NEW YORK STATE | Department of Environmental Conservation

KATHY HOCHUL
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September 21, 2026

Transmitted electronically

Debbe-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
1225 Wilkins Avenue
Rockville, Mayland 20852

RE: Comments from the New York State Department of Environmental Conservation Regarding the Environmental Assessment for the Proposed Constitution Pipeline and Wright Interconnect Projects, Docket Nos. CP13-449-006 and CP13-502-003

Dear Secretary Reese:

The New York State Department of Environmental Conservation (NYSDEC) has reviewed the Environmental Assessment (EA), dated August 21, 2026, prepared by the Federal Energy Regulatory Commission (FERC or Commission) pursuant to the National Environmental Policy Act (NEPA) for the Constitution Pipeline and Wright Interconnect projects. NYSDEC respectfully submits these comments in response to FERC's *Notice of Availability of the Environmental Assessment for the Proposed Constitution Pipeline and Wright Interconnect Projects*. These comments are, in part, intended to supplement the environmental reporting requirements found at 18 C.F.R. § 380.12. NYSDEC often relies on FERC's NEPA analysis for it its own review of certain federally delegated or approved permits associated with the overarching federal permit. As discussed in more detail below, the current EA is inadequate due to multiple reasons, including the stale, outdated information upon which it is based.

As a threshold, and as stated repeatedly on the record for these projects, NYSDEC reiterates its position that FERC should prepare an Environmental Impact Statement (EIS) for these projects due to their scope and the potential for significant adverse environmental impacts.[1] As explained in further detail below, the Commission previously acknowledged the need to prepare an EIS for both the Constitution Pipeline and Wright Interconnect projects and has failed to explain why it is now departing from that determination in issuing an EA. Failure to prepare an EIS when one is warranted violates the Commission's obligations under NEPA.

[1] *See* Letter from NYSDEC to FERC, dated May 4, 2026 and filed as Accession No. 20260504-5304 and Letter from NYSDEC to FERC, dated August 13, 2026 and filed as Accession No. 20260128-5062.

Notwithstanding NYSDEC's assertion that FERC is required to prepare an EIS for the projects, when considering the projects' proposed changes and the lack of updated conditions and information regarding the projects in the EA, the Commission's finding of no significant impact is premature, and a full EIS is required in order to properly evaluate the projects. As stated in further detail below, the EA does not sufficiently evaluate: (1) the necessary NYSDEC permits and approvals the projects must attain prior to construction, (2) compliance with New York State laws and regulations, or (3) the projects' potential impacts to a variety of environmental resources.

Projects Descriptions

FERC's environmental review includes two distinct but related projects, the Constitution Pipeline project (Constitution Pipeline) sponsored by the Constitution Pipeline Company, LLC (Constitution), and the Wright Interconnect project sponsored by Iroquois Gas Transmission System, L.P. (Iroquois).

As proposed, the Constitution Pipeline includes the construction and operation of a new, approximately 125 mile long, 30-inch diameter natural gas pipeline and associated facilities including two new meter stations, ten communication towers, eleven mainline valves, and one pig launcher and receiver. The Constitution Pipeline would impact over 300 streams (approximately 87 of which support trout or trout spawning), over 80 acres of freshwater wetlands, and approximately 500 acres of forest areas surrounding streams and wetlands. The Wright Interconnect project includes the expansion of the Wright Compressor Station and the addition of 22,000 horsepower of new compression, which will result in the increased emissions of criteria air pollutants including but not limited to NO_2, greenhouse gases, and hazardous air pollutants such as formaldehyde. The projects are primarily located in New York, including approximately 100 miles of the proposed Constitution Pipeline and the entirety of the Wright Interconnect project.

