

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Dominion Carolina Gas Transmission, LLC
Transco to Charleston Project

Docket No. CP16-98-000

**REQUEST FOR REHEARING AND MOTION FOR STAY
BY UPSTATE FOREVER**

Pursuant to Section 19(a) of the Natural Gas Act (“NGA”), and 18 C.F.R. §385.713, Intervenor Upstate Forever hereby requests a rehearing of FERC’s February 2, 2017 Order Issuing Certificate to Dominion Carolina Gas Transmission, LLC (“Dominion”) for its “Transco to Charleston” Project (“Project”) in the above-captioned proceeding. See *Dominion Carolina Gas Transmission, LLC*, 158 FERC 61,126 (Feb. 2, 2017). FERC granted Upstate Forever’s motion to intervene in this proceeding, thus it is a party to this proceeding. 18 C.F.R. § 385.214(c). As such, Upstate Forever has standing to file this request for rehearing. See 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713(b).

Upstate Forever respectfully requests that the Certificate Order, as well as the deficient environmental assessment (EA) and finding of no significant impact (FONSI) under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, be withdrawn. Upstate Forever respectfully requests that FERC conduct a new environmental analysis and a new public convenience and necessity analysis that comply with NEPA and the NGA. All communications regarding Upstate Forever’s rehearing request and motion for stay should be served on:

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I. BACKGROUND

On March 9, 2016, Dominion filed an application under section 7(c) of the NGA for a certificate of public convenience and necessity authorizing it to construct and operate a natural gas pipeline and compression facilities in Aiken, Charleston, Dillon, Dorchester, Greenwood, Laurens, Newberry, and Spartanburg Counties, South Carolina. Dominion's stated purpose for this pipeline is to supply natural gas for local distribution and use in electric generating plants in South Carolina. Dominion purports to have secured customer agreements accounting for 100% of the gas to be delivered through its new pipeline. South Carolina Electric and Gas (SCE&G) has agreed to take approximately 94% of the pipeline capacity for a period of thirty years.

At the same time Dominion was negotiating with SCE&G to be the anchor customer for the Project, Dominion was also negotiating with SCE&G (through SCE&G's parent) to purchase its system of nearly 1,500 miles of FERC-regulated interstate natural gas pipeline in South Carolina (the Carolina Gas Transmission system). The Project connects into this Carolina Gas Transmission ("CGT") infrastructure that had been owned by SCE&G. Dominion closed on its purchase of this CGT system in January 2015, very shortly after SCE&G agreed to take almost all of the natural gas generated by the Project. In sum, SCE&G sold its natural gas pipeline system to Dominion at the same time, or nearly at the same time, as it agreed to be the anchor customer for the first new pipeline Dominion seeks to add to that system.

Pursuant to NEPA, FERC issued an EA for this project on October 18, 2016, reaching a finding of no significant impact (FONSI). As will be explained herein, FERC's EA is flawed and incomplete in relation to the Project's environmental impacts. These flaws were pointed out by Upstate Forever and other commenters. In general, numerous comments submitted subsequent to the EA raised issues that should have been addressed pursuant to NEPA and

NGA. Instead of curing these deficiencies, FERC rushed to issue the Certificate Order in response to Dominion's preferred construction schedule. FERC lost its quorum on February 3, 2017 due to Commissioner Bay's resignation, and it would have lost its ability to issue the Certificate Order on that date. However, in order to comply with Dominion's request for approval prior to the loss of quorum, FERC issued the Certificate Order on February 2, 2017. In all, FERC approved a flurry of pipeline projects in the first three days of February, so as to avoid any delay in construction timelines. At the same, however, FERC was expressing its inability to timely provide Upstate Forever with even basic documents necessary to contest this project. FERC's decision to prioritize industry timelines over the process and public is indicative of the flaws in the Certificate Order.

II. ARGUMENT FOR REHEARING

Upstate Forever contests the basis of FERC's decisions under both NEPA and NGA, as well as the process through which those decisions were issued.

A. FERC Denied Upstate Forever Due Process.

By consistently denying Intervenor and other interested parties requested information critical to consideration of the Project and by prioritizing Dominion's interests above the production of such information, FERC denied Upstate Forever due process in these proceedings.

