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October 9, 2012

VIA eFiling to FERC in Docket No. PF12-9

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Re: Stop the Pipeline Comments on the Scope of Work for the Constitution Pipeline Draft Environmental Impact Statement.

Dear Secretary Bose:

On behalf of our client, Stop the Pipeline (“STP”), the Pace Environmental Litigation Clinic, Inc. respectfully submits the following comments on the scope of work for the Constitution Pipeline Draft Environmental Impact Statement. STP is a grass-roots coalition formed to stop the construction and operation of the proposed Constitution Pipeline. Its members live, work, and recreate in the six counties that would be affected by the construction and operation of this pipeline: Susquehanna County, PA, and Broome, Chenango, Delaware, Otsego, and Schoharie Counties in NY.

We request that you also consider this letter a statement of status as an “interested or affected” person or party under the National Environmental Policy Act¹ (“NEPA”) and, pursuant to the regulations promulgated by the Council on Environmental Quality, notify us of all NEPA related documents, as they become available, and NEPA related meetings, as they are scheduled.²

¹ 42 U.S.C. § 4321, *et seq.* (2012).

² 40 CFR § 1506.6(b) (2012).

I. The three-week time period and the locations of the three scoping hearings are insufficient for soliciting meaningful and substantive comments. This inadequacy violates the public's right to meaningful participation, is contrary to the express purposes of NEPA, and violates the Due Process Clauses of the 5th and 14th Amendments.

A. Background

The Constitution Pipeline Company (“Williams/Cabot”) pre-filed an application for a 120-mile, interstate, 30-inch, high-pressure gas transmission line, and submitted Resource Reports 1 and 10 to the Federal Energy Regulatory Commission (“FERC”) on May 21, 2012. These reports described the general nature and purpose of the pipeline, and plotted the proposed and alternate routes on topographic maps. Shortly thereafter Williams/Cabot started contacting the affected landowners, and held “Open Houses” from 6:30 to 8:30 pm, on July 17, 18, 19, 24, and 25, in each of the counties targeted to host it (respectively in Susquehanna County, Pennsylvania, and Broome, Chenango, Delaware, and Schoharie Counties in New York). At these “Open Houses” landowners, and other interested people, were able to view large-scale maps that showed the proposed pipeline on aerial photographs. The 600-foot study corridor, the outline of affected parcels, and the names of the directly affected property owners were also depicted. Once the “Open Houses” were over, the large-scale maps were no longer available to the public.

On June 11, 2012, a representative of the FERC asked Williams/Cabot to study the I-88 corridor as an alternative route. On September 12 and 13, from 6:30 to 8:30 pm, two additional “Open Houses” were held – one in Schoharie County and the other in Otsego County. At these events landowners, and other members of the public, were able to view large-scale maps showing Alternative Route M, which would run parallel to the I-88 corridor through Delaware, Otsego, and Schoharie Counties. However, some of the directly affected landowners were not notified prior to these meetings that their land might be taken. Many of their neighbors, and other members of the public, were equally unaware that their communities might be impacted by this proposed project. Once the “Open Houses” were over, the large-scale maps were no longer available to the public.

Less than two weeks after the second round of Open Houses, for Alternative Route M, the FERC held hearings to solicit testimony on the scope of work for the environmental impact statement for all of the putative routes of the proposed Constitution Pipeline. The hearings took place on September 24, 25, and 26, in Chenango County, NY, Schoharie County, NY, and Susquehanna County, PA. Williams/Cabot made their large-scale maps available for viewing for one hour before the hearings.

The FERC issued a notice of intent to prepare an environmental impact statement (NOI) on September 7, 2012. It was mailed to a stakeholder list and published in the Federal Register

on September 14, 2012. In this notice, the FERC emphasized that “the **scoping period will close on October 9, 2012.**”³

B. The public needs more than three weeks to submit scoping comments.

The proposed Constitution Pipeline is a complex project that would cross a variety of geographies, distinct economic regions, and countless political jurisdictions. While the proposed route, and the initial alternative routes were superimposed on topographical maps, the docket for PF12-9 does not include a single map for Alternative Route M, or for any other alternative route developed since Resource Reports 1 and 10 were filed on May 21, 2012. The FERC also asked Williams/Cabot to study four existing interstate gas pipeline easements, but topographical maps showing those alternative routes have not been filed. In addition, the large-scale maps with the proposed routes and study corridors overlaid on aerial photographs, which were on display for a few hours at the “Open Houses” and “Scoping Hearings,” have not been made available within the affected communities. The public cannot meaningfully analyze the potential impacts of the proposed pipeline, and submit responsive scope comments, without detailed maps of all of the routes that are under consideration.

In addition to spanning a vast geographic area, the proposed pipeline would also impact this region over time. Federal law requires interstate pipelines to be “open access,” which means gas can be taken from them, and added to them. Since the proposed Constitution Pipeline would make natural gas available to the region, it is likely to induce growth. It would also create a means to transport gas from the region to urban markets. This would encourage hydrofracking in this area of New York State, which overlies two major shale gas formations. The ramifications of these possibilities are complex, and require time to analyze. For all of these reasons, a ninety-day extension should be granted for the submission of scoping comments after the filing of topographical maps that show all of the proposed routes.