Scope of Review Required by the National Environmental Policy Act

NEPA requires the Commission to prepare an EIS for any "major Federal actions significantly affecting the quality of the human environment."[2] When evaluating a project under NEPA, Commission staff must abide by the applicable implementing regulations, including 18 CFR § 380.6, which speaks to whether a particular action requires preparation of an EIS. Under these applicable regulations, an EIS for a project involving a major pipeline construction project must be prepared first.[3] Conversely, if "the Commission believes that a proposed action . . . may not be a major Federal Action significantly affecting the quality of the human environment" an environmental assessment may be prepared and, "[d]epending on the outcome of the environmental assessment, an environmental impact statement may . . . be prepared."[4] In making such determination, NEPA requires the Commission to take a "hard look" at the environmental impacts posed by the action.[5] NEPA further "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[6] When making such determination, NEPA "ensures that the agency, in reaching its decision, will have available,

[2] 42 U.S.C. § 4332 (c).
[3] 18 CFR § 380.6 (a) (3).
[4] 18 CFR § 380.6 (b).
[5] *See Sierra Club v United States Department of Transportation*, 125 F.4th 1170, 1183 (D.C. Cir. 2025).
[6] *Roberston v Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision."[7] When an agency fails to prepare an EIS when one is warranted, or otherwise fails to adequately consider an action's environmental impacts, the action is properly invalidated.[8]

Prior Commission Review Indicates the Need to Prepare an EIS

The Commission's finding of no significant impact is inconsistent with its prior position and evaluation of the projects and results in a deficient review of the projects' impacts. Throughout the prior review of the projects, the Commission recognized the continued need to prepare an EIS to consider the environmental impacts of the proposed projects. First, in September 2012 and July 2013, the Commission issued two Notices of Intent to Prepare an Environmental Impact Statement for both the Constitution Pipeline project and the Wright Interconnect project.[9] These two notices recognized that the environmental impacts of the proposed projects would classify the Commission's respective approvals as major federal actions significantly affecting the quality of the human environment. Consistent with the previous Notices of Intent, in December 2013, the Commission issued another Notice of Intent indicating that it was going to prepare an EIS in a consolidated review of the Constitution Pipeline project and the Wright Interconnect project.[10] Indeed, in 2014 the Commission, in accordance with its December 2013 notice, issued its final EIS (FEIS) for the projects, totaling over 1,000 pages and reviewing the projects' proposed impact avoidance, minimization, and mitigation measures on geology, soils, groundwater, surface water, wetlands, vegetation, wildlife, fisheries, special status species, land use, visual resources, socioeconomics, cultural resources, air quality, noise, and safety.[11] Despite this consistent understanding of the scope of the two projects' impacts, both collectively and independently, the Commission's current EA goes back on its established understanding of the projects' impacts and is a procedurally improper method to try and hide its findings of impact without an updated analysis. NYSDEC is concerned by the EA's unexplained departure from its consistent understanding of the need for an EIS and the potential for the Commission to "gloss over" its prior notices and decisions without justification.[12]

The EA's reliance on the 2014 FEIS results in an inaccurate assessment of environmental impacts as it prevents any analysis of the projects based on current, updated information and conditions. The Commission's preparation of the current EA reflects a

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[7] *Id.*

[8] *See Sierra Club v United States Department of Transportation*, 125 F.4th at 1186.

[9] *See* Commission Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Wright Interconnect Project and Request for Comments on Environmental Issues [July 10, 2013] [Docket No. CP13-502, Accession No. 20130710-3024]; Commission 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 [September 7, 2012] [Docket No. PF12-9, Accession No. 20120907-3012].

[10] *See* Commission Notice of Schedule for Environmental Review of the Constitution Pipeline and Wright Interconnect Projects [December 13, 2013] [Accession No. 20131213-3003].

[11] *See* Final Environmental Impact Statement re the Constitution Pipeline Project et al under CP13-499 et al. at ES-3, [Docket CP-13-499, Oct. 25, 2014] [Accession No. 20141024-4001].

