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September 21, 2026

Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
12225 Wilkins Avenue
Rockville, Maryland 20852

RE: Stop the Pipeline's Response to FERC's Environmental Review of the Constitution Pipeline and Wright Interconnect Projects. Docket Nos. CP13-449-006 and CP13-502-003

Dear Secretary Reese,

Pace Environmental Litigation Clinic, on behalf of our client Stop the Pipeline (STP), respectfully submits the following comment in response to the Environmental Assessment (EA) issued by the Federal Regulatory Commission (FERC or the Commission) on August 21, 2026.[1] This EA was conducted to assess the environmental effects of the Constitution Pipeline project (CPP) and Wright Interconnect Project (WIP) (hereinafter, collectively the Project).

Since its formation in June 2012, STP has been dedicated towards preserving and enhancing the rural heritage and pristine environment of central New York State and north-central Pennsylvania by ensuring the purity of its air, water, and soil, the health of its inhabitants, the resilience of its ecosystems, and the capacity of the area to be self-sustaining. As an unincorporated association, STP is associated with a thousand people, the majority of whom would be affected by the proposed pipeline. Some of these members own land along the proposed pipeline route, while others live, work, or recreate in the area. STP's interest in this Project has resulted in the organization's consistent involvement in the Project since its initiation in 2012.

I. BACKGROUND

[1] Federal Energy Regulatory Commission (FERC), *Environmental Assessment for the Constitution Pipeline Project and Wright Interconnect Project*, Docket Nos. CP13-499-006 & CP13-502-003, Accession No. 20260821-3005 (Aug. 21, 2026) [hereinafter *Environmental Assessment*].

According to the Commission, "the Projects would involve construction and operation of various project facilities [located] in Susquehanna County, Pennsylvania, and Broome, Chenango, Delaware, and Schohari Counties" in New York.[2] The scope of the Project would be extensive, with approximately 125 miles of a new 30-inch-diameter natural gas pipeline and appurtenant facilities, including two new meter stations, ten communication towers, eleven mainline valves, one pig launcher and receiver, and the expansion of the pre-existing Wright Compressor Station with an additional 22,000 horsepower of incremental compression and other modifications. The Project's footprint would include 1,970.5 acres for construction and 855.3 acres for operation.[3] If the Project receives all the necessary approvals, construction of the Project would begin in the fourth quarter of 2026, with a proposed May 2028 in-service date.[4]

On April 3, 2026, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Constitution Pipeline and Wright Interconnect Projects* (Notice of Scoping or Notice).[5] This Notice resulted in an influx of comments, including one from STP,[6] raising several different issues, including "requests for restarting the environmental review process, requests to prepare an environmental impact statement, and objections to Constitution's petition to affirm New York's waiver of the water quality certification requirement under the Clean Water Act."[7] STP's comment also raised concerns about the insufficient Final Environmental Impact Statement (FEIS) issued on October 2, 2014.[8] Other comments raised concerns over wetland and waterbody crossings, forest clearing and habitat fragmentation. In its Notice of Schedule, FERC indicated that "all substantive comments [would] be addressed in its EA."[9]

Instead, FERC merely compiled a list of new or different environmental consequences of the Project to justify the use of the 2014 FEIS for a 2026 Project.[10] This list compared the environmental effects found in the 2014 FEIS and considers whether any of these effects have seen any substantial changes.[11] FERC found the majority of consequences had no substantial changes, except for Water Resources, Wetlands, Special Status Species (including State-listed Species), Land Use, Cultural Resources, Air Quality and Noise, and Reliability and Safety.[12] Though the EA claims to address comments the Commission received during the scoping

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[2] Federal Energy Regulatory Commission, *Notice of Schedule for the Preparation of an Environmental Assessment for the Constitution Pipeline and Wright Interconnect Projects*, at 2, Docket Nos. CP13-499-006 & CP13-502-003, 91 Fed. Reg. 39,091 (June 29, 2026), FERC Accession No. 20260624-3023 [hereinafter *Notice of Schedule*].
[3] *Environmental Assessment*, *supra* note 1, at 14.
[4] *Id.* at 15.
[5] *Id.* at 8.
[6] *See* Stop the Pipeline, *Response to the Request for Scoping Comments for the Proposed Constitution Pipeline and Wright Interconnect Projects*, Docket Nos. CP13-499-006 & CP13-502-003 (May 4, 2026), Accession No. 20260504-5336 [hereinafter Stop the Pipeline Comment to Scoping].
[7] *Environmental Assessment*, *supra* note 1, at 15.
[8] *See* Stop the Pipeline Comment to Scoping, *supra* note 6, at 7; *see also* Federal Energy Regulatory Commission, *Final Environmental Impact Statement for the Constitution Pipeline and Wright Interconnect Projects*, Docket Nos. CP13-499-000 & CP13-502-000, Accession No. 20141024-4001 (Oct. 24, 2014).
[9] *See Notice of Schedule*, *supra* note 2; *see also Environmental Assessment*, *supra* note 1, at 8, Table A.4-1.
[10] *Environmental Assessment*, *supra* note 1, at 4–7.
[11] *Id.*
[12] *Id.*

comment period, it cannot address the environmental impacts of the Project by relying on the inadequate 2014 FEIS.