C. Scoping hearings were not equitably located, and their locations were chosen to avoid areas where citizens voiced opposition to the project.

The Council on Environmental Quality (CEQ) has the authority to issue regulations under the National Environmental Policy Act (NEPA). In its guidance on public involvement, the CEQ requires lead agencies to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.”⁴ Federal agencies are also supposed to “[h]old or sponsor public hearings or public meetings whenever appropriate Criteria shall include whether there is: (1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”⁵ The FERC has failed to follow these regulations.

³ *Notice of Intent To Prepare an Environmental Impact Statement for the Planned Constitution Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*, 77 Fed. Reg. 56835 (Sept. 14, 2012) (emphasis in original).

⁴ 40 C.F.R. § 1506.6(a) (2012).

⁵ *Id.* at § 1506.6(c)(1).

The FERC held two scoping hearings within the lower third (southwest end) of the proposed 120-mile long Constitution Pipeline, and another scoping hearing near the northeast end. Specifically, a hearing was held on September 24 in Afton, NY, which is located in Chenango County; on September 25 in Schoharie, NY, which is located in Schoharie County; and on September 26 in New Milford, PA, which is located in Susquehanna County. (See Appendix A, Location of Scoping Hearings.) These three hearings were held within 50 miles of the two ends of the proposed route. Not one hearing was held in the 70-mile middle portion, in either Delaware or Otsego Counties, where there has been significant vocal opposition to the project.

The proposed Constitution Pipeline has generated substantial controversy. Dozens of articles and letters to the editor expressing citizen opposition to this project have appeared in *The Daily Star*, a newspaper that mainly serves Delaware and Otsego Counties. Hundreds of comments have been filed with the FERC in opposition to the project. A statistical summary of these comments was submitted by STP, and filed in the docket maintained by the FERC on September 17, 2012. In addition, a letter expressing opposition, from affected landowners to other affected landowners, has garnered hundreds of signatures from citizens opposed to the project. Versions of this letter, dated July 24, 2012, August 16, 2012, and September 20, 2012, were filed in the docket maintained by the FERC. The letter included the townships associated with each person who signed it; the vast majority of them live in Delaware and Otsego Counties.

Instead of reaching out to these concerned citizens, the FERC has systematically avoided them, refusing to hold a hearing in a location that would be convenient for them to attend. The long distances to the scoping hearings created an additional problem as the proposed project is in a hilly rural area, with no public transportation. This makes it particularly difficult for farmers, families, and older residents who have trouble driving long distances at night. In response, dozens of comments were submitted to the FERC objecting to the disenfranchisement of the citizens of Delaware and Otsego County. One commenter located venues suitable for such a hearing, and provided the FERC with dates, locations, and fees for available spaces, as well as the names and phone numbers of employees responsible for booking the rooms. (See the comment of Diane Nixon, filed on September 18, 2012.) To date, the FERC has not acted on the information provided. The regulations governing NEPA require the FERC to make “diligent efforts” to solicit controversial opinions. Therefore the FERC should comply with NEPA by holding scoping hearings in both Delaware and Otsego Counties.

D. The Due Process Clauses of the Fifth and Fourteenth Amendments require equitable scoping hearings for landowners whose property may be taken by eminent domain.

The Fifth Amendment of the United States Constitution requires “due process of law” before the government can authorize the use of eminent domain to take private property.⁶ Due process has both substantive and procedural components. Whether procedural due process has

⁶ U.S. CONST. amend. V.

been constitutionally sufficient will be based upon an evaluation of three factors: (1) the nature of the private interest; (2) the risk of deprivation and the value of additional proceedings; and (3) the Government's interest, including the burden of providing additional proceedings.⁷

Here the FERC has the power to authorize a private corporation to take private property through eminent domain, so the private interest is very high. Many landowners have requested additional time to prepare scoping comments, as well as additional hearings in Delaware and Otsego Counties. A time extension and conveniently sited hearings would be meaningful to the landowners, and could add substantive value to the environmental review by increasing the quantity and quality of public input to the FERC. Finally, while the FERC will have some burden if it has to schedule and attend two more scoping sessions – in Delaware and Otsego Counties – this inconvenience is small in comparison to what is at stake for the hundreds of potentially affected landowners.

Fairness and equity need to be promoted and prioritized. The landowners along the proposed route were notified in the spring that their land might be taken for the Constitution pipeline, and “Open Houses” were held in mid-July – a full two-months before the scoping hearings. In sharp contrast, the landowners along Alternative Route M (and some of the other alternative routes) were only recently notified about the proposed pipeline, and the threat to their property and safety. The Open Houses for landowners along Alternative Route M were held on September 12th and 13th, less than two weeks before the scoping hearings. These landowners were not given sufficient time to adjust to the threat to their persons and property, or to educate themselves about the FERC's process, eminent domain, interstate gas pipelines, economic impacts, environmental, health, and safety issues. The lack of adequate notice has put them at a distinct disadvantage. In addition, these citizens were denied a convenient location to voice their concerns at a scoping hearing. It is obvious that they would have been much better prepared to testify and to submit scoping comments if they had been treated equitably.

