BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Algonquin Gas Transmission LLC	**)**	**Docket No. CP16-9**
Maritimes & Northeast Pipeline	**)**	

PETITION FOR REHEARING OF THE ORDER ISSUING CERTIFICATE FOR THE ATLANTIC BRIDGE PROJECT AND REQUEST FOR STAY BY THE FORE RIVER RESIDENTS AGAINST THE COMPRESSOR STATION, FOOD & WATER WATCH, CITY OF QUINCY, MASSACHUSETTS, WEYMOUTH COUNCILOR REBECCA HAUGH, AND OTHER COMMUNITY AND ENVIRONMENTAL ORGANIZATIONS

Pursuant to section 19(a) of the Natural Gas Act ("NGA"), 15 U.S.C. §717r(a) and Rule 713 of the Federal Regulatory Energy Commission's ("FERC") Rules of Practice and Procedure, 18 C.F.R. § 385.713, the Fore River Residents Against the Compressor Station (FRRACS), Food and Water Watch, the City of Quincy, Massachusetts, Town of Weymouth Town Council Member Rebecca Haugh and eleven other regional and local community and environmental organizations (collectively, The Coalition) -- all intervenors in this proceeding [1] -- join in this Petition for Rehearing of the Commission Order Issuing Certificate to Algonquin Gas Transmission, LLC (Algonquin) and Maritimes & Northeast Pipeline, LLC to construct and operate the Atlantic Bridge Project. (Certificate Order). Comprised of various pipelines and new compressor stations and upgrades, including a 7700 horsepower compressor planned for the Town of Weymouth, Massachusetts, the Atlantic Bridge Project

[1] The other organizations joining in this Petition for Rehearing are: Eastern Connecticut Green Action, Keep Yorktown Safe, West Roxbury Saves Energy, Berkshire Environmental Action Team, Dragonfly Climate Collective, Grassroots Environmental Education, Inc., 350 CT, Safe Energy Rights Group, 350Mass South Shore Node, Toxics Action Center, and Stop the Algonquin Pipeline Expansion (SAPE). *See* Attachment 1 (Table listing petitioning organizations and their respective missions).

-- along with the already certificated AIM Project No. 14-96[2] and the pending Access Northeast Project[3] -- function as inextricably, interconnected links in a continuous, linear pipeline highway extending from New York to Canada that will transport Marcellus Shale gas[4] from South to North. Of the capacity related to the Atlantic Bridge Project, the Coalition estimates that 52 percent of the gas carried is destined for export.[5] As this Rehearing Petition contends, the Atlantic Bridge Project suffers from a myriad of legal infirmities that leave the Commission no choice but to rescind the Certificate or face reversal on judicial review.

Yet as it reviews the legal issues raised, the Commission must keep in mind the sheer human toll that results from plopping a toxic, noisy and highly combustible 7700-horsepower compressor station (soon to be doubled in size by the planned Access Northeast Project) within a few hundred feet of residences and in close proximity to environmental justice communities and large population centers. If left intact, the Commission's approval of the Atlantic Bridge Project will imperil the environmental and economic health, security, safety

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[2] *See* Order Issuing Certificate, Algonquin Incremental Market Project, 150 FERC ¶ 61,163 (2015), *reh'g denied*, 154 FERC ¶61,048 (2016). The AIM Certificate Order was challenged on judicial review before the D.C. Circuit in *City of Boston et. al. v. FERC*, Docket Nos. 16-1081, 16-1098 and 16-1103 (docketed March 31, 2016), and now awaits scheduling for oral argument.

[3]The Access Northeast Project is pending before the Commission under Docket No. PF16-1.

[4] *See Mass Live*, Feds Approve Atlantic Bridge Project (January 26, 2017), online at http://www.masslive.com/news/index.ssf/2017/01/feds_approve_atlantic_bridge_n.html.

[5] The Coalition estimate was derived as follows: (1- (14,500/106,276))*79,705 is the amount of gas from Algonquin into the Maritimes System that does not get sold off in Maine. Divide that by 132,000 or so and you have 52% of added capacity going for export.

and well-being of residents of the Town of Weymouth, the City of Quincy and surrounding communities -- all to advance a misguided, unnecessary project of dubious need. Given the serious issues and prospect of significant and irreparable harm associated with approval of the Atlantic Bridge Project, the Coalition also asks the Commission to stay the Certificate pending resolution of all legal challenges.

The Commission granted each organization's motion to intervene (some filed jointly). *See* Certificate Order, Appendix B (listing intervenor), thus making each organization a party within the meaning of 18 C.F.R. § 385.214(c) with standing to seek rehearing. *See* 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713(b). Further, this request for rehearing is timely filed within 30 days of the Commission's January 25, 2017 Certificate Order.

