impact any streams that cross station properties”). FERC’s comparative analysis table, on the other hand, shows that Site C1 would directly impact one intermittent waterbody within the construction and operation footprint of the facility, which Petitioners do not dispute. Environmental Assessment at 128 tbl.3-4 (J.A. 345).

Second, Petitioners’ table lists the approved site as impacting 42.8 acres of forested land, and Site C1 as only impacting 33.8 acres. Pet’rs’ Br. at 20. Although this information reflects the data on Table 3-4 in the Environmental Assessment, Petitioners properly acknowledge that the Certificate Order explained that the Environmental Assessment miscalculated the forested acreage affected by Site C1. *Id.* at 21 n.15. FERC explained in the Certificate Order, and again in the Rehearing Order, that the Environmental Assessment inadvertently omitted 9.4 acres of evergreen forest acres in the tally for Site C1. Certificate Order at P 111 (J.A. 497); Rehearing Order at P 24 n.40 (J.A. 674-675). In support, FERC cites Tennessee’s Supplemental Alternatives Analysis, which contains the exact forested acres FERC ultimately relied on in comparing impacts. *See* Supplemental Alternatives Analysis at 24-25 (J.A. 122-123). A total of 43.2 acres for Site C1 is, therefore, not an unsupported “modified tree count,” as alleged by Petitioners, it is the accurate acreage that reflects the Environmental Assessment’s inadvertent omission of 9.4 acres of evergreen forest in the total for Site C1.

Third, Petitioners allege that although the Environmental Assessment lists 13 residential structures within 0.5-mile of Site C1, “data from the Davidson County Records submitted to the Commission show[s] only one residence within [0].5 mile[] of Site C1.” Pet’rs’ Br. at 20 n.12. However, Site C1 is not located in Davidson County. Site C1 is located in Cheatham County, Tennessee; so “data from . . . Davidson County” could not provide any support for or relevance to the number of residences located within 0.5-mile of Site C1. *See* Environmental Assessment at App. C, fig.C-5 (J.A. 388) (showing location of Site C1 in Cheatham County). Petitioners also allege that the approved site is “directly adjacent to nine residences,” compared to “zero for Site C1.” Pet’rs’ Br. at 21. Petitioners provide no support for these assertions. Although the Environmental Assessment notes that the closest residence to the approved site is 75 feet away, and that a “few residences” are within 1,000 feet, the Environmental Assessment continues by explaining that “no visual impacts are anticipated from construction and operation of Compressor Station 563.” Environmental Assessment at 79 (J.A. 296). This is because any “[p]otential views of the compressor station would be shielded by a thick forest buffer to the north, south, and east of the site.” *Id.* at 79-80 (J.A. 296-297); *see also* Certificate Order at P 147 (J.A. 508) (noting that forested area will provide sound buffer between facility and recreational park). Therefore, FERC reasonably concluded that Site C1 did not offer significant

environmental advantages over the approved site. Environmental Assessment at 127 (J.A. 344).

In addition to inaccurately portraying the facts relied upon in FERC's alternatives analysis, the cases cited by Petitioners to support their argument that in other instances FERC has treated close proximity to residences as a dispositive factor when siting facilities are either readily distinguishable from the facts of this case or are mischaracterized by Petitioners. Petitioners cite *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, at P 142 (2017), where FERC recognized that an alternative compressor station location would impact fewer residences within 0.5 mile of the facility. Pet'rs' Br. at 21 n.14. However, in that case, the alternative location would have required an additional 30.4 miles of pipeline, which would have placed the additional mileage of *pipeline* within 50 feet of over 60 residences. Thus contrary to Petitioners' assertion, FERC did not reject the alternative location because it had "60 homes within 50 feet of the *compressor station*." *Id.* (emphasis added). Rather, FERC rejected the alternative location because it would have required significant additional pipeline mileage within 50 feet of 60 residences.