NEPA regulations require “diligent efforts” to involve the public. It is not too late for the FERC to correct its mistakes, and thereby avoid the risk that the entire process will be invalidated for lack of procedural due process. The Commission should provide a draft scope of work, detailed maps of all alternatives, a new 90-day scoping period, and schedule hearings in Delaware and Otsego Counties at its earliest possible convenience.

II. A draft scope of work should have been available for review during the scoping process.

The proposed Constitution Pipeline will pass through approximately 100 miles of New York State, and will be subject to compliance with the New York State Environmental Quality Review Act (“SEQRA”) before state permits can be issued.⁸ The citizens of New York are

⁷ Mathews v. Eldridge, 424 U.S. 319, 334-335 (1976).

⁸ 6 N.Y.C.R.R. §617.15.

accustomed to responding to scoping documents issued by the lead agency, not creating them from scratch. For example, the New York State Department of Environmental Conservation issued a forty-two page Draft Scope of Work for its Draft Supplemental Generic Environmental Impact Statement (dSGEIS) on the Oil, Gas and Solution Mining Regulatory Program on October 6, 2008, and a fifty-six page Final Scope on February 6, 2009.⁹ In the recent environmental review for the Tappan Zee Replacement Bridge, which combined a state and national review process, the lead federal agency was the Federal Highway Administration, and its Draft Scope of Work was forty-nine pages long.¹⁰

Unlike the Federal Highway Administration, the FERC did not issue a scope of work. It did list the general topics to be covered in an environmental review, and seven specific areas of concern in regards to this particular pipeline proposal. However, this amounted to less than one page of material in the Federal Register.¹¹ There were no definitions of study areas; no descriptions of existing sources of data or how new data would be collected, by whom, or over what period of time; no discussions of methodology or analysis; and no indications of how the information would be presented once it was completed. Since the FERC chose to initiate a scoping process, then it should comply with regulations implemented under NEPA. Therefore the FERC should issue a draft scope of work and reopen its scoping process to solicit public comments on what it is proposing to study.¹²

III. All cumulative and indirect impacts must be studied, including a complete build-out of gas drilling wells and growth inducement from the establishment of heavy industry.

The Council on the Environment (CEQ) was established under NEPA, and one of its functions is to offer guidance on federal environmental reviews.¹³ Under that authority, CEQ has stated that the scope of environmental impact statements should include all connected and

⁹ New York State Department of Environmental Conservation, *Final Scope of Work for Draft Supplemental Generic Environmental Impact Statement (dSGEIS) on the Oil, Gas and Solution Mining Regulatory Program* (February 6, 2009), available at http://www.dec.ny.gov/docs/materials_minerals_pdf/finalscope.pdf.

¹⁰ Federal Highway Administration, *Tappan Zee Hudson River Crossing Project, Scoping Information Packet* (October 2011), available at <http://transportationnation.org/wp-content/uploads/2011/10/tappan-zee-bridge-2011-10-13-Scoping-Information-Packet.pdf>.

¹¹ *Notice of Intent To Prepare an Environmental Impact Statement for the Planned Constitution Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*, 77 Fed. Reg. 56835, 56836-56837 (Sept. 14, 2012).

¹² 6 N.Y.C.R.R. §617.8; 40 C.F.R. 1506.6 (2012).

¹³ 42 U.S.C. §§ 4342, 4344 (2012).

cumulative actions.¹⁴ Connected is defined as being “closely related.”¹⁵ A cumulative impact is defined as

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.¹⁶

FERC’s regulations for the preparation of environmental reports also require the identification of “cumulative effects resulting from existing or reasonably foreseeable projects. . . .”¹⁷

The environmental review for the proposed Constitution Pipeline will require a particularly robust cumulative impact analysis because of the unique set of facts and circumstances that exist in this part of the state. Because interstate pipelines are required to be open access, it is “reasonably foreseeable” that the Constitution Pipeline will lead to both hydraulic fracturing and the industrialization of the surrounding rural area.

In 2008, the New York State Department of Environmental Conservation (“DEC”) initiated a Supplemental Generic Environmental Impact Statement (SGEIS) for its Oil, Gas and Solution Mining Regulatory Program.¹⁸ Simultaneously, then-governor David Paterson signed a new spacing bill into law, which lays out in detail the exact number of wells that can be drilled in each shale gas formation.¹⁹ According to the state’s spacing law, a multi-acre well pad will be permitted every square mile for horizontal drilling in a specific shale formation.²⁰ The DEC has since issued a revised draft SGEIS, which anticipates the number of wells that will actually be drilled.²¹ Depending on the size, shape, and topography of the unit, it is possible that one to

¹⁴ 40 C.F.R. § 1508.25 (2012).

¹⁵ *Id.* at § 1508.25(a)(1)(i).

¹⁶ 40 C.F.R. § 1508.7 (2012).

¹⁷ 18 C.F.R. §380.12(a)(8)(2012).

¹⁸ Abrahm Lustgarten, *Governor Signs Drilling Bill But Orders Environmental Update*, PROPUBLICA (July 23, 2008), available at <http://www.propublica.org/article/governor-signs-drilling-bill-but-orders-environmental-update-723/>.