I. CONCISE STATEMENT OF ERROR

The Commission's Certificate Order authorizes construction and operation of the Atlantic Bridge Project, -- the middle portion of a continuous, toxic pipeline highway running from New York to Canada -- which involves construction and/or upgrades of infrastructure in three different states. Most serious - and the focus of the Coalition's Rehearing Petition - is the new 7700 horsepower compressor station (the gateway for substantial upgrades) to be sited in the Town of Weymouth, Massachusetts in the worst possible location imaginable. The compressor station will:

- Sit less than 200 feet from the Massachusetts Water Resources Authority sewage pumping station which serves nine South Shore Towns;
- Abut 200 feet of the new, as yet un-built, Fore River Bridge that will carry 33,000 cars/day, and has been constructed so as to allow 1200+' super tankers laden with gasoline and oil to pass through the Fore River on their way to the Citgo tank farm. Traffic studies cite 33,000 cars/day pass over the bridge;
- Fall within the half-mile radius for two state and federally recognized Environmental

Justice communities, Quincy Point and Germantown (Quincy) and is located within a half-mile of senior housing (O'Brien Towers) and homeless veteran's housing (Quincy) and eighteen schools and daycare centers;

- Be located on a site is the smallest acreage for any compressor station in the United States, as well as the most densely populated;

- Is vulnerable to severe storm surges and tidal inundation which can sever above-ground piping.

Both the site and the proposed project are also surrounded by substantial legal controversy and uncertainty summarized below:

- On December 5, 2016, Calpine sold to Spectra a piece of its property which had been illegally sub-divided and is now subject to a legal challenge by the Town of Weymouth;

- In August 2016, the Massachusetts Office of Coastal Protection notified Algonquin that it suspend review of its application for a Coastal Zone Management Act (CZMA) consistency finding until Algonquin received an Article 91 license from Massachusetts DEP;[6]

- The Massachusetts Supreme Judicial Court ruled that the Massachusetts Public Utilities Commission is prohibited from approving long-term contracts between regulated electric utilities and gas companies, thus potentially derailing the Access Northeast Project - which is economically and functionally linked to the Atlantic Bridge Project -- which was intended to serve electric markets.

In light of these legal uncertainties (in combination with other legal errors discussed more fully in this Rehearing Petition) and the substantial and irreparable harm that the Project will cause to residents of the Town of Weymouth, the City of Quincy and surrounding communities - without any countervailing benefits - render the Commission's conclusion that the project will serve the "public and future convenience" arbitrary, capricious and unsupported by substantial evidence. As such, the Certificate Order cannot be

[6] *See* Letter from Mass Coastal Zone Office to Algonquin (August 3, 2016), online at http://www.nocompressor.com/news/2016/8/5/big-news-delay-on-atlantic-bridge.

sustained.

II. STATEMENT OF ISSUES

1. Was the Commission's finding that the project meets the "present and future public convenience" under Section 7 of the Natural Gas Act unsupported by substantial evidence when more than fifty percent of the project capacity is destined for export and studies by the Massachusetts Attorney General shows no need for additional gas in Massachusetts.

Yes. To approve a certificate under the Natural Gas Act, the Commission must find that a project will serve the present and future convenience. 15 U.S.C. §717f(e). The record in this proceeding lacks any evidence to show a need of for this project. Although the Coalition calculated that 52 percent of the gas is bound for export, even the Commission itself admits that 46 percent will leave the county. Certificate Order at P. 121. The public interest requirement of Section 7 requires a showing of domestic need. Moreover, a report commissioned by the Massachusetts Attorney General and released in 2015 shows that the New England will not have a need for gas until 2030.[7] Even more recently, the *Annual Energy Outlook* 2017 released by the Energy Information Administration (EIA) found that by 2018, the United States is expected to become a net exporter of natural gas on an average annual basis.[8] Even departing Chairman Norman Bay expressed concern about the Commission's somewhat casual approach to determining project need, reminding his

[7] *See* Power System Reliability in New England, Analysis Group (November 2015), http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-11-18-electric-reliability-study.html

[8] *See Annual Energy Outlook 2017*, online at http://www.eia.gov/outlooks/aeo/data/browser/.

colleagues that "LNG import terminals that were built during the early 2000 time period became stranded as shale gas increasingly substituted for LNG imports from overseas. n a parting statement."[9] Taken together, these recent studies suggest that additional gas infrastructure, including the Atlantic Bridge Project is simply unnecessary and serves only to benefit private companies while unnecessarily burdening communities like the Town of Weymouth.

2. Did the Commission violate the Coastal Zone Management Act (CZMA), which prohibits grant of a federal license prior to a state's certification that the proposed project is consistent with the state's coastal zone management plan?

Yes. Section 1456(c)(3) of the CZMA, 16 U.S.C. §1456(c)(3) could not be clearer in providing that: "No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification…" and allows no exceptions. By issuing a certificate before Massachusetts Coastal Zone Office could certify the project's consistency, the Commission violated the CZMA. Moreover, a CZMA consistency certification will not issue any time soon - if ever: currently, the Coastal Zone office, having suspended review of the application, will not complete review until August 2017. And in any event, the compressor station is so incompatible with the Massachusetts Coastal Zone Management Plan, that it is unlikely that it could ever be approved.

3. Did the Commission violate the Natural Gas Act by approving an unsafe, combustible project in a highly populated and heavily trafficked area that will burden the Town of Weymouth and the region with added security costs.