II. THE ENVIRONMENTAL ASSESSMENT ADDS TO THE INADEQUACIES OF THE 2014 FINAL ENVIRONMENTAL IMPACT STATEMENT INSTEAD OF CURING THEM

A. FERC Cannot Rely on an Invalid Procedure and a Stale Baseline in its Environmental Review

Because the Second Circuit vacated the underlying Certificate and Waiver Orders and remanded the proceeding with instructions to dismiss the agency's proceedings, the Commission lacks statutory authority to: (1) entertain petitions seeking "reissuance" or "reaffirmance" of those vacated orders; and (2) rely on the very documents that have been dismissed to conduct its reviews.[13] When an agency order is vacated, it is rendered a legal nullity; it does not remain in administrative stasis waiting to be revived through summary proceedings.[14] The Commission's assertion in Table A.4-1 of the 2026 EA[15], that the validity of prior orders and legal reinstatement are issues reserved for the final order, ignores the threshold statutory prerequisite of NEPA: an environmental review cannot evaluate the "reissuance" of non-existent authorizations. Treating this proceeding as an expedited continuation of vacated orders and dismissed dockets, rather than requiring a new Section 7 application with updated resource reports, unlawfully bifurcates agency review and shields core issues from public scrutiny and the judicial review that was underway when the Second Circuit vacated the prior orders.

Even if the Commission had authority to consider the petitions, tying an EA to the 2014 FEIS violates NEPA because the 2014 environmental baseline was structurally deficient when issued and is now twelve years out of date. In its April 2014 comments on the Draft EIS (DEIS), STP submitted a detailed accounting (Exhibit 1) demonstrating FERC's acknowledgement that essential field surveys, geotechnical borings, and mitigation plans were never completed across dozens of resource areas.[16] Rather than curing these deficiencies in the 2014 FEIS, the Commission attached over forty post-authorization environmental conditions requiring Constitution Pipeline, Co., LLC (Constitution), to perform fundamental baseline studies after certificate issuance.[17] A decade later, the 2026 EA perpetuates this flawed structure: staff screens out core resources in Table A.3-1 by relying on stale, unverified 2014 conclusions, while attaching 50 conditional requirements that once again defer essential environmental verifications until after Certificate reissuance.[18]

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[13] *See Constitutional Pipeline, Co., LLC,* 169 F.E.R.C. ¶ 61,102 (2019) (discussing the Commission's ruling for Order on Rehearing)

[14] *See* Public Citizen, Inc. v. FERC, 92 F.4th 1124, 1129–30 (D.C. Cir. 2024).

[15] *Environmental Assessment*, *supra* note 1, at 9, Table A.4-1.

[16] *See* Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 4, 7–8, Ex. 1 (Apr. 8, 2014), Accession No. 20140408-5088.

[17] *See Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199, app. at conditions 14–47 (2014) (Order Issuing Certificates and Approving Abandonment) (attaching forty-three environmental conditions, including requirements to submit geotechnical feasibility studies, well locations, wetland and waterbody survey results, and species mitigation plans prior to construction); *see also* Stop the Pipeline Comment to Scoping, *supra* note 6, at 9, n.48.

[18] *Environmental Assessment*, *supra* note 1, at 4–7, 70–79.

B. FERC Must Incorporate Answers to all Environmental Information Requests in its Environmental Review

Throughout the history of this project, Constitution has engaged in a consistent practice of evading agency inquiries and promising to deliver critical baseline data only after regulatory approvals are granted. In December 2013, STP submitted comments documenting how Constitution systematically deleted or obscured outstanding data requests from the U.S. Army Corps of Engineers (USACE) and the New York State Department of Environmental Conservation (NYSDEC) within its tracking tables.[19]

This evasion continues in the present docket. In response to FERC Staff's May 5, 2026, and June 25, 2026, Environmental Information Requests (EIR Nos. 1 and 2), Constitution repeatedly refused to provide contemporary field data, asserting that field delineations, species surveys, and agency coordination would occur only "following reinstatement of the Certificate Order[.]"[20] The following tracking chart details this pattern of non-compliance:

FERC Information Request (EIR 1 & 2) [21]	**Constitution Response / Delivery Commitment**	**Delivery Analysis & Regulatory Deficiency**
EIR 1, No. 1 / EIR 2, No. 1: Submit updated agency correspondence, table of permits, and firm submittal/approval dates.	Constitution filed a revised Table 1.7-1 in July 2026 listing anticipated permit submittals in Q2 2027 and approvals in Q4 2027, asserting CWA Section 401 is "Waived" and SPDES is "Exempt".[22]	**Non-Responsive / Deferred.** Confirms that primary federal and state environmental permits (USACE Section 404, PADEP Chapter 105/102, NYSDOT) will not be sought until 2027, long after Certificate reissuance, depriving FERC of an up-to-

[19] *See* Stop the Pipeline, *Deficiencies in Constitution Pipeline Company's Responses to Agency Requests*, at 3, 10-20, Docket No. CP13-499-000 (Dec. 16, 2013), Accession No. 20131217-5017.
[20] Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2,* at 1–3, Docket No. CP13-499-006 & 18-5-004 (July 10, 2026), Accession No. 20260710-5208 (stating that surveys, species verifications, and agency coordination would proceed "following reinstatement of the Certificate Order" or "once the Certificate Order is received") [hereinafter Constitution Response to EIR No. 2]; *see also* FERC Office of Energy Projects, *Environmental Information Request to Constitution Pipeline Co., LLC*, Docket No. CP13-499-006 (May 5, 2026), Accession No. 20260505-3055; FERC Office of Energy Projects, *Environmental Information Request No. 2 to Constitution Pipeline Co., LLC*, Docket No. CP13-499-006 (June 25, 2026), Accession No. 20260625-3072.
[21] *See* FERC Office of Energy Projects, *Environmental Information Request to Constitution Pipeline Co.;* FERC Office of Energy Projects, *Environmental Information Request No. 2 to Constitution Pipeline Co., LLC*
[22] Constitution Response to EIR No. 2, *supra* note 20, at Response to Item 1 & Attachment (Table 1.7-1, *Status of Permits and Approvals for the Constitution Pipeline - Revised July 2026*), 1, 3–9.

		date baseline.[23]
EIR 1, No. 14 / EIR 2, No. 5: File details regarding 10 newly identified northern long-eared bat (NLEB) hibernacula within 4 miles (one within 0.15 mile), assess impacts, and provide recent USFWS consultation.	Constitution stated: "We have not determined the location of the hibernacula... We will continue to coordinate... once the Certificate Order is received... The need for mitigation measures will be assessed through the permitting process".[24]	**Unresponsive / Unlawfully Deferred.** Defers location and impact assessments for an endangered species' winter hibernacula until after certificate issuance, violating Endangered Species Act (ESA) Section 7 upfront consultation mandates.[25]
EIR 1, No. 15s / EIR 2, No. 2: Clarify when coordination with PADCNR and NYSDEC regarding updated Invasive Species Management Plans will occur.	Constitution stated: "Once the Certificate Order is received and field surveys are scheduled during the appropriate growing season... coordination will commence".[26]	**Deferred.** Refuses to coordinate with state environmental agencies on terrestrial and aquatic invasive controls until post-certificate, ignoring the spread of invasives since 2014.[27]
EIR 1, No. 15v / EIR 2, No. 3: Clarify whether surveys for newly identified conservation easements and land use restrictions will occur within 2 months or post-certificate.	Constitution stated: "The previously referenced 'within 2 months...' does not apply... these surveys will be conducted, as needed, following reinstatement of the Certificate Order".[28]	**Explicit Deferral.** Retracted an earlier commitment to conduct near-term reviews, pushing property, deed, and conservation easement assessments past certificate issuance.[29]

[23] *Environmental Assessment*, *supra* note 1, at 16–18, Table A.6-1
[24] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 5, at 2–3.
[25] *Environmental Assessment*, *supra* note 1, Section B.3.1.1, at 32.
[26] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 2, at 1
[27] *Environmental Assessment*, *supra* note 1, Section A.3, at Table A.3-1; *id.* Section A.5, at 16.
[28] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 3, at 1.
[29] *Environmental Assessment*, *supra* note 1, Section B.5.0, at 43.