¹⁹ New York State Department of Environmental Conservation, *Statewide Spacing Unit Sizes and Setbacks*, available at <http://www.dec.ny.gov/energy/1583.html>.

²⁰ *Id.* (One square mile equals 640 acres.)

²¹ New York State Department of Environmental Conservation, *Revised Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program*, §§ 5.1.4.2; 5.2.2 (September 2011), available at <http://www.dec.ny.gov/energy/75370.html> [hereinafter *2011 Revised Draft SGEIS*]. (These projections should not be confused with the vastly greater number of wells that the law actually allows.)

sixteen horizontal gas wells will be drilled and fracked per square mile.²² In addition, vertical infill wells, based on a forty-acre spacing unit, may be permitted within this same square mile in order to extract gas from areas the horizontal drilling could not reach.²³ Besides well density, the 2011 draft SGEIS discusses “reduced emissions completion” of gas wells, and suggests those techniques may be required in a few years.²⁴ EPA has since issued regulations making “green completions” mandatory as of January 2015.²⁵ Therefore the location of the gas transmission pipelines is likely to significantly inform the location of future gas drilling.

The proposed Constitution Pipeline has been routed through an area that overlies two tight shale formations: the Marcellus and the Utica.²⁶ While the DEC has not yet issued a final SGEIS for its Oil, Gas and Solution Mining Regulatory Program, it is likely to do so by 2015. At that point, EPA’s green completion rule will be in effect, and gas drillers will be motivated to drill near gas transmission lines in order to reduce their cost of compliance with the new federal regulation. It would be extremely risky and prohibitively expensive to drill in areas far from pipelines as gathering lines would then have to be run for many miles before an unproven well could be fracked. Therefore it is “reasonably foreseeable” that interstate gas transmission lines will be a magnet for hydraulic fracturing, so the environmental review of the Constitutional Pipeline must include all of the impacts associated with a complete build-out of fracking in the proposed and alternative pipeline areas.

If the Constitution Pipeline is constructed, companies will be able to take gas from it as well as put gas into it. Individuals and elected officials are filing comments to FERC stating they will want to tap the gas that would be flowing through the area in order to attract and retain industry.²⁷ These comments alone demonstrate that it is “reasonably foreseeable” that the availability of natural gas will induce growth within the region. Therefore, for every potential impact that could be studied within the environmental review for the Constitution Pipeline, the additional impact of growth inducement from the availability of natural gas must be considered with it.

²² *Id.*

²³ *Id.* at § 5.1.4.2. (The DEC specifically retains discretion to permit wells at a greater density.)

²⁴ *Id.* at §§ 6.6.8; 7.6.5; Appendix 25.

²⁵ 40 C.F.R. § 60. (Green completions require connecting gas wells to pipelines before drilling starts in order to reduce the emissions associated with flaring. This regulation has not yet been published in the Federal Register, but is available at <http://www.epa.gov/airquality/oilandgas/pdfs/20120417finalrule.pdf>.)

²⁶ 2011 Revised Draft SGEIS, *supra* note 22, at §§ 4.3, 4.4; USGS, *Assessment of Undiscovered Oil and Gas Resources of the Ordovician Utica Shale of the Appalachian Basin Province* (2012), available at <http://pubs.usgs.gov/fs/2012/3116/FS12-3116.pdf>. (The map on page 4 shows the most productive portion of Utica shale. The proposed route of the Constitution Pipeline runs within this “sweet spot.”)

²⁷ *See, e.g.*, comment of: Bruce Hodges filed on August 2, 2012; Robert McCarthy filed on August 9, 2012; Duncan Martin, filed on August 30, 2012; Andrew Matviak, filed on August 30, 2012; Ted Sturka, filed on September 13, 2012; and the Otsego County Board of Representatives filed on October 5, 2012. Joe Mahoney, *Otsego Dems split over pipeline*, THE DAILY STAR (October 2, 2012) available at <http://thedailystar.com/localnews/x708371126/Otsego-Dems-split-over-pipeline>.

IV. The EIS should include a complete analysis as to whether there is a real need for the gas in the northeast market.

In order for the Constitution Pipeline to move forward, the FERC must issue a certificate of public convenience and necessity. However, the standard for granting this certificate is not well defined. The FERC is authorized to issue regulations for these certificates, but has not defined the words “public convenience and necessity.”²⁸ Its general rule states:

Terms defined in the Natural Gas Policy Act of 1978 (NGPA) shall have the same meaning for the purposes of this subpart as they have under the Natural Gas Policy Act of 1978.²⁹

The Natural Gas Policy Act states, “[t]he term ‘certificate’, when used with respect to the Natural Gas Act [15 U.S.C.A. 717 et seq.], means a certificate of public convenience and necessity issued under such Act.”³⁰ The Natural Gas Act says federal regulation regarding the transportation of natural gas must be in the public interest, but it does not define the term.³¹

These circular definitions have not been clarified by case law. Instead the courts have added their own vague terms on top of the nonexistent statutory and regulatory definitions. For example, in *Cia Mexicana*, the Court says “[a] certificate of public convenience and necessity requires as a condition to its granting that the commission make a positive finding of consistency with the public interest.”³² While “public interest” has no strict definition, the Court has found that all factors must be considered in the assessment.³³ Therefore, in this environmental review, the FERC must gather information on all factors, analyze the data, and then describe how it is weighing the factors in making its decision.