Safety is a critical factor in determining whether a project meets the public interest standard under Section 7 of the Natural Gas Act. *See Washington Gas Light Company v.*

[9] Statement of Norman Bay, National Fuel Supply Corporation, Order Issuing Certificate, 158 FERC ¶ 61,145 (2017).

Federal Energy Regulatory Commission, 532 F.3d 928 (D.C. Cir. 2008)(finding that project was not in the public interest when the Commission could not guarantee its safety); *See also Weaver's Cove LNG*, Order Granting Certificate, Kelly dissenting, 112 FERC ¶ 61,070 (2005)(declining to approve LNG certificate that raises significant unresolved safety issues). The Commission failed to consider the Atlantic Bridge's adverse impacts on public safety, and therefore, the Certificate must be rescinded.

The record contains extensive documentation of the public safety concerns associated with the project. Not only is the project inherently unsafe due to lack of compliance with PHMSA regulations (49 C.F.R. §192.165-169) and its present location in close proximity to a bridge with frequently passing oil tankers, but it will impose added safety costs on communities - which simply do not have the resources to act as first responders for a hazardous project. Spectra's recent gas leak at a Weymouth-based metering station does little to inspire confidence.[10] Meanwhile, Spectra's SEC disclosure statements serve to corroborate Coalition members' concern by acknowledging the risk of terrorist attacks and pipeline explosions as sufficiently credible to warrant their disclosure to investors.[11]

4. Did the Commission violate NEPA to segment review of the Atlantic Bridge and Access Northeast Projects to evade rigorous environmental review?

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[10] *See* Patriot Ledger (January 9, 2017), online http://www.patriotledger.com/news/20170109/gas-leak-heightens-concerns-over-proposed-weymouth-project.

[11] *See e.g.,* Spectra Energy, Form 10k (December 31, 2015)(disclosing risks of terrorism and explosion and lack of adequate insurance coverage for damage), online at https://www.sec.gov/Archives/edgar/data/1373835/000137383516000014/se-2015123110k.htm.

Yes. The Atlantic Bridge and Access Northeast Projects are temporally, geographically and functionally connected and therefore, should have been subject to a single environmental impact statement under 40 C.F.R. §1508.25(a) and *Delaware Riverkeeper v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014). Indeed, the record is thick with evidence of the connection between the projects - in the form of maps showing the continuity of the pipeline as well as an Algonquin official's reference to Atlantic Bridge as the "Trojan Horse" that paves the way for future infrastructure.

5. Did the Commission violate NEPA and the CEQ regulations by failing to consider the direct and/or indirect cumulative impacts of (a) reasonably foreseeable infrastructure, such as the addition of the Access Northeast Project; (b) Marcellus Shale development?

Yes. Under NEPA and the CEQ regulations, the Commission must consider cumulative impacts of reasonably foreseeable projects - such as Access Northeast which will more than double the size of the Weymouth Compressor Station. Failure to do so is grounds for reversal. *Del. Riverkeeper Network v. FERC,* 753 F.3d 1304, 1307 (D.C.Cir.2014) (vacating Commission order based on conclusory statements dismissing cumulative impacts). Likewise, the Commission's cursory attempt to consider the impacts associated with upstream gas extraction at Marcellus Shale and downstream consumption lacks sufficient detail to inform decision-makers about the impacts.

6. Did the Commission violate NEPA and the CEQ regulations by failing to prepare an environmental impact statement for the project?

Under NEPA, the Commission is required to prepare an environmental impact statement for major actions that significantly impact the human environment. To determine whether an EA or EIS is required, an agency considers both the intensity of the impacts and

whether the impacts are "likely to be highly controversial." *See* 40 C.F.R. §1508.27. The Atlantic Bridge Project, and particularly the compressor station readily satisfy this test. In fact, the Commission itself initially proposed to prepare an EIS for the project, but downgraded to an EA at some point thereafter.

7. Did the Commission violate the CEQ's Final Guidance on climate change and greenhouse gas emissions?

Yes. Under CEQ's Final Guidance federal agencies must analyze and quantify the direct and indirect climate change impacts from a given project using GHG emissions as a proxy for climate change impacts. CEQ Final Guidance, 81 FR 51866 (August 2016). The CEQ regulations further require an agency to consider GHG emissions in connection with upstream activities such as shale extraction. *See* CEQ Final Guidance, at 16 n.42. Yet instead of quantifying climate change impacts as required by the CEQ regulations, the Commission simply declared -- without any evidentiary support -- that the emissions from the project are too small to have any direct impacts on climate change.

Moreover, the CEQ Final Guidance encourage agencies to look look to the state goals for GHG emission reduction as a frame of reference. To provide a frame of reference, agencies can incorporate by reference applicable agency emissions targets such as applicable Federal, state, tribal, or local goals for GHG emission reductions to provide a frame of reference and make it clear whether the emissions being discussed are consistent with such goals." In particular, Massachusetts has adopted targets outlined in the Massachusetts Global Warming Solutions Act (GWSA) to reduce greenhouse gas (GHG) emissions to 80% below 1990 levels by 2050 and 25% by 2020. Yet the Commission order

fails to discuss whether approval of the Atlantic Bridge Project may interfere with Massachusetts' GHG goals.