Petitioners also cite to *Florida Gas*, 100 FERC ¶ 61,282 at P 39, selectively quoting FERC for the proposition that "it is preferable to site a compressor station where there are fewer existing residences." Pet'rs' Br. at 21 n.14. However,

FERC actually said: “Although it is preferable to site a compressor station where there are fewer existing residences . . . than an alternative site, it is not always possible. Here it is possible.” 100 FERC ¶ 61,282 at P 39. In the same case, as previously noted, FERC also stated that it “much prefers that pipelines acquire sites for permanent, aboveground facilities from willing sellers without the need to rely on condemnation proceedings.” *Id.* at P 27 n.16. In fact, FERC actually required the pipeline company to change its preferred site to an alternative site because the owner refused to sell. *Id.* at PP 8-9. Rather than support Petitioners’ contention that FERC historically rejects compressor station locations in close proximity to residences, the cases on which Petitioners rely²⁴ demonstrate that close proximity to residences is just one factor among many (including site ownership) in FERC’s consideration of alternatives.²⁵

Petitioners additionally allege that Site C1 would allow a for a smaller-sized compressor station, which, according to Petitioners, would result in a reduction in air emissions. Pet’rs’ Br. at 21-22. Petitioners argue this reduction would help mitigate the Project’s “exceedance of major source thresholds for NOx and CO.”

²⁴ Petitioners also cite to *Millennium Pipeline Co.*, 117 FERC ¶ 61,319, at P 253 n.139 (2006), arguing that FERC determined a certain alternative to be preferable because it would impact fewer residences in close proximity. However, FERC also found that the alternative would have a lesser environmental impact overall.

²⁵ The Rehearing Order accordingly recognized that “proximity to a proposed site does not necessarily indicate potential environmental impacts on residences or recreational facilities.” Rehearing Order at P 23 (J.A. 674).

Id. at 22. Petitioners are wrong on multiple points here. As explained above, FERC determined that Compressor Station 563 was appropriately sized at the approved site to meet the Project’s purpose, and rejected Petitioners’ contentions with respect to reduced horsepower. *See infra* 17-21. FERC explained that the Clean Air Act Title V major source threshold is not a “maximum regulatory limit;” rather, it is a value used to determine whether a permit is required. Certificate Order at P 135 (J.A. 504); Environmental Assessment at 97 (J.A. 314). The Project, including Compressor Station 563, will produce operational emissions that are well below the National Ambient Air Quality Standards. Certificate Order at P 135 (J.A. 504); Environmental Assessment at 103 tbl.2-27 (J.A. 320).

Contrary to Petitioners’ assertions, FERC conducted a robust alternatives analysis and concluded that none of the 12 alternatives—including Site C1—would offer a significant environmental advantage over the approved site. Although FERC considered site ownership as one factor in its analysis, FERC weighed all environmental factors—some of which favored and some of which disfavored Site C1—in making its determination. Even accepting *arguendo* that some, or even the majority of factors, weigh in favor of Site C1, NEPA does not require FERC to choose the most environmentally friendly alternative. *See Methow Valley*, 490 U.S. at 349. As Petitioners note, “NEPA does not mandate a particular result,” but FERC is required to “demonstrate that its choice of one project

alternative over another is rationally connected to the evidence in the record.” Pet’rs’ Br. at 18 (citing *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014)). FERC complied with this directive.

III. The Commission Properly Concluded Alleged Downstream and Upstream GHG Emissions Are Not Indirect Effects of the Project.

Petitioners argue FERC “failed to evaluate the environmental impacts associated with the downstream greenhouse gas emissions resulting from the project.” Pet’rs’ Br. at 39. Petitioners further argue FERC was required to assess potential downstream greenhouse gas emission as part of its Project review under this Court’s precedent in *Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2017), in which the Court found that FERC was required to quantify the potential downstream greenhouse gas emissions resulting from burning of gas at power plants directly tied to the pipeline projects at issue in that case. Petitioners are incorrect. Under both Council on Environmental Quality regulations and *Sierra Club*, alleged downstream greenhouse gas emissions are not indirect impacts of the Project.

The Council on Environmental Quality’s NEPA regulations require consideration of direct and indirect effects of a proposed project. 40 C.F.R. § 1502.16(b). Indirect effects “are caused by the [project] and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b).

FERC properly concluded that downstream greenhouse gas emissions are not an indirect effect of the Project, consistent with NEPA and *Sierra Club*. Rehearing Order at P 62 (J.A. 694). In this case, the Project is designed to create pipeline capacity to transport 200,000 dekatherms per day of natural gas on behalf of the Project shipper, Antero. Antero is a natural gas production company and not an end-user of natural gas. Neither FERC nor Tennessee know the end-use of the gas in this case. As FERC explained, it “does not know where the gas will ultimately be consumed or what fuels it will displace, and likely neither does the entity over which the Commission has jurisdiction, i.e., the transporting pipeline.” *Id.* at P 61 (J.A. 694). Emissions, therefore, are not reasonably foreseeable. *See* 40 C.F.R. § 1508.8(b).