Upstate Forever submitted two requests pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and FERC failed to produce documents responsive to either request. FERC did not deny the requests, but simply failed to muster the resources and effort to respond. The first of these requests came in Upstate Forever's comment letter of June 7, 2016, which is available on the FERC Online docket sheet. In that letter, Upstate Forever requested information critical to assessing the validity of the need for the Project. Particularly, the request was for contractual

documents between Dominion and the Project's customers. Such documents would have been especially relevant to evaluating any relationship between Dominion's purchase of SCE&G's pipeline system and SCE&G's corresponding agreement to serve as anchor customer. However, FERC never responded to such request. Then, on January 5, 2017, Upstate Forever submitted a FOIA request for a document Dominion had filed as "privileged and confidential" that identifies the owners of property that would be crossed by the pipeline. This information was and is critical to assessing the environmental impacts of this project on a parcel-by-parcel level. On February 3, 2017, Upstate Forever received notice from FERC that it could not make a decision on the request within the allowable time and was invoking an extension of time. As of the date of this filing, Upstate Forever has still not received documents responsive to its request. Note, startlingly, that at the same time FERC managed to push out this Certificate Order and a host of others in advance of losing a quorum on February 3, 2017, it notified Upstate Forever on that same day that it could not timely comply with a simple request to turn over a single document on file with the agency.

Through its actions in constructively denying Upstate Forever's FOIA requests, in prioritizing issuance of the Certificate Order above providing complete information to Upstate Forever and other interested parties, in prematurely issuing the Certificate Order before the process had reached its natural end, and in generally withholding critical documents from the public under Dominion's broad designation of "privileged and confidential," the Commission failed to provide a meaningful opportunity to participate in its consideration process. Upstate Forever's due process rights were violated because these denials of information deprived it of a "meaningful opportunity" to comment on the EA, the FONSI, and the certificate of public convenience and necessity.

The due process owed to Upstate Forever and other affected parties was enhanced due to the nature of the Project. In Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441(1915), the Supreme Court distinguished the concerns arising from agency actions that affect broad swaths of the population and those zeroing in on a handful of individuals, noting that the latter were more significant. It made clear that, when agency action affects a “relatively small number of persons,” those individuals are “exceptionally affected.” Id. at 446. Such action is adjudicative in nature, and affected parties are entitled to procedural due process above and beyond that which has been provided by the legislature via the agency’s organic statute. Id. The nature of due process in this particular case accentuates FERC’s failings in this regard.

B. FERC Failed to Prepare and EIS, in Violation of NEPA.

The environmental impacts of the Project, as laid out in FERC’s EA, warrant the preparation of a full EIS. However, the need for an EIS is made all the more clear by the fact that FERC’s EA fails to capture significant environmental impacts that should have been included.

i. The Environmental Impacts, as Identified by FERC, Warrant an EIS.

As an initial matter, the essential nature of this project belies FERC’s finding of no significant impact. The immense scope of this project is undeniable, and if this were a project with impacts concentrated on a single site, rather than a pipeline with impacts interspersed over 60 miles, those impacts would likely be hailed as catastrophic. Indeed, one can scarcely imagine a single-site project involving: 84 waterbody crossings, the majority of which will simply be open trenched; 10 wetland crossings, which will involve significant construction disturbance and ongoing threat of gas leaks and spills; 700 acres of environmental disturbance during construction; almost 300 acres that will basically be permanently denuded for purpose of a right-

of-way; and the creation of 7 new roadways permanently covering 88 acres. These are exactly the impacts proposed by Dominion, yet somehow their magnitude seems to have been obscured as a result of the project being extended over multiple counties and many parcels, to the point that FERC has dismissed the impacts as not significant.

Starting from the “big picture” down, Upstate Forever contends that it is a legal error to forego preparation of an Environmental Impact Statement for this project. Given the scope of this project, to conclude that it is not a major action with significant effects on the environment is to reject any natural meaning of those words and to reject a well-established history of NEPA analysis in similar cases. Indeed, agencies have typically prepared, and courts have typically required, the preparation of an EIS for pipeline projects comparable to the one in question here.