8. Did the Commission violate NEPA by failing to take a hard look at project impacts and independently investigate the applicant's' claims instead of unquestioningly accepting them as true?

Yes. NEPA prohibits an agency may not rely on conclusory statements by the applicants that are unsupported by data, authorities, or explanatory information. *Seattle Audubon Soc. v. Moseley*, 798 F. Supp. 1473, 1482 (W.D. Wash.), *supplemented,* 798 F. Supp. 1484 (W.D. Wash. 1992), *aff'd sub nom. Seattle Audubon Soc. v. Espy*, 998 F.2d 699 (9th Cir. 1993), and *aff'd in part, appeal dismissed in part sub nom. Seattle Audubon Soc. v. Espy*, 998 F.2d 699 (9th Cir. 1993). Instead, NEPA requires agencies to undertake a probing look at project impacts. Further, NEPA regulations specifically place a duty on the Commission to independently verify information submitted by the applicant in support of the project. The regulations state that "[t]he agency *shall independently evaluate* the information submitted and *shall be responsible* for its accuracy." 40 C.F.R. 1506.5. The Commission's order falls far short of what NEPA requires. The Commission repeatedly dismissed virtually every concern raised by the Coalition and its members, while tacitly adopting the companies' unsubstantiated claims. Moreover, even when parties urged the Commission to undertake (or even require the companies to undertake) a risk assessment or study of the health impacts of compressor stations, the Commission refused.

9. Did the Commission violate Executive Order 12898 which requires additional measures to protect environmental justice communities from the health impacts of projects and to ensure adequate opportunities to participate in the decision-making process?

Yes. Algonquin's proposed measures to protect environmental justice communities are

identical to those that it will employ to protect everyone else - and those have already been shown to be inadequate. As such, the Commission's Certificate Order failed to provide the level of analysis or protection to environmental justice communities required under the Executive Order.

10. Did the Commission's order violate its third party contractor rules by relying on an environmental assessment prepared by a third party contractor with a conflict of interest?

The Commission may engage third party contractors funded by the applicant to prepare environmental documents provided that they must complete and submit an Organizational Conflict of Interest ("OCI") Statement to demonstrate that they "have no financial or other conflicting interest in the outcome of the project."[12] In this matter, the Commission's selection of a third party contractor with ties to Spectra, Algonquin's parent corporation raised enough concerns to prompt Massachusetts Senators Warren and Markey to initiate an inquiry of the Commission's third-party practices. Given the questions surrounding the relationship between NRG and the Applicant, the EA is inherently suspect, and the Commission's reliance on it is arbitrary and capricious.

11. Is the Commission's grant of a certificate under Section 7 of the Natural Gas Act arbitrary, capricious, unsupported by substantial evidence and contrary to the "present and future public convenience and necessity?"

Yes. The rehearing petition has already detailed nine separate legal bases for vacating the certificate. Yet there are dozens of other factual inaccuracies, mischaracterizations and oversights related to the project's impacts on recreation, the impact of arsenic ground

[12] *See* Commission Third Party Contractor Handbook, online at http://www.ferc.gov/industries/hydropower/enviro/tpc/tpc-handbook.pdf.

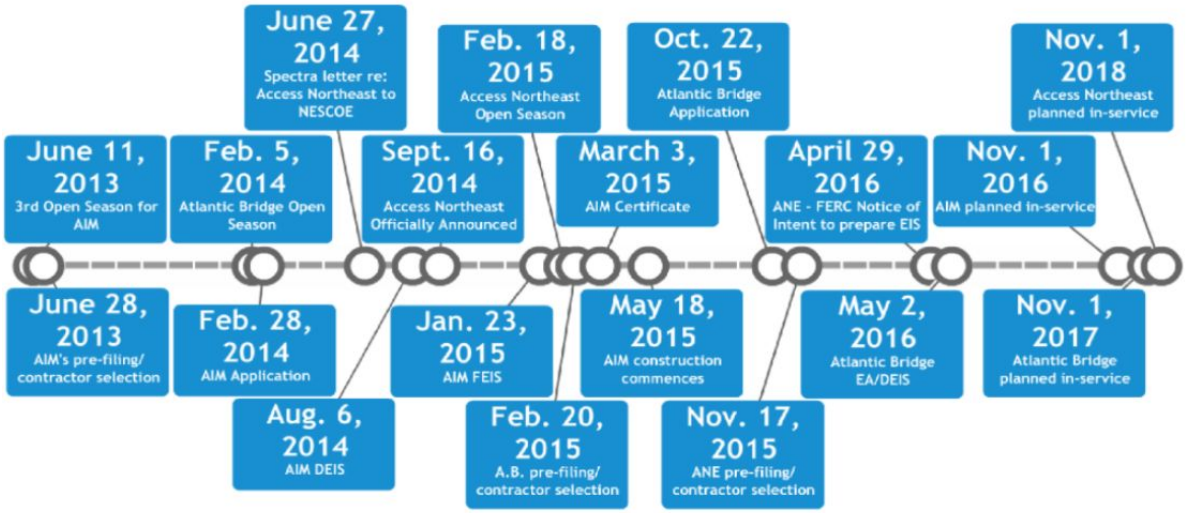
contamination and vibrational noise on the herring population of the Fore River (not to mention on the human population of the region), the project's vulnerability to storm surges and many that the Commission ignored, which taken together undermine the reasonableness of the Commission's finding that the project serves the public convenience, and require rescission of the certificate.