Williams/Cabot has stated that it has contracts to sell the gas it intends to transport, and that those contracts are sufficient proof of the need for the pipeline. If that is true, then the FERC should require the disclosure of those contracts in the EIS. To the extent that they exist, they are powerful documents that could ultimately lead to the taking of portions of 1000 or more parcels of land. The FERC grants the power of eminent domain to private companies for private profit, so it needs to ensure the contractual words are worth more than the paper they are written on. The FERC should also probe who is buying the gas, for what markets, and over what period of time. After all, these corporations have many financial incentives to lie. For example, Cabot is both an investor in the pipeline and a company that drills for gas, so the pipeline could give it a

²⁸ 18 C.F.R. § 157 (2012).

²⁹ *Id.* at § 157.202(a).

³⁰ 15 U.S.C. § 3301(23) (2012).

³¹ 15 U.S.C. § 717(a) (2012).

³² *Cia Mexicana de Gas, S. A. v. Federal Power Com.*, 167 F.2d 804, 806 (5th Cir. 1948).

³³ *Atlantic Ref. Co. v. PSC of New York*, 360 U.S. 378, 391 (1959).

competitive edge in the new shale formations when New York State opens its borders to drilling. Williams also plays multiple roles; it is a majority owner of the proposed pipeline as well as a potential driller of gas, and a provider of gathering lines and other facilities in new drilling fields. The FERC should not acquiesce to objections by the Constitution Pipeline Company to the disclosure of its contracts. The company should not be allowed to use its contracts as both a sword to justify the taking of peoples' property and a shield to guard against scrutiny of them.

The needs analysis for this proposed pipeline must be vigorous and exhaustive. It will require a robust analysis of the underlying data because unique conditions are driving the market to drill for natural gas. For example, there is a lack of regulatory oversight of the drilling; abundant Wall Street hype; an oversupply of gas; a recent spate of approvals for infrastructure to move it; and an increasing interest in its export. The FERC must determine whether there is an actual demand, in the United States, for the amount of gas being produced. Recent reports and articles suggest not.³⁴ Therefore the FERC should be prepared to gather the following information, as well as any additional information needed, to perform a complete and accurate needs analysis:

1. current data on the recoverable reserves in Pennsylvania and New York State that could feasibly be transported through this pipeline;
2. Estimated Ultimate Recovery (EUR) of shale plays by the USGS within the project area;
3. holdings of Cabot Oil and Gas and Southwestern Energy within the project area;
4. reserves and EURs of holdings by Cabot Oil and Gas and Southwestern Energy within the project area based upon USGS data and methodology;
5. percentage of wells drilled and capped by Cabot Oil and Gas and Southwestern Energy within the project area;
6. yearly data on producing wells owned by Cabot Oil and Gas and Southwestern Energy within the project area;
7. contracts between the suppliers (Cabot Oil and Gas and Southwestern Energy) and the Constitution Pipeline Company;
8. contracts between the suppliers (Cabot Oil and Gas and Southwestern Energy) and the purchasers of the transported gas;
9. total current retail demand of natural gas in the northeast (NYC and Boston markets);

³⁴ Daniel Gilbert and Tom Fowler, *Natural Gas Glut Pushes Exports*, WALL STREET JOURNAL (October 4, 2012), available at <http://online.wsj.com/article/SB10000872396390444223104578036403362012318.html>.

10. projected retail demand of natural gas in the northeast (NYC and Boston markets) from 2015 to 2020, from 2020 to 2025, and from 2025 to 2030;
11. projected supply of natural gas for the northeast (NYC and Boston markets) from 2015 to 2020, from 2020 to 2025, and from 2025 to 2030;
12. number of billion cubic feet per day (Bcf/d) of new transmission capacity approved to serve the northeast markets over the past 5 years;
13. number of billion cubic feet per day (Bcf/d) of new transmission capacity approved to serve the northeast markets over the past 5 years, currently in operation;
14. number of billion cubic feet per day (Bcf/d) of new transmission capacity approved to serve the northeast markets over the past 5 years, but not yet in operation;
15. number of billion cubic feet per day (Bcf/d) of new transmission capacity planned to serve the northeast markets that are currently in pre-filing stages;
16. number of billion cubic feet per day (Bcf/d) of new transmission capacity planned to serve the northeast markets that are in the application stage; and
17. reports on total US gas reserves, EURs, transmission capacity, yearly production, storage, market demand over the past five years, and projections over the next five, ten, fifteen, and twenty years.

V. The FERC cannot certify the use of eminent domain for a pipeline for domestic use, knowing that gas will be exported from the United States.

At the heart of the assessment of need for the proposed “Constitution” Pipeline is the Fifth Amendment Takings Clause.