A good example is the case of Fuel Safe Washington v. F.E.R.C., 389 F.3d 1313 (10th Cir. 2004), which also involved a FERC certificate of need determination for a natural gas pipeline. The pipeline in that case was shorter than the one proposed by Dominion (46 miles vs. 60 miles), and both projects involved comparable compressor station construction. However, FERC prepared a full Environmental Impact Statement for the pipeline in Fuel Safe Washington, while it has obviously declined to do so here. The case of Wilderness Workshop v. U.S. Bureau of Land Mgmt., 531 F.3d 1220 (10th Cir. 2008) also involved a comparable pipeline project. The natural gas pipeline in that case was approximately 25.5 miles in length and 20 inches in diameter, and it was being constructed along with a related four-acre natural gas facility. The Bureau of Land Management prepared an EIS for this project, though it is obviously significantly smaller in scale than Dominion’s project. See also Nat’l Comm. for the New River v. F.E.R.C., 373 F.3d 1323 (D.C. Cir. 2004) (FERC prepared EIS for certificate of need decision involving 100 mile natural gas pipeline extension). Yet another FERC natural gas pipeline

certificate of need case involving preparation of an EIS is South Coast Air Quality Mgmt. Dist. v. F.E.R.C., 621 F.3d 1085 (9th Cir. 2010). FERC prepared an EIS for that project despite the fact that it merely involved expansion of an *existing* 80-mile pipeline, within the existing right-of-way, to allow two-way natural gas flow. The project did not involve installation of a new pipeline or clearing of a new right-of-way. Notably, a significant factor in FERC's NEPA consideration of the pipeline project was the "downstream emissions" from those using the natural gas. As discussed in more detail below, this type of environmental impact received only passing mention in the Dominion EA, yet, in South Coast Air, FERC used these consequential air emissions as a basis for preparing a full EIS.

On the other side of the coin, when FERC has declined to prepare an EIS for a project of this nature and magnitude, courts have looked upon such inaction with skepticism. That is what occurred in the recent case of Delaware Riverkeeper Network v. F.E.R.C., 753 F.3d 1304 (D.C. Cir. 2014), in which FERC prepared only an EA for a 40-mile natural gas pipeline installation. The court found the EA to be inadequate and remanded to FERC for additional consideration of cumulative impacts from the project. All in all, the clear trend for natural gas pipeline projects of the magnitude proposed by Dominion is that FERC will prepare an EIS to fully assess environmental impacts and alternatives. FERC has not identified any notable basis for why it is breaking with that trend here, and the significance of the environmental resources at stake do not support such a departure.

This conclusion is especially true in light of the fact that no off-site mitigation is being proposed as a part of the Project. Oftentimes such mitigation will be required by the U.S. Army Corps of Engineers as part of its permitting requirement for projects like this, so as to offset the loss of aquatic resources caused by construction. As Dominion has not sought an individual

permit from the Corps, such mitigation has not been required, and the significant aquatic impacts from the Project are in no way offset. FERC's decision not to prepare an EIS is even less justifiable in this light.

Finally, FERC's basis for an EA relies on a faulty and incomplete analysis of the Project's impacts on Upstate Forever's Conservation Focus Areas ("CFAs"), which are areas identified for their exceptional resource value. The EA gives little consideration to the particulars of these impacts and makes the representation that minor route variations were undertaken to lessen the impacts. However, as far as Upstate Forever can tell, the route variations in question had nothing to do with resources in the CFAs, and the EA reliance on such variations is disingenuous. Based on extensive study of the area, Upstate Forever strongly disagrees with the EA's determination that the Project will not have a significant impact on the CFAs. Such determination formed part of the basis for FERC's faulty decision to prepare an EIS.

ii. *FERC Failed to Take a Hard Look at the Cumulative Impact of Greenhouse Gas Emissions.*

Had FERC given due consideration to greenhouse gases in its EA, the need for an EIS would have been even more apparent. The EA contains no assessment of the emissions facilitated by the Project.¹ In other words, even though the entire purpose of the Project is to transport fuel that is to be combusted for various purposes, the EA does not consider the environmental impacts (or even the existence) of such combustion. Because Upstate Forever pointed out this failure in a response letter to the EA, FERC's Certificate Order makes passing mention of such emissions, but it simply states the projected amount of such emissions (1.6

¹ The EA's only discussion of air emissions is in relation to those emissions coming directly from the Project's compressor facilities.

million metric tons per year), offering no assessment or conclusion on the environmental effects flowing therefrom. FERC's failure to consider the environmental impacts originating immediately and directly from the activities this pipeline facilitates is in error under NEPA and led directly to FERC's failure to prepare an EIS.