III. BACKGROUND

On October 22, 2015, Algonquin and Maritime filed a joint application to construct and operate the Atlantic Bridge Project which will provide up to 153,000 decatherms (dth) per day of transportation service to delivery points along the Algonquin system to the Maritime pipeline for delivery to points in New England and Canada. The Atlantic Bridge Project is the second of three overlapping upgrades to the Algonquin system, which collectively expand the capacity of this pipeline highway. The AIM Project, FERC Docket CP14-96 preceded Atlantic Bridge. Approved in April 2015, the AIM Project has gone into service as of January 2017.[13] The Access Northeast Project also involves upgrades to the Algonquin system to expand gas transportation to New England. Algonquin initiated pre-filing for Access Northeast in December 2015 - just two months after its application for Atlantic Bridge. The diagram below depicts the overlapping timelines for the three projects. three connected projects:

[13] *See Feds Approve Atlantic Bridge*, Mass. Live (January 26, 2017), online at http://www.masslive.com/news/index.ssf/2017/01/feds_approve_atlantic_bridge_n.html (noting AIM project in service).

TIMELINE OF ALGONQUIN EXPANSION PROJECTS



Although Algonquin was not forthright with the public about the link between the projects, it disclosed these connections during its quarterly earnings calls.[14] For example, Greg Ebel, CEO of Spectra Energy Partners admitted that segmenting projects made the permitting process run more smoothly - since it would allow the company to avoid "getting out in front of itself" -- or more accurately, to avoid admitting the true scope of the project. Consider this statement by Greg Ebel:

> …So it is a little bit different structure and ***typically we would have put that project in execution but because of the regulatory environment, we don't want to get out in front of ourselves.*** So in fact, if I look across the whole portfolio I think regulatory approvals are the things very much seem to trip up a number of other companies so we are cautious before we say it is ready to go.[15] (***emphasis added***)

[14] Available to the public at: http://investors.spectraenergy.com; *see also* Comments of Chet Clem, FRRAACS member filed 4/21/2016 (detailed summary of Spectra earnings calls as relevant to segmentation.

[15] SE-Transcript-2016-08Feb16.pdf

Spectra also referred to the Atlantic Bridge Project as a Trojan Horse, from which Access Northeast and larger projects would emerge.

On May 2, 2016, the Commission issued an Environmental Assessment for the Atlantic Bridge Project. Not surprisingly, the EA prepared by Spectra's contractor, NRG rejected the possibility that the projects had been segmented (EA 1-3), unquestioningly adopted all of Algonquin's information - even when intervenors showed it to be inaccurate, and summarily disposed of the hundreds of pages of well-researched, comments filed by project opponents with little discussion. *See e.g.,* EA at 2-98 (dismissing reports submitted by intervenors regarding health impacts of compressor stations). The EA also declined to conduct its own investigative reports on health or safety impacts related to the compressor station. Naturally, the EA concluded that the project had no significant impacts.

Since the issuance of the EA, there have been other key developments which bear on the certificate process. In August 2016, the Massachusetts Office of Coastal Protection notified Algonquin that it suspend review of its application for a Coastal Zone Management Act (CZMA) consistency finding until Algonquin received a Chapter 91 waterways permit from Massachusetts DEP.[16] And on December 5, 2016, Calpine sold to Spectra a piece of its property which had been illegally subdivided and is now subject to a legal challenge by the Town of Weymouth. Yet the Commission never considered these recent events in the proceeding - even though they reduce the likelihood that the project will be built.

On January 25, 2017, the Commission granted a certificate for the Atlantic Bridge Project. This rehearing petition ensued.

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[16] *See* Letter from Mass Coastal Zone Office to Algonquin (August 3, 2016), online at http://www.nocompressor.com/news/2016/8/5/big-news-delay-on-atlantic-bridge.

IV. ARGUMENT

A. The Commission's Finding of Project Need Is Unsupported By Substantial Evidence in the Record.

Proof of need is equally significant under the NGA which authorizes the Commission to grant certificates only if projects are "required by the present and future public necessity and convenience." 15 U.S.C. §717f(e). The Commission assigns the applicant the burden of proof to establish that a certificate is in the public necessity and convenience under Section 7 of the Natural Gas Act. *See Sunray Mid-Continent Oil v. FPC*, 364 U.S. 137, 158 (1960) (finding that Commission was reasonable to require applicant to prove need for a limited certificate).