EIR 1, No. 18 / EIR 2, No. 4: Provide updated coordination with resource agencies regarding sensitive fisheries and aquatic resources, given 12-year-old prior coordination.	Constitution responded: "We will continue to coordinate with applicable federal and state natural resource agencies once the Certificate Order is received and the applicable permit application process... begins".[30]	**Unresponsive / Deferred.** Fails to provide updated field surveys or agency concurrence on trout stream crossing windows, water quality changes, or aquatic macroinvertebrate impacts.[31]
EIR 1, No. 22 / EIR 2, No. 6: Clarify how rare plants and yellow lampmussel can be deemed unaffected when survey access was denied on key parcels.	Constitution asserted the yellow lampmussel is "unlikely to be present" based on old collections and claimed 2015 surveys resolved botanical data gaps, despite acknowledging some parcels remain unaccessed.[32]	**Evasive.** Relies on negative inferences from decades-old data while admitting that private parcels across the right-of-way remain unsurveyed due to denied access.[33]
EIR 1, No. 26 & 27 / EIR 2, No. 9 & 10: Provide exact number of unevaluated cultural sites in NY, exact unsurveyed APE percentage, and list of 50+ structures over 45 years old.	Constitution admitted 12.6 acres of the APE remain unsurveyed, 7 NY sites are still being evaluated for avoidance, and stated: "We have not yet identified the specific additional properties over 45 years of age... A full survey and detailed reporting will begin once the Certificate Order is received".[34]	**Unresponsive / Deferred.** Punts National Historic Preservation Act (NHPA) Section 106 architectural evaluations to post-certificate compliance, despite the expiration of the 2015 Programmatic Agreement in November 2020.[35]

[30] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 4, at 2.
[31] *Environmental Assessment*, *supra* note 1, Section A.3, at Table A.3-1.
[32] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 6, at 3–4.
[33] *Environmental Assessment*, *supra* note 1, Section B.3.2, at 33.
[34] Constitution Response to EIR No. 2, *supra* note 20, Response to Items 9 & 10, at 4–5.
[35] *Environmental Assessment*, *supra* note 1, Section B.4.1, at 34–35.

EIR 1, No. 30 & 37 / EIR 2, No. 12: Provide updates and resolution plans for structures located directly in proposed workspaces (distance = 0 ft).	Constitution gave generic responses that perpetual easements encumber properties, that it will coordinate during final design, or that it will negotiate "at the appropriate time".[36]	**Evasive.** Fails to provide site-specific alignment modifications or landowner concurrence, forcing FERC Staff to recommend Condition 45 (denying PAR-1 and ordering 10-foot buffers).[37]
EIR 1, No. 38 / EIR 2, No. 13: Detail potential impacts and avoidance measures for newly planned developments, including the Capital Career & Technical School and Amazon warehouse.	For the School, Constitution asserted the route is on the northern property edge and it will "coordinate... to better understand existing property uses". Provided no engineering plan for the 200,000-sq-ft Amazon facility at MP 120.[38]	**Inadequate.** Discloses no design solution for crossing the Amazon facility's parking lot and stormwater retention pond, deferring resolution to Condition 50.[39]

Under NEPA, environmental reviews must be based on comprehensive, upfront baselines so the public and decision-makers can understand the true environmental consequences before an irrevocable commitment of resources is made.[40] Conditionally granting a certificate while leaving dozens of essential surveys, delineations, and mitigation plans to be resolved behind closed doors via post-certificate variance processes violates NEPA's public participation requirements.

C. FERC's Dismissal of Cumulative Impacts is Arbitrary and Capricious

The 2026 EA treats cumulative impacts as a minor, isolated checklist, dismissing the need for an integrated analysis. In doing so, the Commission repeats the errors STP challenged in 2014 and 2015.

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[36] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 12 (Overview & Subparts 12a–12s), at 11–17.

[37] *Environmental Assessment*, *supra* note 1, Section B.5.0, at 36–38 (Table B.5-1), 43–45 (Table B.5-6), & Section D, at 78 (Conditions 44, 45, 46).

[38] Constitution Response to EIR No. 2, *supra* note 20, Response to Item 13, at 17–18; *see also* Constitution Pipeline Co. LLC, *Comments on Petition for Order Reissuance*, Response to Item 38, at 28, Docket Nos. CP-13-499-006 & CP-18-5-004 (May 22, 2026), Accession No. 20260522-5210.

[39] *Environmental Assessment*, *supra* note 1, Section B.1.0, at 22, Section B.5.0, at 39–40 (Table B.5-2), & Section D, at 79 (Condition 50w).

[40] *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(a) (stating a draft environmental review "must fulfill and satisfy to the fullest extent possible the requirements established for final statements... If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft").