Sierra Club does not apply here. In *Sierra Club*, all the natural gas to be transported by the pipeline projects at issue was delivered directly to several specifically known power plants in Florida. *Sierra Club*, 867 F.3d at 1371. Because end-use consumption was specifically identified, the Court reasoned that it was reasonably foreseeable that the natural gas transported by the project would be burned downstream “in those power plants.” *Id.* at 1372 (transportation of natural gas to the power plants was the project’s “entire purpose”). In contrast, the Project here is *not* designed to serve any particular end-user. Rather, as explained above, the shipper is a natural gas producer and the ultimate end-use and end-user

are unknown. Thus, the Court's reasoning and holding in *Sierra Club* do not apply to this case.

Petitioners further argue FERC erred in failing to consider the Project's alleged upstream impacts from natural gas production. Pet'rs' Br. at 41. Again, FERC properly found the upstream impacts from production are neither causally connected nor reasonably foreseeable impacts of the Project. Certificate Order at PP 64-85 (J.A. 479-489); Rehearing Order at PP 58-60 (J.A. 690-693). Petitioners blithely state that "the record shows that construction of the pipeline will induce upstream gas production," without citing anywhere in the record that supports this bare assertion. Pet'rs' Br. at 41. In fact, FERC explicitly found "there is no record evidence that the Broad Run Expansion Project will induce incremental production of natural gas and, even if additional gas is induced, the amount, timing, and location of such development activity is speculative." Rehearing Order at P 58 (J.A. 690) (quoting Certificate Order at P 84 (J.A. 488-489)). Nothing Petitioners present rebuts FERC's findings.

FERC's conclusion that greenhouse gas emissions from the unidentified downstream uses of natural gas and alleged upstream production are not sufficiently reasonably foreseeable to be indirect impacts is therefore consistent with both NEPA regulations and *Sierra Club*.

CONCLUSION

WHEREFORE, for the reasons explained herein, the Court should deny the Petition for Review.

Respectfully submitted,

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Dated: March 8, 2019

STATUTORY ADDENDUM

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18 C.F.R. § 157.14
Exhibits.

(a) To be attached to each application. All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F- 1, G, G-I, and G-II, must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Receipt and delivery point information required in various exhibits must be labeled with a location point name and code in conformity with the location name and code the pipeline has adopted in conformance with § 284.13(f) of this chapter. Intervenors and persons becoming intervenors after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

(1) Exhibit A—Articles of incorporation and bylaws. If applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(2) Exhibit B—State authorization. For each State where applicant is authorized to do business, a statement showing the date of authorization, the scope of the business applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected shall be supplied upon request.

(3) Exhibit C—Company officials. A list of the names and business addresses of applicant's officers and directors, or similar officials if applicant is not a corporation.

(4) Exhibit D—Subsidiaries and affiliation. If applicant or any of its officers or directors, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of any other person or organized group of persons engaged in production, transportation, distribution, or sale of natural gas, or of any person or organized group of persons engaged in the construction or financing of such enterprises or operations, a detailed explanation of each such relationship, including the percentage of voting strength represented by such ownership of securities. If any person or organized group of persons, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of applicant—a detailed explanation of each such relationship.

(5) Exhibit E—Other pending applications and filings. A list of other applications and filings under sections 1, 3, 4 and 7 of the Natural Gas Act filed by the applicant which are pending

before the Commission at the time of the filing of an application and which directly and significantly affect the application filed, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(6) Exhibit F—Location of facilities. Unless shown on Exhibit G or elsewhere, a geographical map of suitable scale and detail showing, and appropriately differentiating between all of the facilities proposed to be constructed, acquired or abandoned and existing facilities of applicant, the operation or capacity of which will be directly affected by the proposed facilities or the facilities proposed to be abandoned. This map, or an additional map, shall clearly show the relationship of the new facilities to the applicant's overall system and shall include:

(i) Location, length, and size of pipelines.

(ii) Location and size (rated horsepower) of compressor stations.

(iii) Location and designation of each point of connection of existing and proposed facilities with:

(A) Main-line industrial customers, gas pipeline or distribution systems, showing towns and communities served and to be served at wholesale and retail, and

(B) Gas-producing and storage fields, or other sources of gas supply.