To assess whether a project meets the statutory "public necessity and convenience" standard, the Commission, pursuant to its *Certificate Policy Statement*,[17] balances a project's benefits, such as need against burdens imposed on customers and property owners.[18] Finally, a showing of "public need" (as opposed to "private need") is constitutionally imperative since the Section 7f(h) of the NGA empowers certificate holders to exercise the power of eminent domain. Absent public need, Section 7f(h) would violate the Fifth Amendment's prohibition on takings of property for private gain. Moreover, even where a project does not involve eminent domain, failure to take a hard

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[17] Certification of New Interstate Natural Gas Pipelines, 88 FERC ¶61,227 (1999), clarified, 90 FERC ¶61,227 (1999), further clarified, 92 FERC 61,094 (2000) (Certificate Policy Statement).

[18] Certificate Policy Statement at 25 ("The amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests.").

look at project need may result in overbuild, leaving communities like the Town of Weymouth encumbered with an abandoned project.

The record in this proceeding lacks evidence to show a need of for this project. Although the project is - at least according to the Applicants' representations - fully subscribed, 52 percent of the capacity (as calculated by the Coalition) is bound for export. Indeed, even the Commission itself admits that 46 percent will leave the county. Certificate Order at P. 121. The public interest requirement of Section 7 requires a showing of domestic need.

Nor is need for natural gas likely to increase and by all indications, will precipitously decline. A Report commissioned by the Massachusetts Attorney General and released in 2015 shows that the New England will not have a need for gas until 2030.[19] Even more recently, the *Annual Energy Outlook* 2017 released by the Energy Information Administration (EIA) found that by 2018, the United States is expected to become a net exporter of natural gas on an average annual basis.[20]

The Commission's practice of unquestioningly adopting an applicant's assertion of need without any further independent investigation (indeed, the Commission has said that it will not "look behind" precedent agreements to evaluate whether they might be sham transactions) apparently became alarming to Chairman Norman Bay, who departed the Commission on February 3, 2017. Before leaving, however, Chairman Norman Bay issued a

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[19] *See* Power System Reliability in New England, Analysis Group (November 2015), http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-11-18-electric-reliability-study.html

[20] *See Annual Energy Outlook 2017*, online at http://www.eia.gov/outlooks/aeo/data/browser/.

statement in another compressor station proceeding, expressing concern about the Commission's somewhat casual approach to determining project need, reminding his colleagues that "LNG import terminals that were built during the early 2000 time period became stranded as shale gas increasingly substituted for LNG imports from overseas. n a parting statement."[21]

The Commission should heed the former Chairman's words and undertake a rigorous review of need that does not just myopically focus project contracts, but also considers which markets the project will serve (domestic or foreign), industry trends and market predictions. Were the Commission to apply this robust inquiry here, it would undoubtedly conclude that there is no need for the Atlantic Bridge Project and accordingly, would vacate the Certificate.

B. The Commission Violated The CZMA by Prematurely Granting the Certificate Before the State's Consistency Certification Which Is Likely to Be Denied.

1. CZMA requires strict compliance for natural gas projects subject to the NGA.

The Natural Gas Act preserves the applicability of the CZMA to natural gas projects. *See* 15 U.S.C. §717b(d)("nothing in this chapter affects the rights of states under the CZMA, CAA and FWPCA").

Section 1456(c)(3) of the CZMA, 16 U.S.C. §1456(c)(3) could not be clearer in requiring a CZMA compliance *before* a federal license is granted:

> any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to

[21] Statement of Norman Bay, National Fuel Supply Corporation, Order Issuing Certificate, 158 FERC ¶ 61,145 (2017).

> the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. **No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed**...

15 U.S.C. § 1536(emphasis added). The language of the CZMA leaves no doubt that AES must obtain a consistency determination *before* the Commission can grant a certificate for the Atlantic Bridge Project. Here, however, the Commission jumped the gun and issued the certificate - not only without a CZMA determination on consistency, but while the Massachusetts Coastal Zone Act suspended the application due to Algonquin's failure to obtain other required permits.

The Commission defends its unlawful action as a matter of expediency, explaining that by issuing a certificate conditioned on the holder obtaining all approvals prior to construction, it can avoid delays to the project. Certificate Order P. 60. But it is not the Commission's job to speed projects along; it is the Applicant's. Moreover, a desire to avoid delay does not excuse *violating* a federal statute.

Nor does the Commission's condition prohibiting commencement of construction until all permits are received cure its violation of the CZMA. The CZMA unequivocally prohibits the issuance of *any* license or permit prior to issuance of the consistency certification. The CZMA does not include an exception for a conditional license or permit. Moreover, it is completely unreasonable to allow some significant activities to proceed under the Order, including the draconian use of eminent domain and condemnation proceedings,

when the denial of CZMA certifications would preclude the Project from moving forward altogether.