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.³⁵

This fundamental right – rooted in the Constitution of the United States of America – raises the legal question of whether the FERC can certify a project that entails the taking of land for domestic use while another federal agency considers its export. The current situation creates a

³⁵ U.S. CONST. amend. V.

“reasonably foreseeable” result – gas transmitted through the proposed pipeline is likely to be exported.³⁶ Therefore the implications and impacts of such exports must be studied in detail.³⁷

According to statements made by Williams/Cabot, the gas to be transmitted by the proposed Constitution Pipeline is for domestic use in the northeast United States, specifically New York City and Boston.³⁸ However, Williams made conflicting statements to its investors, indicating that the gas flowing through its pipelines could be exported.³⁹

WPZ – Gas Pipeline

Constitution Pipeline creates new market access for Marcellus production

Williams.
We make energy happen.™

- > A 120-mile, 30-inch pipeline connecting Williams' Midstream Gathering System in Susquehanna County, PA to Iroquois Gas Transmission and Tennessee Gas Pipeline in Schoharie County, NY
- > Capacity: 650 Mtd/d
- > New FERC-regulated interstate pipeline
- > Owned (75%) and operated by WPZ; Cabot Oil and Gas owns 25%
- > Target in-service date: March 2015

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WPZ – Gas Pipeline

Key points

Williams.
We make energy happen.™

- > Prime assets in premier growth markets
- > Access to abundant new shale supply sources
- > Opportunities to serve:
 - Power generation
 - Industrial/petrochemical
 - LDCs
 - LNG exports

³⁶ Daniel Gilbert and Tom Fowler, *Natural Gas Glut Pushes Exports*, WALL STREET JOURNAL (October 4, 2012), available at <http://online.wsj.com/article/SB10000872396390444223104578036403362012318.html>.

³⁷ 18 C.F.R. §380.12(a)(8).

³⁸ Constitution Pipeline Company, *Constitution Pipeline Update*, 4 (July 2012), available at http://constitutionpipeline.files.wordpress.com/2012/07/12-559-constitution-landowners-newsletter_online_v1.pdf.

³⁹ Williams, *Williams Analyst Day*, slide 20 (May 22, 2012), available at <http://www.b2i.us/Profiles/Investor/Investor.asp?BzID=630&from=dl&ID=136006&myID=136006&L=i&Validate=3&I=>.

In addition to this apparent conflict, FERC does not have statutory or regulatory authority to certify interstate pipeline projects as part of an export facility. It is the Department of Energy (“DOE”) that determines the need for export.⁴⁰ Only after DOE has made such a determination does the FERC gain authority over the siting and construction of Liquefied Natural Gas (LNG) facilities. To date, DOE has approved only one LNG facility; thirteen applications await its decision.⁴¹ Some of these facilities would be on the east coast, but that is irrelevant as the gas pipelines in the United States are networked. If gas is exported from one part of the U.S., say in the Gulf Coast or northwest, then gas from another part of the country simply replaces the gas that would have served the domestic market but instead is being shipped overseas. It is a single flow of gas pulsing through a network of steel pipes. If one section runs low, another refills it.

The Energy Information Administration (EIA) recently concluded that gas exports would increase the price of domestic shale.

Increased natural gas exports lead to increased natural gas prices. Larger export levels lead to larger domestic price increases, while rapid increases in export levels lead to large initial price increases that moderate somewhat in a few years. Slower increases in export levels lead to more gradual price increases but eventually produce higher average prices during the decade between 2025 and 2035.⁴²

Since the FERC is required to consider the price of gas in its assessment of public convenience and necessity, the exporting of gas would be contrary to the domestic public interest.

The FERC should thoroughly study the domestic need for the gas that would flow through this proposed pipeline, and through the network to which it connects. Given the current glut of gas and projections that the oversupply of gas could continue for years, it seems hard to justify the construction of yet another pipeline. New pipelines only make sense if the federal government allows the export of gas. Since foreign markets pay five times as much for gas, the FERC would essentially be authorizing the taking of private land from U.S. citizens in order to increase the export profits of private corporations.⁴³ The decrease in domestic supply caused by

⁴⁰ U.S. Department of Energy, *DOE's Natural Gas Regulatory Responsibilities*, available at <http://fossil.energy.gov/programs/gasregulation/>.

⁴¹ U.S. Department of Energy, *Applications Received by DOE/FE to Export Domestically Produced LNG from the Lower-48 States* (September 21, 2012), available at http://fossil.energy.gov/programs/gasregulation/reports/Long_Term_LNG_Export_Concise_Summary_Tab1.pdf.

⁴² U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets as requested by the Office of Fossil Energy* (January 19, 2012), available at <http://www.eia.gov/analysis/requests/fe/>.

⁴³ LNG World News, *Spot natural gas prices at Marcellus trading point reflect pipeline constraints* (July 24, 2012), available at <http://www.lngworldnews.com/eia-spot-gas-prices-at-marcellus-trading-point-reflect-pipeline-constraints-usa/>.

the exports would, in turn, increase the price of domestic gas. Because of this conundrum, the EIS should include a legal analysis of whether private land can be taken for a pipeline if it is reasonably foreseeable that gas would be exported to a foreign market.