This failure is made even more pointed by EPA's recent input into FERC's NEPA process. Shortly after FERC issued its EA for this project, the EPA expressed its conclusion that FERC's consideration of greenhouse gases in its NGA/NEPA process is generally inadequate. In particular, the EPA strongly encouraged FERC to take a more comprehensive approach to analyzing greenhouse gas emissions from natural gas pipelines and to fold such analysis into FERC's NEPA consideration.² In other words, the EPA believes that life-cycle analysis of emissions facilitated by proposed natural gas pipelines should be a meaningful component of the NEPA process for those pipelines. Despite the EPA's guidance and despite Upstate Forever pointing out the EA's failure to account for emissions, FERC did not revise or reconsider its environmental analysis.

FERC's failure to analyze downstream greenhouse gas emissions and climate change impacts is contrary to the plain language and law of NEPA. Under applicable NEPA regulations, FERC is required to include "connected actions," "cumulative actions," and "similar actions" in an EA. 40 C.F.R. § 1508.25(a)(1)-(3). Further, the EA should consider the cumulative impact of a project in relation to other activities. A "cumulative impact" is 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.

² See <<http://www.eenews.net/stories/1060044726>>.

40 C.F.R. § 1508.7. Under this language and similar language in NEPA case law and regulatory law, FERC's EA should have considered combustion of the natural gas transported through Dominion's pipeline as a "connected," "cumulative," or "similar" action, and it should have considered the contribution of this combustion to the overall problem of greenhouse gas emissions as a "cumulative impact."

iii. FERC Failed to Take a Hard Look at Related Pipeline Projects.

Upon information and belief, the Project is just the first step in an overall upgrade and expansion of Dominion's natural gas pipeline system in South Carolina. A number of factors suggest the veracity of such conclusion, especially including the relation of this Project to Dominion's recent purchase of the CGT. Dominion bought the CGT pipeline system from SCE&G in January 2015, through an agreement that provided for the payment of \$497M, which was delineated as \$277M in assets plus \$250M in goodwill reflecting the "economic value attributable to future expansion projects." (Source: Dominion FY14 10-K filing, p. 148). Upstate Forever interprets the language of such agreement to reflect that Dominion bought the CGT in order to facilitate multiple short term expansions, with this Project being the first. The proposed location of Dominion's Atlantic Coast Pipeline (and other regional and national natural gas infrastructure) in relation to the CGT lends further credence to such conclusion. The details necessary to prove with certainty that this Project is the first in a related series of expansions is not currently available to Upstate Forever, given the document access limitations noted above. However, what is apparent with certainty is that FERC's NEPA analysis entirely fails to undertake the consideration and to make relevant inquiry of Dominion. On this basis, Upstate Forever submits that FERC's EA fails to appropriately consider connected and cumulative actions related to the Project. See Delaware Riverkeeper Network v. FERC, 753 F.3d 1304,

1308 (D.C. Cir. 2014) (citing 40 C.F.R. § 1508.25(a)). Had FERC not failed in this regard, the need for an EIS would have been even more apparent.

C. FERC Failed to Adequately Consider Alternative Alignments for the Pipeline.

While Upstate Forever certainly believes that an EIS is appropriate for this Project, FERC’s alternatives analysis is deficient even under the standards for an EA. Consideration of reasonable alternatives is required regardless of whether the agency issues a FONSI. See 40 C.F.R. § 1508.9(b). Indeed, “consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process.” Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228–29 (9th Cir.1988). While FERC’s alternatives analysis need not be as rigorous as it would be in an EIS and may be “brief,” the discussion of alternatives must still be reasonable. FERC’s EA fails this standard.³

First of all, in terms of the manner in which FERC compared each of the alternatives it developed, that analysis is entirely lacking. FERC’s analysis of the environmental impacts of each alternative goes beyond the realm of being “brief,” into the realm of being meaningless. That analysis consists of an elementary-level comparison of the number of wetland/water crossings and the number of acres impacted for each alternative, without any consideration of the quality or value of the impacted resources. Such a one-to-one comparison without any further level of refinement provides no valuable environmental data and is arbitrary to the point of having no value to the process.