Nor does the fact that it is not practical...for the Commission to withhold its analysis and decisions until all permits are issued justify a departure from compliance with the CWA, particularly in this case. Here, Algonquin filed a CZMA application - but failed to obtain other necessary permits - such as an Article 91 license - that would have allowed the Massachusetts Coastal Zone Office to process the application. Thus, to the extent that the CZMA consistency ruling has not issued, the fault lies with Algonquin for failing to coordinate its permitting process.

There is a second problem with the Commission's Certificate related to the CZMA. The Commission's order states that "any state or local permits issued with respect to the project must be consistent with the conditions of the certificate." Certificate Order, P. 61. Nothing in the Natural Gas Act, however, allows FERC to so limit the States' powers under the CWA. *See* 15 U.S.C. § 717(d)(3); *see also Dominion Transmission, Inc. v. Summers,* 723 F.3d 238, 243 (D.C. Cir. 2013) (holding that with respect to the construction of a facility under 15 U.S.C. § 717f(c), Congress expressly saved the States' powers from preemption under the Clean Air Act). In fact, just the opposite is true – any protections contained in any CZMA certifications trump any related conditions in the Commission Order.

The Commission's Order flies in the face of the CZMA. The Order exceeds the Commission's statutory authority and impermissibly intrudes on the States' rights over consistency determinations under the CZMA. Accordingly, the Commission should rescind or vacate the certificates as prematurely issued.

2. The Certificate Order should be dismissed because the CZMA certificate

is likely to be denied.

In comments to the Massachusetts Office of Coastal Zone Management, the Town of Weymouth Weymouth, Massachusetts listed numerous situations where the project would not comply with state policies,[22] which could doom its CZMA application. These include the Project's failure to :

- Comply with many of the criteria for coastally dependent facilities like Atlantic Bridge including consideration of alternative sites;
- Comply with Coastal Hazards Safety Policy given its failure to "prevent or significantly reduce hazards such as erosion, flooding and storm damage" due to, among other things, its location in a Hurricane Surge Inundation Zone;
- Comply with sever Ports and Harbors Policies regarding siting by occupying a space for Designated Port Areas;
- Comply with public access policies given the compressor station's fencing of 3 acres of filled private tidelands for its own exclusive use.[23]

Of course, the Massachusetts Coastal Zone Office will never even reach the merits of Algonquin's CZMA application because the company must obtain an Ch. 91 permit and other permits before the state can begin its review. As a result, the Coastal Zone Office suspended review of the Applicants' CZMA permit, and does not expect to complete review and render a decision until August 2017 - six months from now.

All of these problems arising out of the Applicants' efforts to procure a CZMA consistency finding for the project emerged during the spring and summer of 2016, six months before the Certificate Order issued. With substantial questions regarding the

[22] Town of Weymouth Letter (March 30, 2016).

[23] *Id*. *See also* Comments of Massachusetts Siting Board, (December 21, 2015) at 5-6 (describing adverse coastal impacts).

Applicant's' ability to successfully obtain permits and move forward in a reasonable time frame, the Commission should have dismissed Algonquin's application instead of permitting it to proceed.

C. The Commission Violated the Natural Gas Act by Approving an Unsafe, Combustible Project That Does Not Comply With PHMSA Regulations That The Applicant Itself Considers Dangerous.

Safety is a critical factor in determining whether a project meets the public interest standard under Section 7 of the Natural Gas Act. *See Washington Gas Light Company v. Federal Energy Regulatory Commission*, 532 F.3d 928 (D.C. Cir. 2008)(finding that project was not in the public interest when the Commission could not guarantee its safety); S*ee also Weaver's Cove LNG*, Order Granting Certificate, Kelly dissenting, 112 FERC ¶ 61,070 (2005)(declining to approve LNG certificate that raises significant unresolved safety issues). The record contains substantial evidence demonstrating the inherent dangers and unacceptable safety risks posed by the proposed location of the Compressor Station.

For example, multiple intervenors commented that the project is inherently unsafe due to the present location in close proximity to a bridge with frequently passing oil tankers. [24] The Massachusetts Energy Facilities Siting Board states that while the Commission acknowledges that the Weymouth Compressor is in a high consequence area, it fails to take adequate steps to protect the public.

Others pointed out that the project fails to comply with PHMSA regulations - such as Michael Lang, who argued that the Weymouth Compressor Station site violates 49 C.F.R.

[24] *See* Commission Order at P 181 - 183 (referencing comments regarding project dangers).

§163(a) which prohibits compressor stations in close proximity to a sewage pumping station. The Commission's response to Mr. Lang is that the regulation does not prohibit the current location for the compressor station because it does not establish minimum setback requirements. Commission Order at P. 228. The Commission's position is simply irrational: the regulation states that the compressor building "must be far enough from an adjacent property to minimize the possibility of the fire being communicated to the compressor building from structures on the adjacent property." That the regulation does not specify a minimum setback does not give the Commission license to ignore the hazards. Moreover, because Algonquin must operate the project in compliance with PHMSA regulation, it is unlikely that it will be able to do so in light of this regulation - and thus, the certificate should have been denied.

The compressor station location also saddles communities with substantial costs. For example, local first responders in the area will be trained on how to respond to Algonquin in the event of an emergency - providing substantial benefits for a project that returns no benefits to the community.