(7) Exhibit F–I—Environmental report. An environmental report as specified in §§ 380.3 and 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F–I whenever route or site changes are filed. These revisions should identify the locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected.

(8) Exhibit G—Flow diagrams showing daily design capacity and reflecting operation with and without proposed facilities added. A flow diagram showing daily design capacity and reflecting operating conditions with only existing facilities in operation. A second flow diagram showing daily design capacity and reflecting operating conditions with both proposed and existing facilities in operation. Both flow diagrams shall include the following for the portion of the system affected:

(i) Diameter, wall thickness, and length of pipe installed and proposed to be installed and the diameter and wall thickness of the installed pipe to which connection is proposed.

(ii) For each proposed new compressor station and existing station, the size, type and number of compressor units, horsepower required, horsepower installed and proposed to be installed, volume of gas to be used as fuel, suction and discharge pressures, and compression ratio.

(iii) Pressures and volumes of gas at the main line inlet and outlet connections at each compressor station.

(iv) Pressures and volumes of gas at each intake and take-off point and at the beginning and terminus of the existing and proposed facilities and at the intake or take-off point of the existing facilities to which the proposed facilities are to be connected.

(9) Exhibit G–I—Flow diagrams reflecting maximum capabilities. If Exhibit G does not reflect the maximum deliveries which applicant's existing and proposed facilities would be capable of achieving under most favorable operating conditions with utilization of all facilities, include an additional diagram or diagrams to depict such maximum capabilities. If the horsepower, pipelines, or other facilities on the segment of applicant's system under consideration are not being fully utilized due, e.g., to capacity limitation of connecting facilities or because of the need for standby or spare equipment, the reason for such nonutilization shall be stated.

(10) Exhibit G–II—Flow diagram data. Exhibits G and G–I shall be accompanied by a statement of engineering design data in explanation and support of the diagrams and the proposed project, setting forth:

(i) Assumptions, bases, formulae, and methods used in the development and preparation of such diagrams and accompanying data.

(ii) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication, and methods of testing proposed.

(iii) When lines are looped, the length and size of the pipe in each loop.

(iv) Type, capacity, and location of each natural gas storage field or facility, and of each dehydration, desulphurization, natural gas liquefaction, hydrocarbon extraction, or other similar plant or facility directly attached to the applicant's system, indicating which of such plants are owned or operated by applicant, and which by others, giving their names and addresses.

(v) If the daily design capacity shown in Exhibit G is predicated upon an ability to meet each customer's maximum contract quantity on the same day, explain the reason for such coincidental peak-day design. If the design day capacity shown in Exhibit G is predicated upon an assumed diversity factor, state that factor and explain its derivation.

(vi) The maximum allowable operating pressure of each proposed facility for which a certificate is requested, as permitted by the Department of Transportation's safety standards. The applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection or shall certify that it has been

granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Pertinent details concerning the waiver shall be set forth.

(11) Exhibit H—Total gas supply data. A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

(12) Exhibit I—Market data. A system-wide estimate of the volumes of gas to be delivered during each of the first 3 full years of operation of the proposed service, sale, or facilities and during the years when the proposed facilities are under construction, and actual data of like import for each of the 3 years next preceding the filing of the application, together with:

(i) Names and locations of customer companies and municipalities, showing the number of residential, commercial, firm industrial, interruptible industrial, residential space-heating, commercial space-heating, and other types of customers for each distribution system to be served at retail or wholesale; and the names and locations of each firm and interruptible direct industrial customer whose estimated consumption totals 10,000 Mcf or more in any calendar month or 100,000 Mcf or more per year together with an explanation of the end use to which each of these industrial customers will put the gas.

(ii) Applicant's total annual and peak day gas requirements by classification of service in paragraph (a)(11)(i) of this section, divided as follows: Gas requirements for each distribution area where gas is sold by applicant at retail; for each wholesale customer; for all main line direct industrial customers; and company use and unaccounted-for gas, for both the applicant and each wholesale customer.

(iii) Total past and expected curtailments of service by the applicant and each wholesale customer proposing to receive new or additional supplies of gas from the project, all to be listed by the classifications of service in paragraph (a)(12)(i) of this section.