³ Notably, the alternatives analysis requirement does not arise exclusively from NEPA. Rather, “the duty imposed upon the Commission by Section 7 of the Natural Gas Act is not merely to determine which of the submitted applications is most in the public interest, but also to give proper consideration to logical alternatives which might serve the public interest better than any of the projects outlined in the applications.” N. Natural Gas Co. v. Fed. Power Comm'n, 399 F.2d 953, 973 (D.C.Cir.1968). This requirement from NGA supplements the NEPA standard and accentuates the deficiencies in FERC’s analysis here.

FERC's most significant failings, though, come specifically in relation to "alternative 4," which is the designation given to the route that would track an existing pipeline and pipeline right-of-way owned by Dominion. See (EA, p. 131). As explained in the EA, Dominion currently owns an 8-inch natural gas pipeline that has the same origination and termination points as the new pipeline would have. Id. Rather than cutting an essentially straight line from start to finish, as does the proposed route, this existing pipeline basically forms two sides of a triangle. Id. Alternative 4 calls for the new pipeline to be collocated with the existing pipeline along its entire length, meaning that the right-of-ways for the pipelines would overlap, and the overall area maintained as right-of-way between the two pipelines would be reduced. Id. The EA's failures in regard to alternative 4 come first from bare-boned nature of that analysis (see above), but more importantly from its arbitrary and unreasonable nature.

FERC's analysis of alternative 4 unreasonably treats as equivalent the land and resources already maintained as pipeline right-of-way with the land and resources along the preferred route that currently exist in a natural state. For example, if alternative 4 and the preferred alternative both cross one wetland, FERC's EA treats those crossings as equivalent from an environmental perspective, despite the fact that the alternative 4 crossing is already disturbed. In reality, the fact that alternative 4 crosses one more wetland than the preferred alternative is meaningless when the wetlands in the existing right-of-way already have a pipeline underneath and are already maintained according to right-of-way standards. FERC's failure to give any way to the significance of an existing right-of-way, or to even calculate/estimate how much the overall right-of-way would be reduced under that alternative, leads to an analysis of alternative 4 that is without reason and does not facilitate any meaningful consideration of the environmental and social values of alternative 4.

Alternative 4 holds great appeal in terms of the environment and the public interest, in that it could be constructed largely within an existing right-of-way and in that it would cross zero residential parcels, versus 181 crossings for the chosen alternative (meaning that residential landowners would not face the threat of eminent domain).⁴ Under those circumstances, FERC's nearly off-hand dismissal of alternative 4 represents a complete abdication of its duties under NEPA and NGA.

D. FERC Erred in Refusing to Consider Need in the NEPA Process.

As explained in Upstate Forever's previous response letter to the EA, FERC's flat declaration that "need is not an environmental issue to be addressed in an EA" is contrary to law and problematic in relation to the NEPA consideration of this project. Instead of specifying the need for the Project or exercising any degree of skepticism with regard to Dominion's statements in this regard, FERC simply ignored the need for this pipeline as it relates to NEPA. This violates the plain language of NEPA regulation 40 C.F.R. § 1502.13. The fact that FERC considers need as part of its certification review under NGA does not relieve the agency of its obligation to specify the need for the Project during the NEPA process when the public has the opportunity to comment and potentially influence FERC's decision. The failure to specify and assess the need for the Project during the NEPA process renders the EA invalid. FERC should rescind the Certificate Order and prepare an EIS or supplemental EA that fully vets the purpose and need for the Project.

As previously explained by Upstate Forever, one of the big problems that arises from excluding need for NEPA is that the purpose and need for a project are essential in establishing a

⁴ In its comment letter to FERC regarding the EA, the South Carolina Department of Natural Resources recommends that Dominion re-evaluate opportunities for maximizing the use of existing right-of-ways and already disturbed corridors to further minimize habitat fragmentation and avoid sensitive natural and cultural resources. Neither Dominion nor FERC bolstered the analysis of alternative 4 in light of this agency input.