In its April 2014 DEIS comments and its December 2, 2015, request for a Supplemental Draft EIS (SDEIS), STP demanded FERC evaluate the cumulative and synergistic effects of regional pipeline development—specifically highlighting Tennessee Gas Pipeline's (TGP) Northeast Energy Direct (NED) Project (Docket No. CP16-21), which proposed a parallel supply path to the same market region.[41] In its 2014 Certificate Order, the Commission brushed aside STP's cumulative review requests by pointing to divergent in-service dates (claiming Constitution would enter service in 2015, whereas NED was slated for 2018).[42] STP demonstrated in its December 2015 filing that relying on arbitrary in-service dates when both projects were simultaneously pending in Commission dockets constituted unlawful segmentation under *Delaware Riverkeeper Network v. FERC*.[43]

The 2026 EA carries forward this flawed cumulative framework. Section B.1.0 identifies numerous reasonably foreseeable projects within the regional sub-watersheds—including five natural gas well development operations, five gas gathering systems, twenty transportation projects, four industrial developments, and fourteen renewable energy installations.[44] Yet, the EA summarily dismisses these combined effects as "temporary and localized," concluding without dynamic hydrologic, ecological, or airshed modeling that cumulative impacts would be minor.[45]

Furthermore, the EA ignores new industrial load sources that did not exist in 2014. In its May 4, 2026 scoping comments, STP presented evidence that Williams (Constitution's owner) has actively acquired equity stakes in power generation facilities to power off-grid, gas-fired AI data centers.[46] With the proposed pipeline route featuring four tap locations capable of feeding massive regional power generation, the induced development of gas-fired data center

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[41] *See* Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 4, 56–57 (Apr. 8, 2014), Accession No. 20140408-5088; *see also* Stop the Pipeline, *Comments on Application for Northeast Energy Direct Project and Request for Supplemental Environmental Impact Statement*, Docket No. CP13-499, at 1–2 (Dec. 2, 2015), Accession No. 20151203-5030. STP acknowledges that NED is no longer under consideration but is using it to illustrate FERC's inconsistent standards.

[42] *See Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199, at PP 36–37 (2014) (Order Issuing Certificates and Approving Abandonment) (dismissing requests to consider the cumulative impacts of TGP's Northeast Expansion/Northeast Energy Direct project because the Constitution Pipeline was proposed to be in service in 2015 while TGP's project had a planned 2018 in-service date and had not yet filed a formal certificate application).

[43] *See* Stop the Pipeline, *Comments on Application for Northeast Energy Direct Project and Request for Supplemental Environmental Impact Statement*, Docket No. CP13-499, at 2, n.7 (Dec. 2, 2015), Accession No. 20151203-5030 (citing Del. Riverkeeper Network v. FERC, 753 F.3d 1304 (D.C. Cir. 2014)); *see also Del. Riverkeeper Network*, 753 F.3d at 1313–19 (holding that an agency violates NEPA when it segments its environmental analysis of connected, contemporaneous pipeline improvement projects on an integrated pipeline system rather than evaluating their cumulative impacts together).

[44] *Environmental Assessment*, *supra* note 1, at 22.

[45] *Id.*

[46] *See* Stop the Pipeline Comments on Scoping, *supra* note 6, at 17–18, nn.127–128 (citing Mikaila Adams, *Williams Names New CEO, Notes Power Project Advancements*, OIL & GAS J. (May 6, 2025); Scott Mitchell & Graham Dowers, *Williams Companies' Alan Armstrong: Natural Gas, Infrastructure, and Oklahoma Can Lead U.S. Energy Future*, News9 (July 20, 2025)).

infrastructure is a reasonably foreseeable indirect effect under 42 U.S.C. § 4332(2)(C) that must be evaluated in an EIS.[47]

D. FERC's Environmental Assessment is Incomplete Without the Required Information on Water Resources and Wetlands, and Compliance with Sections 401 and 404 of the Clean Water Act ("CWA")

The 2026 EA fails to provide the site-specific hydrologic analysis required to evaluate impacts across 330 waterbody crossings and over 91 acres of wetlands.

In its April 2014 comments, supported by the expert report from Dr. Erik Kiviat and Dr. David Richardson of Hudsonia Ltd., STP warned that open-cut and dry trenching through 277 streams would trigger severe downstream sedimentation, destroy hyporheic zone nutrient processing, elevate stream temperatures through riparian clearing, and destabilize steep headwater catchments.[48] Hudsonia emphasized that high-intensity storm events in the Catskill Plateau exacerbate these disturbances, mobilizing sediments that overwhelm standard silt fencing and smother trout redds and benthic macroinvertebrate communities.[49]

The 2026 EA demonstrates that water resource impacts have expanded rather than diminished. The number of crossed waterbodies has increased from 289 to 330.[50] Key receiving waters have been afforded higher state protections: Pennsylvania upgraded Roaring Run to Wild Trout Waters (Natural Reproduction) and Starrucca Creek to Special Protection, while New York upgraded numerous Class D streams to Class C and B.[51] Yet, Constitution has not modified its crossing methods. It continues to rely on dry open-cut, flume, or dam-and-pump trenching for 235 crossings, relegating horizontal directional drilling (HDD) or Direct Pipe to a fraction of crossings.[52]