(iv) Explanation and derivation of basic factors used in estimating future requirements, including, for example: Peak-day and annual degree-day deficiencies, annual load factors of applicant's system and of its deliveries to its proposed customers; individual consumer peak-day and annual consumption factors for each class of consumers, with supporting historical data; forecasted saturation of space-heating as related to past experience; and full detail as to all other sources of gas supply available to applicant and to each of its customers, including manufacturing facilities and liquid petroleum gas.

(v) Conformed copy of each contract, letter of intent or other agreement for sale or transportation of natural gas proposed by the application. Indicate the rate to be charged. If no agreements have been made, indicate the basis for assuming that contracts will be consummated and that service will be rendered under the terms contemplated in the

application.

(vi) A full description of all facilities, other than those covered by the application, necessary to provide service in the communities to be served, the estimated cost of such facilities, by whom they are to be constructed, and evidence of economic feasibility.

(vii) A copy of each market survey made within the past three years for such markets as are to receive new or increased service from the project applied for.

(viii) A statement showing the franchise rights of applicant or other person to distribute gas in each community in which service is proposed.

(ix) When an application requires a statement of total peak-day or annual market requirements of affiliates, whose operations are integrated with those of applicant, to demonstrate applicant's ability to provide the service proposed or to establish a gas supply, estimates and data required by this paragraph (a)(12)(ix) shall also be stated in like detail for such affiliates.

(x) When the proposed project is for service which would not decrease the life index of the total system gas supply by more than one year, the data required in paragraphs (a)(12)(i) to (ix), inclusive, of this section need be submitted only as to the particular market to receive new or additional service.

(13) Exhibit J—Federal authorizations. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

(14) Exhibit K—Cost of facilities. A detailed estimate of total capital cost of the proposed facilities for which application is made, showing cost of construction by operating units such as compressor stations, main pipelines, laterals, measuring and regulating stations, and separately stating the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction, and contingencies. Include a brief statement indicating the source of information used as the basis for the above estimate. If not otherwise set forth, submit data on preliminary bids, if any, for the proposed facilities and recent experienced cost data for facilities of similar character.

(15) Exhibit L—Financing. Plans for financing the proposed facilities for which the application is filed, together with:

(i) A description of the class (e.g., commercial paper, long-term debt, preferred stock) and cost rates for securities expected to be issued with construction period and post- operational sources of financing separately identified.

(ii) Statement of anticipated cash flow, including provision during the period of construction and the first 3 full years of operation of proposed facilities for interest requirements, dividends, and capital requirements.

(iii) A balance sheet and income statement (12 months) of most recent data available.

(iv) Comparative pro forma balance sheets and income statements for the period of construction and each of the first 3 full years of operation, giving effect to the proposed construction and proposed financing of the project.

(v) Any additional data and information upon which applicant proposes to rely in showing the adequacy and availability of resources for financing its proposed project.

(vi) In instances for which principal operations of the company have not commenced or where proposed rates for services are developed on an incremental basis, a brief statement explaining how the applicant will determine the actual allowance for funds used during construction (AFUDC) rate, or if a rate is not to be used, how the applicant will determine the actual amount of AFUDC to be capitalized as a component of construction cost, and why the method is appropriate under the circumstances.

(16) Exhibit M—Construction, operation, and management. A concise statement setting forth arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of applicant, including reference to any existing or contemplated agreements therefor, together with:

(i) A statement showing affiliation between applicant and any parties to such agreements or arrangements. See Exhibit D, paragraph (a)(4) of this section.

(ii) Conformed copies of all construction, engineering, management, and other similar service agreements or contracts in any way operative with respect to construction, operation, or financing of facilities which are the subject of the application or will be applicable under system operations.

(17) Exhibit N—Revenues—Expenses—Income. When the estimated revenues and expenses related to a proposed facility will significantly affect the operating revenues or operating expenses of an applicant, there shall be submitted a system-wide statement for the last year preceding the proposed construction or service and pro forma system-wide and incremental statements for each of the first three full years of operation of the proposed facilities, showing:

(i) Gas system annual revenues and volumes of natural gas related thereto, subdivided by classes of service, and further subdivided by sales to direct industrial customers, sales to other gas utilities, and other sales, indicating billing quantities used for computing charges, e.g., actual demands, billing demands, volumes, heat-content adjustment or other

determinants. In addition, if enlargement or extension of facilities is involved, the revenues attributable solely to the proposed facilities shall be stated separately, and the basis and data used in such computation shall be clearly shown.