[12] *Williams Gas Processing-Gulf Coast Co., L.P. v F.E.R.C.*, 475 F.3d 319, 329 (D.C. Cir. 2006); *see American Public Gas Assoc. v United States Dept. of Energy*, 72 F.4th 1324, 1342 (D.C. Cir. 2023); *Ramaprakash v F.A.A.*, 346 F.3d 1121, 1130 (D.C. Cir. 2003).

mistaken belief that an EA is appropriate in this case because the Constitution Pipeline is not likely to have reasonably foreseeable significant effects on the quality of the human environment, because the Commission already determined such in the 2014 FEIS. However, the Commission may not simply rely on the 2014 FEIS and must perform its analysis based on current conditions.[13] Accordingly, while the implementation of mitigation measures contained in the 2014 FEIS may be appropriate, said determination must be made when fully considering updated environmental information and the projects' current and changed conditions and scope. The Commission's EA, by failing to address multiple issues previously evaluated in any meaningful way under current conditions, fails to take a hard look at the impacts of the projects and instead delivers a conclusory and uninformed finding of no significant impact. At the very least, the Commission must issue a supplemental EIS in order to consider the projects' additional impacts and changed affects.[14]

Not only is the EA an unexplained departure from the Commission's prior decisions to prepare an EIS, but so too is the Commission's consideration of issues in the EA, leading to a deficient review. The Commission's first notices of intent to prepare an EIS for each project independently identified fourteen (14) issues and impacts that it would discuss.[15] The Commission's notices also identified additional issues and impacts raised and to be considered.[16] Conversely, Section 3 of the EA limits its analysis to those resources and impacts which it believes have "Carried Forward."[17] In this way, the Commission's analysis is effectively a supplemental EA, failing to consider the applicable impacts of the projects even under the lower review standard of an EA. However, FERC cannot fulfill its underlying obligations pursuant to NEPA by simply relying on the 2014 FEIS; rather, it must perform its analysis based on current conditions and scope, verifying all assumptions previously made.[18] Additionally, the EA states that "[i]n staff's judgment, any considerations addressed briefly or left unaddressed would not meaningfully inform the assessment of environmental effects."[19] Review of the issues evaluated in the current EA, or rather the lack thereof, suggests that the diminished scope of issues to be evaluated when compared to the Commission's prior review

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[13] *See Marsh v Oregon Nat. Res. Council*, 490 U.S. 360, 372-376 (1989).

[14] *See* NYSDEC Motion and Protest at 20-23; NYSDEC Notice of Scoping Comments at 1-2. NYSDEC additionally reserves its right to raise any argument regarding the Commission relying upon documents issued and docketed in a now-dismissed proceeding.

[15] Each notice pertaining to the Project's components identified issues of impacts to geology and soils, land use, water resources, fisheries, wetlands, vegetation, wildlife, endangered and threatened species, cultural resources, air quality, noise, socioeconomics, cumulative impacts, and public safety (*see* Commission Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Wright Interconnect Project and Request for Comments on Environmental Issues at 3 [July 10, 2013] [Accession No. 20130710-3024]; Commission 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 at 5 [September 7, 2012] [Accession No. 20120907-3012]).

[16] The Notice of Intent identified issues of alternatives and the use of existing pipeline systems, cumulative impacts, air quality, noise, impacts on groundwater, impacts on public water supplies, social concerns, economic concerns, environmental justice, property values, public safety, homeowner's insurance, tax revenue, natural resources, fish and wildlife, habitat, vegetation, agriculture, and construction in karst terrain (*see* Commission Notice of Schedule for Environmental Review of the Constitution Pipeline and Wright Interconnect Projects at 2 [December 13, 2013] [Accession No. 20131213-3003]).

[17] EA at 3-4.

[18] *See Marsh v Oregon Nat. Res. Council*, 490 U.S. 360, 372-376 (1989).

[19] EA at 4.

indicates that staff's current belief is that there are no considerations that would meaningfully inform its assessment of environmental effects or review of the projects.