The Commission cannot validate this approach by pointing to future Unites States Army Corps of Engineers ("USACE") and state permitting. In Section B.2.2, the EA acknowledges that in a January 9, 2026 letter, Constitution notified the USACE that updated wetland and waterbody field surveys would be submitted at a "later date".[53] Deferring field delineations to post-

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[47] *See* 42 U.S.C. § 4332(2)(C)(i) (requiring agencies to evaluate all "reasonably foreseeable environmental effects of the proposed agency action"); Stop the Pipeline Comments on Scoping, *supra* note 6, at 17–18; *see also Environmental Assessment*, *supra* note 1, at 9, Table A.4-1 (summarily dismissing data center development as "too speculative and remote in time or geographic location and are otherwise outside the scope for this EA").

[48] *See* Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 18–22 (Section VII), Ex. 3 (*Hudsonia Report* at 1–6) (Apr. 8, 2014), Accession No. 20140408-5088.

[49] *See* Erik Kiviat & David C. Richardson, Hudsonia Ltd., *Review of the DEIS and Technical Report for the Constitution Pipeline*, at 1–2, 4–6, 18–20 (Mar. 31, 2014) (attached as Exhibit 3 to STP's Corrected DEIS Comments, Accession No. 20140408-5088) (analyzing high-intensity summer convective storms and tropical cyclones in the Catskills, barrier failure under extreme runoff on steep slopes, and persistent siltation of wild trout spawning redds).

[50] *See Environmental Assessment*, *supra* note 1, at 24; Constitution Response to EIR No. 2, *supra* note 20, Resp. to EIR No. 8, at 4

[51] *See Environmental Assessment*, *supra* note 1, at 24.

[52] *Id.*

[53] *Id.* at 25–26.

certificate submittals deprives the public and the U.S. Army Corps of Engineers of the upfront baseline required to evaluate whether the project represents the Least Environmentally Damaging Practicable Alternative (LEDPA) under EPA's binding CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230), which the Corps must satisfy before it can lawfully adopt FERC's environmental document and issue a Section 404 permit.[54]

Constitution also lacks a valid Section 401 Water Quality Certification ("WQC") from New York State. After New York denied Constitution's WQC in 2016 due to insufficient stream crossing data, Constitution re-applied in May 2025, received three successive Notices of Incomplete Application from NYSDEC, and withdrew its application on November 7, 2025.[55] Constitution's unilateral assertion in Table 1.7-1 that Section 401 is "Waived" is a contested legal claim that the Commission cannot rely on to bypass water quality standards.[56] The absence of an active Section 401 application or certification bars the issuance of federal authorizations under CWA Section 401(a)(1).[57]

E. FERC's Environmental Assessment is Incomplete Without the Required Information on Biological Resources, Habitat Fragmentation, and Other Unfulfilled Obligations Under the Endangered Species Act

The 2026 EA glosses over significant ecological changes in the project area, failing to account for the heightened vulnerability of regional biota:

- **Endangered Northern Long-Eared Bat ("NLEB"):** In its May 2026 comments, STP noted that on March 31, 2023, the United States Fish and Wildlife Service ("USFWS") officially reclassified the NLEB (Myotis septentrionalis) from threatened to endangered.[58] In the 2026 EA, Staff concluded that the project is "likely to adversely

[54] *See* 40 C.F.R. § 230.10(a) (2017) (mandating denial of a Section 404 permit if there is a practicable alternative that would have less adverse impact on the aquatic ecosystem); 40 C.F.R. § 1506.3 (authorizing cooperating agencies to adopt an EIS/EA only if the document satisfies their independent statutory and regulatory requirements); 33 C.F.R. § 320.4(a) (1986); *see also* DEIS at 1-4 (confirming USACE is participating as a cooperating agency and will adopt the environmental document only if its CWA § 404(b)(1) comments are satisfied); Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 4, 12–15, 33–36 (Apr. 8, 2014), Accession No. 20140408-5088.

[55] *See* Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2*, Docket No. CP13-499-006, at Attachment (Table 1.7-1, at 5–6) (July 10, 2026), Accession No. 20260710-5208 (detailing the May 30, 2025 WQC re-filing, NYSDEC's subsequent Notices of Incomplete Application on July 2, August 26, and September 30, 2025, and Constitution's withdrawal of the application on November 7, 2025); *see also* FERC, *Environmental Assessment*, at 18 & nn.47–48 (Aug. 21, 2026).