(ii) Gas system annual operating expenses classified in accordance with the Commission's Uniform System of Accounts for Natural Gas Companies; the annual depreciation, depletion, taxes, utility income, and resulting rate of return on net investment in gas plant including working capital. In addition if enlargement or extension of facilities is involved, the cost of service attributable solely to the proposed facilities shall be stated separately with supporting data.

(iii) When the data required in paragraphs (a)(17)(i) and (ii) of this section is not submitted, applicant shall provide in lieu thereof a statement in sufficient detail to show clearly the effect on the operating revenues and operating expenses of the estimated revenues and expenses related to the proposed facility.

(18) Exhibit O—Depreciation and depletion. Depreciation and depletion rates to be established, the method of determination and the justification therefor.

(19) Exhibit P—Tariff.

(i) A statement of the rates to be charged for the proposed sales or service, including:

(A) Identification of the applicable presently effective rate schedules, when no additional tariff filings will be required, or

(B) When changes are required in applicant's presently effective tariff, or if applicant has no tariff, pro forma copies of appropriate changes in or additions to the effective tariff or a pro forma copy of the new gas tariff proposed, or

(C) When a new rate is proposed, a statement explaining the basis used in arriving at the proposed rate. Such statement shall clearly show whether such rate results from negotiation, cost-of-service determination, competitive factors or others, and shall give the nature of any studies which have been made in connection therewith.

(ii) When new rates or changes in present rates are proposed or when the proposed facilities will result in a material change in applicant's average cost of service, such statement shall be accompanied by supporting data showing:

(A) System cost of service for the first calendar year of operation after the proposed facilities are placed in service.

(B) An allocation of such costs to each particular service classification, with the basis for each allocation clearly stated.

(C) The proposed rate base and rate of return.

(D) Gas operating expenses, segregated functionally by accounts.

(E) Depletion and depreciation.

(F) Taxes with the basis upon which computed.

(b) Additional exhibits. Applicant shall submit additional exhibits necessary to support or clarify its application. Such exhibits shall be identified and designated as provided by [§ 157.6\(b\)\(6\)](#).

(c) Additional information. Upon request by the Secretary, prior to or during hearing upon the application, applicant shall submit such additional data, information, exhibits, or other detail as may be specified. An original and 7 conformed copies of such additional information shall be furnished to the Commission. The Commission reserves the right to request additional copies.

(d) Availability of Commission staff for advice prior to formal filing. Prior to filing an application, any person may informally confer with the staff of the Commission to obtain advice on any problem of statement or presentation of an application or any part thereof.

18 C.F.R. § 385.713
Request for rehearing (Rule 713).

(a) Applicability.

(1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) Time for filing; who may file. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) Content of request. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled "Statement of Issues," listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) Answers.

(1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) Request is not a stay. Unless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order.

(f) Commission action on rehearing. Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

40 C.F.R. § 1502.3
Statutory requirements for statements.

As required by [sec. 102\(2\)\(C\)](#) of NEPA environmental impact statements ([§ 1508.11](#)) are to be included in every recommendation or report.

On proposals ([§ 1508.23](#)).

For legislation and ([§ 1508.17](#)).

Other major Federal actions ([§ 1508.18](#)).

Significantly ([§ 1508.27](#)).

Affecting ([§§ 1508.3, 1508.8](#)).

The quality of the human environment ([§ 1508.14](#)).

40 C.F.R. § 1502.14
Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

40 C.F.R. § 1502.16
Environmental consequences

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

- (a) Direct effects and their significance (§ 1508.8).
- (b) Indirect effects and their significance (§ 1508.8).
- (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)
- (d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.
- (e) Energy requirements and conservation potential of various alternatives and mitigation measures.
- (f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- (g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- (h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e)(2)(B)(i), I certify that this document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this document contains 8,993 words.

2. As required by Fed. R. App. P. 27(d)(1)(E), this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Respectfully submitted,

/s/ Brian D. O'Neill

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Dated: March 8, 2019

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 25(d) and D.C. Circuit Rule 25(f), I hereby certify that on this 8th day of March, 2019, I have served the foregoing document upon all counsel registered to receive service through the Court's CM/ECF system via electronic filing.

Federal Energy Regulatory Commission	Scott Ediger Federal Energy Regulatory Commission (FERC) Office of the Solicitor 888 First Street, NE Washington, DC 20426 Email: scott.ediger@ferc.gov
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Dated at Washington, D.C., this 8th day of March, 2019.

/s/ Brian D. O'Neill

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