The diminished consideration of issues the Commission is currently considering raises multiple concerns regarding the ultimate finding of no significant impact. First, the diminished scope of issues the Commission is evaluating constitutes an unexplained departure from its prior consistent position of impacts to be assessed in an EIS for the projects. These identified impacts also depart from staff guidance on issues to be considered properly in an EIS.[20] The Commission's evidenced refusal to identify impacts of the projects which it previously identified and evaluated under its prior FEIS evidences an apparent unwillingness to take a hard look at the projects' impacts.[21]

NYSDEC Review and Approvals

As an initial matter, and as previously asserted, the United States Court of Appeals for the Second Circuit's vacatur of FERC's Certificate Order and the Waiver Order[22] requires Iroquois and Constitution to file new applications for Certificates of Public Convenience and Necessity pursuant to the federal Natural Gas Act and a NYSDEC-issued Water Quality Certification (WQC) pursuant to Section 401 of the federal Clean Water Act (CWA). NYSDEC is also the certifying or permitting authority for (i) any necessary Air Title V permits in New York and (ii) any required coverage under the State Pollution Discharge Elimination System (SPDES) program. In addition, Constitution will be required to obtain easements from New York State for the portions of the proposed Constitution Pipeline crossing through State Forests. NYSDEC reserves its rights to make independent determinations on all necessary approvals required for the projects to ensure that the projects comply with all applicable statutory and regulatory requirements within its purview.

While the EA states that the Air Title V permit application for the Wright Interconnect project is "Pending" with NYSDEC, as of the date of these comments, there are no pending permit applications for either project before NYSDEC. We also note that NYSDEC, as the certifying authority under CWA Section 402(1)(2), has not determined the applicability of any exemption from requiring Constitution to obtain coverage under NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-25-001).

NYSDEC EA Comments

Notwithstanding NYSDEC's position that an EA is improper given the extensive environmental impacts of the projects, NYSDEC offers the following comments. In addition to the specific issues raised in each comment, the totality of the resources impacted support NYSDEC's position that an EIS is required for both the Constitution Pipeline and Wright Interconnect project.

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[20] *See* Staff Guidance Manual on Implementation of The National Environmental Policy Act at § B (2) (e) (1) (June 2025).
[21] *See NRDC v Herrington*, 768 F.2d 1355, 1432 (D.C. Cir. 1985).
[22] 168 FERC ¶ 61,129, *rehearing denied by* 169 FERC ¶ 61,199 (2019) (Order Denying Rehearing and Stay).

Impacts to Federally Protected Species

The conclusions set forth in the EA regarding bald eagles and Northern Long-eared bats are flawed because they are based primarily on stale information provided by the applicants, as well the 2015 Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS).[23]

With respect to bald eagles, Constitution has not conducted any surveys since March 2013. Indeed, based on a preliminary review by NYSDEC staff, it appears that there are multiple bald eagle nests currently within 0.5 miles of the Constitution Pipeline, some of which were not in existence at the time Constitution conducted its surveys. The existence and proximity of these nests to the project work areas must be considered before the Commission makes a determination of whether there will be a significant impact. With respect to Northern Long-eared bats, the EA offers inconsistent conclusions. First, Table B.3-1 states that the pipeline is "likely to adversely affect" the Northern Long-eared bats, but goes on to say "[n]o critical habitat has been designated for this species; therefore, none will be affected." Additionally, as with bald eagles, the underlying survey data and the 2015 Biological Opinion are stale and cannot be relied upon in making such a conclusion. NYSDEC staff has identified multiple Northern Long-eared bats hibernacula along portions of the Constitution Pipeline route.

Impacts to resources cannot be evaluated until those resources are properly identified. Accordingly, the conclusions set forth in the EA regarding both bald eagles and Northern Long-eared bats are flawed insofar as they rely on patently stale and inaccurate information.