[56] *See* Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2*, Docket No. CP13-499-006, at Attachment (Table 1.7-1, at 5) (July 10, 2026), Accession No. 20260710-5208 (listing Section 401 WQC status as "Not Applicable (N/A) – Waived"); FERC, *Environmental Assessment*, at 18 (Table A.6-1 & n.48) (Aug. 21, 2026).

[57] *See* 33 U.S.C. § 1341(a)(1) ("No license or permit shall be granted until the certification required by this section has been obtained or has been waived...."); *see also* Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 18–20, 32 (Apr. 8, 2014), Accession No. 20140408-5088.

[58] *See* Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73,488 (Nov. 30, 2022) (effective March 31, 2023) (codified at 50 C.F.R. pt. 17); Stop the Pipeline, *Scoping Comments on Revived Petitions*, Docket Nos. CP13-499-006 & CP13-502-003, at 18 & n.130 (May 4, 2026), Accession No. 20260504-5336.

affect" the NLEB, but attempted to rely on a 2015 Biological Opinion that evaluated the species under its former threatened status and under an entirely different environmental baseline.[59] Consultation under ESA Section 7 cannot rest on a stale 2015 opinion.[60] Constitution disclosed in July 2026 that NYSNHP identified ten bat hibernacula within four miles of the route—one just 0.15 mile away—yet Constitution admitted in EIR No. 2 that it has not verified the locations or evaluated blasting, noise, and vibration impacts on these hibernacula.[61] Punting hibernacula identification to post-certificate compliance violates Section 7(a)(2) of the ESA, which requires the Commission to insure, using the "best scientific and commercial data available," that its action is not likely to jeopardize an endangered species.[62]

- **Interior Forest Fragmentation:** The Project would clear over 1,024 acres of vegetated cover, including 983 acres of upland forest and 32.7 acres of forested wetlands, bisecting 129 interior forest blocks across 36 miles.[63] In 2014, STP objected that the draft review dismissed interior canopy loss and edge effects simply because undeveloped forest existed elsewhere in the region.[64] In the 2026 EA Table A.3-1, Staff summarily dismissed forest fragmentation by asserting that felled trees in Pennsylvania have "started to regenerate into shrub vegetation".[65] Regrowth of brush along a cleared corridor does not restore mature, contiguous interior forest canopy; it introduces edge effects, invasive cowbird brood parasitism, and soil drying up to 300 feet into adjacent stands. Furthermore, the EA carries forward Condition 23, requiring a post-certificate Upland Forest and Migratory Bird Plan—a document that was never subjected to public notice and comment during initial reviews.[66]

- **Soil Microbial and Mycorrhizal Fungi Communities:** As raised in STP's May 2026 scoping comments, trenching a 110- to 125-foot right-of-way causes severe, long-term

[59] *See* FERC, *Environmental Assessment*, at 27–32, 29.
[60] *See* Stop the Pipeline, *Scoping Comments on Revived Petitions*, Docket Nos. CP13-499-006 & CP13-502-003, at 18–20 (May 4, 2026), Accession No. 20260504-5336; *see also* 50 C.F.R. § 402.16(a) (requiring reinitiation of formal consultation where a new species is listed, new information reveals effects not previously considered, or the action is modified).
[61] *See* FERC Office of Energy Projects, *Environmental Information Request No. 2 to Constitution Pipeline Co., LLC*, Docket No. CP13-499-006, at 1 (Item 5) (June 25, 2026), Accession No. 20260625-3072; Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2*, Docket No. CP13-499-006, at 2–3 (Resp. to EIR No. 5) (July 10, 2026), Accession No. 20260710-5208 (acknowledging that hibernacula locations have not been determined and stating that consultation and mitigation will proceed "once the Certificate Order is received"); 2026 EA at 32.
[62] *See* 16 U.S.C. § 1536(a)(2); *Bennett v. Spear*, 520 U.S. 154, 176 (1997) (holding that the ESA's "best scientific and commercial data available" requirement ensures that agency action is not based on speculation and surmise); *Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000); Stop the Pipeline, *Scoping Comments on Revived Petitions*, Docket Nos. CP13-499-006 & CP13-502-003, at 19–20 (May 4, 2026), Accession No. 20260504-5336.
[63] FERC, *Environmental Assessment*, at 5.
[64] *See* Stop the Pipeline, *Corrected Comments on the Draft Environmental Impact Statement for the Proposed Constitution Pipeline*, Docket Nos. CP13-499 & CP13-502, at 3–4, 46–47, 55–56, 61 (Apr. 8, 2014), Accession No. 20140408-5088.
[65] FERC, *Environmental Assessment*, at 5.
[66] *Id.* at 74–75.

disruption to soil microbial networks and mycorrhizal fungi.[67] These underground fungi are essential for nutrient absorption, forest resilience, and carbon sequestration. Dismissing soil impacts as "temporary and short-term" based on superficial topsoil segregation ignores established ecological science regarding fungal network destruction and soil compaction.