V. Increasing the capacity of existing pipelines and/or co-locating segments of a new pipeline on existing pipeline easements must be studied in detail.

According to FERC regulations, new natural gas transmission lines should be sited “in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.”⁴⁴ In addition, the FERC requires companies to try to “avoid forested areas and steep slopes. . . .”⁴⁵ Instead, “[t]he use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.”⁴⁶

The implications of these standards on the proposed pipeline were brought to the FERC’s attention early in the pre-filing process. (See Appendix B, Map of existing interstate gas pipeline easements.)⁴⁷ On August 9, 2012, Pamela J. Romano, Division of Pipeline Certificates, Office of Energy Projects, asked Williams/Cabot to submit, in thirty days, under oath, the following information:

1. Estimate the unsubscribed capacity on the interstate pipelines in the project area including: Millennium Pipeline Company, LLC, Tennessee Gas Pipeline Company, L.L.C., Dominion Transmission, Inc., and Transcontinental Gas Pipeline Company, LLC.
2. Estimate the facilities and costs necessary to achieve the project objectives if the route would be co-located along one of the above pipeline companies.
3. Estimate the facilities and costs any of the above pipeline companies would be required to build if the project capacity were to flow through its pipeline(s).⁴⁸

The response of Williams/Cabot to this request for supplemental information was not only inadequate, but also dishonest.⁴⁹ For example, the company did not answer question three at all, claiming:

⁴⁴ 18 C.F.R. §§ 380.15(a), (d)(2) (2012).

⁴⁵ *Id.* at § 380.15(d)(3).

⁴⁶ *Id.* at § 380.15(d)(2).

⁴⁷ This map was filed in docket number PF12-9 on July 6, 2012.

⁴⁸ Pamela J. Romano, *Letter requesting Constitution Pipeline Company, LLC to provide w/in 30 days the Data Request information to assist in FERC's analysis of Constitution's proposal under PF12-9* (August 9, 2012), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120809-3001.

“Constitution is not privy to, nor does it have a means to determine, other pipeline’s design criteria or have access to the operational data necessary to accurately determine the specific facilities or cost for expansions to other pipeline operator’s systems.”⁵⁰

The truth of that statement is questionable. Williams owns three-quarters of the Constitution Pipeline Company, and all of the Transcontinental Gas Pipeline Company.⁵¹ Since it is a majority owner in both companies, it appears Williams should have access to this information on at least one of the pipelines. Williams may not want to provide this information to the FERC because increasing the capacity of an existing pipeline would be much less expensive and less disruptive than their proposed plan, and the FERC would select it as the best alternative. Why wouldn’t Williams want the cheapest alternative? In the long term, Williams would make much more money by cutting a swath through virgin territory that lies above two thick tight shale formations, and cornering the market on the countless gathering lines, compressor stations, and gas transport that would take place over the next forty or fifty years as shale gas is developed.

Responses to question two were equally outrageous. The end market for the gas transmitted through the proposed Constitutional Pipeline is purported to be New York City and Boston. So it is blatantly absurd to suggest, as Williams/Cabot did in various scenarios, that no matter where they co-locate, and no matter which direction the gas flows, that the end point be Schoharie, New York. In one scenario, a pipeline was co-located with the Transco, bringing it within fifty miles of New York City.⁵² Instead of connecting to existing pipelines at that point, it stated that it would have to create a new “greenfield” pipeline up to Schoharie, just to bring the gas back down to New York City!⁵³ This sleight of hand allowed the company to increase the predicted length of “greenfield” construction and artificially inflate the price of this alternative so that it is substantially higher than the projected cost of the proposed route. Similar techniques to increase costs and impacts were used in the other scenarios.

⁴⁹ Julie Pradel, *Constitution Pipeline Company, LLC submits responses to Staff’s August 9, 2012 Data Requests regarding the Constitution Pipeline Project under PF12-9-000* (September 10, 2012), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120910-5099.

⁵⁰ *Id.* at p. 4.

⁵¹ *Company Overview of Transcontinental Gas Pipe Line Company, LLC*, BLOOMBERG BUSINESSWEEK (October 6, 2012), available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=3031850>. (The summary concludes with the line: “Transcontinental Gas Pipe Line Company, LLC operates as a subsidiary of Williams Partners L.P.”)

⁵² Julie Pradel, *Constitution Pipeline Company, LLC submits responses to Staff’s August 9, 2012 Data Requests regarding the Constitution Pipeline Project under PF12-9-000*, p. 8 (September 10, 2012), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120910-5099.