Wetlands and Waterbodies

The conclusions set forth in the EA regarding wetlands and waterbodies are also flawed due to FERC's reliance on outdated information submitted in Constitution's initial application and contained in the 2014 FEIS. Without verification of the prior information, the conclusions set forth in the EA do not reflect current environmental conditions or changes and, thus, cannot meet the applicable NEPA standards. Despite the EA's conclusion to the contrary, the determination presently before the Commission does not involve the evaluation of the same projects and environmental conditions made previously in 2014. Significant alterations have been made to both the projects and the environment itself.

For example, with respect to wetlands, the EA's finding of no significant impact relies on Constitution's wetland delineations conducted from June 2012 to September 2013, along with a promise that Constitution will be required to conduct updated delineations and file an updated report prior to construction. FERC is again relying on stale and outdated information. The Commission cannot make a determination that the projects will not adversely impact wetlands without identifying the resources currently within the project areas. Additionally, since the issuance of the 2014 FEIS, the total area of "Pipeline Facilities and Contractor

[23] The EA states that in January 2026, Constitution requested that USFWS confirm that the opinions and conclusions in the 2015 Biological Opinion remain valid but have not received a response to date (EA at 32). However, on July 17, 2026, USFWS issued a correspondence to the Commission stating that the 2015 Biological opinion was based on the project's details and best available science "at that time" (Accession No. 20260721-5205). USFWS further identified changes to the status of multiple species since the 2015 Biological Opinion was issued, requiring further consultation to ensure that all species occurring in the project area are identified and appropriately considered in compliance with the Endangered Species Act (*Id.*).

Yards" as defined in the EA have increased in New York State as well as the number of known and verified waterbody crossings. Additionally, the EA reflects that "most of the stream classifications in NY that would be crossed" have changed since the issuance of the FEIS, primarily through upgrading the protective status of the streams.[24] Despite this fact, the EA states simply that staff's conclusions and analysis have not changed from those in the FEIS, including such for newly designated trout streams, without any discussion regarding these increased impacts or verification of the assumptions underlying staff's prior analysis given these new conditions. There have also been material changes including but not limited to changes in the forest cover, rivers, and floodplains which intersect the projects. In light of the EA's failure to verify past assumptions or consider new impacts of the projects to the changed environmental landscape, the Commission's finding of no significant impact does not reflect the projects' actual impacts on the environment and reflects an outdated analysis.

Air Quality

The EA does not evaluate the projects based on the current federal and State laws, regulations, and standards for greenhouse gas (GHG) emissions. Therefore, FERC cannot conclude that the projects will not significantly impact air quality.

Ozone Non-attainment Standards

Section 6.0 of the EA discusses that Schoharie County, New York, was previously designated as nonattainment for 8-hour ozone and, while such standard was revoked, the designation still exists. The EA goes on to state that all areas where the Constitution Pipeline is proposed to be located are in attainment with the current National Ambient Air Quality Standards (NAAQS) for all criteria pollutants. However, both New York and Pennsylvania are part of the Ozone Transport Region, and accordingly the area is treated as moderate nonattainment for the ozone NAAQS. The EA must assess the effects on air quality through moderate nonattainment for ozone, and the Commission thus erred in concluding that the projects would pose no significant impacts without this analysis.

Changes to Applicable Law

Section 6.1 of the EA states that because the design of the Constitution Pipeline and Wright Interconnect project has not changed, any required federal or state air quality permitting requirements remain the same as those discussed in Section 4.11.1.2 of the 2014 FEIS. But a similarity of design has nothing to do with whether permitting requirements and other legal requirements are the same in 2026 as they were in 2014.

For example, the 2014 FEIS discusses the U.S. Environmental Protection Agency's Greenhouse Gas Tailoring Rule (the Tailoring Rule) and its applicability to the projects. That rule has since been vacated[25] and any discussion of the rule and the treatment of GHG under the federal Prevention of Significant Deterioration regulations is no longer accurate. The EA's consistent reliance on outdated and invalid regulatory conditions fails to evaluate the projects under currently applicable requirements, which are necessary to evaluate the projects and their environmental impacts.