basis for the development of the range of reasonable alternatives required in an EA or EIS and in assisting with the identification and eventual selection of a preferred alternative. In other words, the identification and evaluation of alternative ways of meeting the purpose and need of the proposed project is the heart of the NEPA analysis. FERC has rendered this analysis incomplete by cutting “need” out of the equation. As a consequence, the EA’s alternatives analysis is incomplete and relies on unproven assumptions. This is especially true of the no-action alternative, which should receive genuine consideration under the circumstances. However, the EA provides just the opposite. The EA’s “no-action” analysis assumes genuine demand from the customers named by Dominion and that this demand cannot be satisfied by existing infrastructure. Neither of these things has been established. These assumptions set up the EA’s conclusion that “no-action” is not a reasonable alternative because some pipeline will need to be built to supply these customers. Such conclusion is not supported by evidence that has been presented to the public during this process. The EA’s analysis of the critical no-action alternative is meaningless without an actual assessment of need, which the EA has explicitly declined to undertake.

E. FERC Failed to Ensure that Substantial Environmental Information was Available Before Authorizing the Project.

FERC’s rush to approve this and other pipelines prior its loss of a quorum resulted in an Certificate Order that is based on incomplete and inaccurate information about the environmental consequences of the project. Agencies must ensure that “environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). FERC’s NEPA regulations require that environmental considerations be addressed “at appropriate major decision points.” 18 C.F.R. § 380.11(a). “In proceedings

involving a party or parties and not set for trial-type hearing, major decision points are the approval or denial of proposals by the Commission or its designees.” Id. § 380.11(a)(1).

FERC issued the Certificate Order even though Dominion has not submitted substantial information related to environmental consequences of the project. See Certificate Order, Environmental Conditions 12-19. Instead of requiring complete information on the environmental impacts of this project prior to approval, FERC has ordered Dominion to take certain actions and submit certain information subsequent to approval, but prior to construction. Id. However, given that approval has already been issued, there is absolutely no mechanism through which these actions or information will be given affect. Further, rather than providing a meaningful analysis of comments FERC received in response to its issuance of the EA, the Certificate Order attempts to dispose of those concerns summarily through perfunctory, often inaccurate recitals.⁵

In sum, instead of requiring Transco to submit missing and clarifying information and allowing the public an opportunity to review that information, FERC rushed to issue the Certificate Order before it lost its quorum on February 3, 2017. This “rush to judgment” is greatly exacerbated by the fact that, as described above, there was no similar rush to provide Upstate Forever and other members of the public with the information needed to fully consider this project. FERC’s decision to prioritize industry timelines over the public interest underscores the arbitrary and capricious nature of its decisionmaking. By rushing to issue the Certificate Order, FERC failed to ensure that it “has indeed considered environmental concerns in its decisionmaking process.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989); see also California v. Block, 690 F.2d 753, 761 (9th Cir. 1982). FERC acted at a “major

⁵ See discussion above regarding Upstate Forever CFAs, as well as content of Upstate Forever’s comment letter in response to issuance of the EA.

decision point” without fully considering significant environmental and human health and safety concerns. 18 C.F.R. § 380.11(a)(1).

F. FERC’s Need Analysis under NGA is Arbitrary and Incomplete.

A “key Congressional goal in enacting the NGA [was] to have FERC balance the competing public interests involved in a proposed project through the issuance of certificates of public convenience and necessity.” Williston Basin Interstate Pipeline Co. v. Exclusive Gas Storage Leasehold, 524 F.3d 1090, 1097 (9th Cir.2008). In light of all that has been explained herein, that “balance” has been fundamentally altered in favor of complete deference to industry needs and representations. In general, the Certificate Order defers authority and declines to take up the most critical inquiries in relation to the actual need for this project. In specific terms, FERC’s complete unwillingness to address the existence of end users for the gas subscribed to by SCE&G renders any question of actual need meaningless, the idea that agreements between corporate affiliates somehow establish ‘need’ for a new pipeline is a sham. That is especially true in light of the major related contractual transaction occurring between Dominion and SCE&G at the same time SCE&G was vouching for need (see above). FERC’s passing on all of this without analysis or question does not fulfill the purpose or plain language of the NGA.

III. CONCLUSION

For the reasons stated above, FERC should grant Intervenor’s request for rehearing and withdraw its February 2, 2017 Certificate. FERC should also withdraw its FONSI and deficient EA and prepare a full EIS that considers the direct, indirect, and cumulative impacts of the Project, as well as a complete consideration of alternatives.

Respectfully submitted,

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