⁵³ *Id.*

Since responses from Williams/Cabot do not appear to be accurate, the information requested on August 9, 2012 must be provided by the FERC during the environmental review process. The following data, as well as any additional information needed, should be gathered as part of the needs and/or alternatives analysis:

1. existing capacity of current interstate pipelines that could carry this gas, including the Millennium Pipeline Company, LLC, Tennessee Gas Pipeline Company, L.L.C., Dominion Transmission, Inc., Transcontinental Gas Pipeline Company, LLC, and Laser Pipeline, in dekatherms per day (Dth/d) and billion cubic feet per day (Bcf/d);
2. potential maximum capacity of current interstate pipelines that could carry this gas, including Millennium Pipeline Company, LLC, Tennessee Gas Pipeline Company, L.L.C., Dominion Transmission, Inc., Transcontinental Gas Pipeline Company, LLC, and Laser Pipeline, with calculations based on age, thickness, and diameter of pipes; current compression; maximum possible increase in compression; and the amount of additional gas that could be transported as a result of such an increase in capacity;
3. costs for adding facilities to realize the potential maximum capacity of the pipelines in number 2, supra;
4. costs to co-locate a pipeline within the Laser Pipeline easement, from Susquehanna County, PA south to the intersection with the Tennessee Pipeline;
5. costs to co-locate a pipeline within the Tennessee Pipeline easement, from Susquehanna County, PA west to the intersection with the Dominion Pipeline;
6. costs and facilities to connect this new pipeline, co-located with the Tennessee Pipeline, to the Dominion Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
7. costs to co-locate a pipeline within the Tennessee Pipeline easement, from Susquehanna County, PA west to the intersection with the Tennessee Pipeline;
8. costs and facilities to connect this new pipeline, co-located with the Tennessee Pipeline, to the Tennessee Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
9. costs to co-locate a pipeline within the Laser Pipeline easement, from Susquehanna County, PA north to the intersection with the Millennium Pipeline;
10. costs to co-locate a pipeline within the Millennium Pipeline easement, west from the intersection of the Laser Pipeline to the intersection with the Dominion Pipeline;
11. costs and facilities to connect this new pipeline, co-located with the Millennium Pipeline, to the Dominion Pipeline that runs southwest to northeast – from Pennsylvania into New York State.

12. costs to co-locate a pipeline within the Millennium Pipeline easement, west from the intersection of the Laser Pipeline to the intersection with the Tennessee Pipeline;
13. costs and facilities to connect this new pipeline, co-located with the Millennium Pipeline, to the Tennessee Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
14. costs to co-locate a pipeline within the Laser Pipeline easement, from Susquehanna County, PA south, and then continued to the intersection with the Transcontinental Pipeline;
15. costs to co-locate a pipeline within the Transcontinental Pipeline easement, from Susquehanna County, PA west to the intersection with Dominion Pipeline;
16. costs and facilities to connect this new pipeline, co-located with the Transcontinental Pipeline, to the Dominion Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
17. costs to co-locate a pipeline within the Transcontinental Pipeline easement, from Susquehanna County, PA west to the intersection with Tennessee Pipeline;
18. costs and facilities to connect this new pipeline, co-located with the Transcontinental Pipeline, to the Tennessee Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
19. costs and facilities to connect the Transcontinental Pipeline to the Dominion Pipeline that runs southwest to northeast – from Pennsylvania into New York State.
20. costs and facilities to connect the Dominion Pipeline to the Iroquois Pipeline at their intersection west of Schoharie County, NY.
21. costs and facilities to connect the Dominion Pipeline to the Iroquois Pipeline in or northeast of Schoharie County, NY.
22. costs and facilities to connect the Dominion Pipeline to the Tennessee Pipeline at their intersection west of Schoharie County, NY.
23. costs and facilities to connect the Dominion Pipeline to the Tennessee Pipeline in or northeast of Schoharie County, NY.
24. costs and facilities to connect the Tennessee Pipeline to the Iroquois Pipeline in or northeast of Schoharie County, NY.

Once all of these data have been generated, a matrix of the interconnections within the network should be generated. This will show the alternative, or the mix of alternatives, that could potentially transmit 650,000 dekatherms per day of gas to the northeast markets.

VI. All impacts associated with a compressor station must be studied in the DEIS

In the plans submitted by Williams/Cabot, there is no compressor station at the start of the proposed Constitution Pipeline. Since gas cannot flow without compression, the required compressor station needs to be added to this environmental review and must not be segmented from the pipeline project.

VII. Conclusion

The proposed Constitution Pipeline has put a cloud over the lives of at least 1500 property owners whose land might be taken. Many of them no longer rest securely in their own homes, and feel as if their futures and dreams have been stolen from them. This is also true for thousands of others who have chosen to live in this idyllic rural area. It is imperative, in such a sensitive and disruptive situation, to provide as much notice and as many opportunities for comment as possible. We therefore ask the Federal Energy Regulatory Commission to: (1) issue a draft scoping document; (2) require Williams/Cabot to file topographical maps of all the alternative routes; (3) reopen the scoping process for ninety days; and (4) schedule scoping hearings in Delaware and Otsego Counties. In addition, a thorough analysis of the need for this project must be performed. Existing contracts must be disclosed and consumer demand calculated to determine if there is sufficient capacity in existing – or already proposed – pipelines to meet the public’s need for natural gas in the United States. Finally, information on the maximum expansion capacity of existing pipelines must be calculated to determine the least disruptive way to move more gas to New York City and Boston.

Thank you for the opportunity to comment. We hope to provide substantive scoping comments on potential social, economic, and environmental impacts once the comment period is reopened.

Respectfully yours,



Daniel E. Estrin
Supervising Attorney



Anne Marie Garti
Legal Intern

C: Stop the Pipeline