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[24] EA at 24.

[25] *See Utility Air Regulatory Group v. EPA*, 575 U.S. 302 (2014); *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. App'x. 6 (2015) (Memorandum).

Additionally, there have been several regulatory changes to New York State laws and regulations that FERC must evaluate for project compliance. Below is a list of applicable State and federal regulatory changes that are not reflected in the 2014 FEIS or 2026 EA:

a. The New York State Climate Leadership and Community Protection Act (CLCPA) became effective January 1, 2020. Among other things, the CLCPA sets certain Statewide GHG reduction targets and limits and requires State agencies to consider whether permitting decisions would be inconsistent with or interfere with the attainment of those emission reduction targets and limits. Additionally, the CLCPA requires State agencies considering and issuing permits to not disproportionately burden disadvantaged communities and prioritize the reduction of GHG and co-pollutant emissions in disadvantaged communities. To aid in this evaluation, NYSDEC requires the preparation of a CLCPA analysis as part of certain permit applications that evaluates GHG emissions from the proposed project. This requirement is not reflected in the 2014 FEIS and will be a critical component of any future Air Title V permit application filed with NYSDEC for review of the Wright Compressor Station.
b. On March 3, 2022, NYSDEC promulgated 6 NYCRR Part 203 – Oil and Natural Gas Sector (Part 203). Part 203 establishes standards, monitoring, and recordkeeping requirements for various emission sources associated with natural gas pipelines and compressor stations.
c. On December 25, 2025, NYSDEC promulgated 6 NYCRR Part 253 - Mandatory Greenhouse Gas Reporting Program (Part 253). Part 253 establishes a mandatory GHG reporting program that requires certain GHG emission sources to report emissions to NYSDEC.
d. Since the 2014 FEIS, there have been changes in federal regulation including the development and promulgation of New Source Performance Standards applicable to natural gas pipelines, compressor stations, and related activities.

FERC must consider these changes to applicable laws and regulations to properly evaluate the air impacts posed by the projects. By failing to do so, the EA failed to take a hard look at the project impacts under current conditions, rendering its ultimate finding of no significant impact to be based on a stale analysis, not reflective of current environmental conditions or scope of impacts.

Air Quality Impact Analysis

Section 6.3 of the EA indicates that Iroquois provided FERC with an updated modeling analysis that follows NYSDEC's *DAR-10: NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis* (DAR-10). However, the modeling report included in Iroquois' July 24, 2026 response to FERC indicates that it was conducted based on the 2013 modeling protocol previously reviewed and approved by NYSDEC. NYSDEC released an updated DAR-10 on September 1, 2020. Accordingly, the recent modeling analysis provided by Iroquois, based on protocol reviewed in 2013, may not be consistent with the current modeling procedures required by NYSDEC.

Climate Change

Section 6.4 of the EA purports to discuss climate change impacts associated with the projects and references past discussion in the 2014 FEIS regarding the same. However, the climate change discussions in both the EA and 2014 FEIS do not provide a meaningful

assessment of climate change impacts associated with the projects. In both documents, the emissions from the proposed projects are compared to national and/or statewide total GHG emissions, with the apparent conclusion that the projects constitute only a small percentage of total emissions and thus would have no overall effect on climate change. This conclusion is flawed. Emissions have a cumulative impact on climate change and must therefore be evaluated cumulatively. Any one individual source of any air contaminant will always be considered a small percentage of total emissions when compared to the total emissions statewide.

Conclusion

Based on the foregoing, the EA is deficient on its face based on FERC's reliance on outdated and inaccurate information. The EA does not adequately identify and evaluate the environmental impacts of the proposed Constitution Pipeline and Wright Interconnect project and, as such, the conclusions contained therein are flawed. The preparation of an EIS, as previously done for both projects, is the only appropriate course of action under NEPA to properly consider the full breadth of environmental impacts.

Please do not hesitate to contact me if you have any questions or comments.

Sincerely,



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