F. FERC Fails to Address Land Use Conflicts, Direct Workspace Encroachments, and Denial of Landowner Due Process

The passage of twelve years has substantially changed the human and built environment along the 124-mile route. The 2026 EA documents multiple direct spatial conflicts where new commercial developments, infrastructure, and residential structures occupy the proposed construction right-of-way:

- **Direct Pipeline Conflicts with Structures:** Table B.5-6 of the 2026 EA lists 42 structures located within 50 feet of the workspace.[68] Eight structures—including garage/sheds at MP 71.8, MP 78.4, and MP 97.9, and an aboveground storage tank at MP 4.5—are situated directly over the pipeline centerline or within the workspace (distance = 0 feet).[69] In EIR No. 2, Constitution offered no engineered reroutes, stating only that it will coordinate with landowners "at the appropriate time".[70] While Staff recognized these conflicts by proposing Condition 44 (denying use of PAR-1 because it runs through an existing valve facility) and Condition 45 (requiring 10-foot buffers or landowner concurrence), NEPA requires that these structural conflicts and routing adjustments be resolved and disclosed before authorization, not deferred to private post-certificate negotiations.

- **New Industrial Developments (Amazon Facility and Active Quarry**): The EA confirms that a newly constructed 200,000-square-foot Amazon distribution and logistics facility at MP 120 directly intersects the pipeline alignment.[71] The pipeline would traverse approximately 2,000 linear feet of the facility's active truck parking lot and stormwater retention basin.[72] Similarly, an active 3.2-acre bluestone quarry at MP 6.2 intersects the proposed right-of-way.[73] Constitution has presented no engineered realignment or safety risk assessment for these major facilities, and the Commission cannot remedy this omission through Condition 50 by directing Constitution to report on resolution status in its post-certificate Implementation Plan.

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[67] *See* Stop the Pipeline, *Scoping Comments on Revived Petitions*, Docket Nos. CP13-499-006 & CP13-502-003, at 16–17 & nn.116–120 (May 4, 2026), Accession No. 20260504-5336.
[68] FERC, *Environmental Assessment*, at 36–38 (Table B.5-1), 43–45 (Table B.5-6), 78 (Conditions 44 & 45) (Aug. 21, 2026).
[69] *Id.*
[70] Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2*, Docket No. CP13-499-006, at 16 (Resp. to EIR No. 12o), 17–18 (Resp. to EIR No. 13) (July 10, 2026), Accession No. 20260710-5208.
[71] FERC, *Environmental Assessment*, at 22 (Section B.1.0), 39–40 (Table B.5-2), 79 (Condition 50s & 50w) (Aug. 21, 2026).
[72] *Id.*
[73] *Id.*

- **Due Process of New Landowners:** Many parcels along the route have changed hands since 2014. In EIR No. 2, FERC Staff identified numerous comment filings from newly affected landowners who were never notified of the original proceedings, never participated in the 2014 scoping, and purchased land after the Second Circuit was told the Projects would not be built.[74] Attempting to resurrect expired certificates based on outdated scoping denies these property owners their constitutional right to meaningful notice and due process under the Natural Gas Act and the Fifth Amendment.[75]

III. Conclusion

The 2026 Environmental Assessment unlawfully relies on a twelve-year-old FEIS located in a dismissed docket that was incomplete when issued and has been rendered obsolete by changed environmental conditions and new regulatory standards. By continuously substituting post-certificate compliance conditions for mandatory upfront baseline surveys across water, biological, and land resources, the Commission denies the public and affected landowners meaningful review. The Commission must reject the 2025 and 2026 Petitions and require Constitution to file a new Section 7 application so that a comprehensive Draft Environmental Impact Statement can be prepared.

Respectfully submitted,



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[74] FERC Office of Energy Projects, *Environmental Information Request No. 2 to Constitution Pipeline Co., LLC*, Docket No. CP13-499-006, at 2–4 (Items 11 & 12) (June 25, 2026), Accession No. 20260625-3072 (identifying numerous comment filings by new landowners who acquired property after 2014); Constitution Pipeline Co., LLC, *Response to Environmental Information Request No. 2*, Docket No. CP13-499-006, at 5–17 (July 10, 2026), Accession No. 20260710-5208; Stop the Pipeline, *Scoping Comments on Revived Petitions*, Docket Nos. CP13-499-006 & CP13-502-003, at 21–22 (May 4, 2026), Accession No. 20260504-5336; *see also* 2026 EA at 67–68 (Section C.3.0).

[75] U.S. Const. amend. V; 15 U.S.C. § 717f(h).

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