Spectra's recent track record on safety further heightens risks associated with the project. Last April, a Spectra pipeline exploded in Pennsylvania, and on January 6, 2017, a valve froze at a Spectra metering station, releasing natural gas for several hours.[25] These incidents cast doubt on Spectra's ability to competently and safely operate the Weymouth

[25] *See Officials Blast Spectra Over Gas Valve Monitoring*, Patriot Ledger (February 7, 2017), online at *http://www.patriotledger.com/news/20170207/officials-blast-spectra-over-gas-valve-monitoring-after-leak* (shoing video of Town meeting raising concerns).

Compressor Station.

2. Spectra itself recognizes the substantial risk in its operations.

Intervenors' concerns about the compressor station's volatility or the prospect of terrorist attacks on the facility are not far-fetched as the Commission's summary dismissal of these claims would suggest. To the contrary, these risks are sufficiently credible to warrant their disclosure to investors in the Spectra's SEC 10K.[26]

Below are excerpts from Spectra's 2015 Form 10K:[27]

> ***Protecting against potential terrorist activities, including cyber-terrorism, requires significant capital expenditures and a successful terrorist attack could affect our business.*** Acts of terrorism and any possible reprisals as a consequence of any action by the U.S. and its allies could be directed against companies operating in the U.S. This risk is particularly relevant for companies, like ours, operating in any energy infrastructure industry that handles volatile gaseous and liquid hydrocarbons. The potential for terrorism, including cyber-terrorism, has subjected our operations to increased risks that could have an adverse effect on our business. In particular, we may experience increased capital and operating costs to implement increased security for our facilities and pipelines, such as additional physical facility and pipeline security, and additional security personnel. Moreover, any physical damage to high profile facilities resulting from acts of terrorism may not be covered, or covered fully, by insurance. We may be required to expend material amounts of capital to repair any facilities, the expenditure of which could affect our business and cash flows.
>
> ***Gathering and processing, natural gas transmission and storage, crude oil transportation and storage, and gas distribution activities involve numerous risks that may result in accidents or otherwise affect our operations.*** There are a variety of hazards and operating risks inherent in

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[26] *See e.g.,* Spectra Energy, Form 10k (December 31, 2015)(disclosing risks of terrorism and explosion and lack of adequate insurance coverage for damage), online at https://www.sec.gov/Archives/edgar/data/1373835/000137383516000014/se-2015123110k.htm.

[27] Online at https://www.sec.gov/Archives/edgar/data/1373835/000137383516000014/se-2015123110k.htm (emphasis added).

> natural gas gathering and processing, transmission, storage, and distribution activities, and crude oil transportation and storage, such as leaks, explosions, mechanical problems, activities of third parties and damage to pipelines, facilities and equipment caused by hurricanes, tornadoes, floods, fires and other natural disasters, that could cause substantial financial losses. In addition, these risks could result in significant injury, loss of life, significant damage to property, environmental pollution and impairment of operations, any of which could result in substantial losses. For pipeline and storage assets located near populated areas, including residential areas, commercial business centers, industrial sites and other public gathering areas, the level of damage resulting from these risks could be greater. **We do not maintain insurance coverage against all of these risks and losses, and any insurance coverage we might maintain may not fully cover the damages caused by those risks and losses.** Therefore, should any of these risks materialize, it could have a material effect on our business, earnings, financial condition and cash flows.

Many of the risks identified by Spectra itself are identical to those raised by intervenors and ignored by the Commission.

One final troubling point is Spectra's admission that it lacks sufficient insurance against risks caused by hurricanes, facility explosions and leaks for assets located near populated areas. Thus, not only will Spectra's compressor station imperil the community, but to add insult to injury, should a catastrophe occur, residences and businesses will have to pay for damage, not Spectra.[28]

In *Washington Gas v. FERC, supra*, the court found that the Commission's certificate order was contrary to the public interest because the Commission made unfounded assumptions about Washington Gas' ability to repair leaks and protect public safety. Here too, the Commission took the same leap of faith, assuming that Spectra's word that it will

[28] Spectra's admission that it lacks insurance to cover the risk of damage to populated areas will almost certainly increase insurance premiums for residences and businesses in the blast zone - yet another adverse impact of this ill-advised project.

comply with PHMSA regulations is adequate to protect public safety, even in the face of substantial risks that Spectra itself admits. Accordingly, the Commission must rescind the Certificate Order or face reversal on appeal as it did in *Washington Gas v. FERC*.

D. The Commission Violated NEPA By Segmenting the Atlantic Bridge and Access Northeast Projects to Evade Rigorous Environmental Review.

The CEQ regulations implementing NEPA require that an EIS include: (1) connected actions, including those that are "interdependent parts of a larger action and depend on the larger action for their justification;" (2) cumulative actions, "which when viewed with other proposed actions have cumulatively significant impacts;" and (3) similar actions, "which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together." 40 C.F.R. § 1508.25(a). The purpose for the rule against segmentation is to "prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Wilderness Workshop v. BLM*, 531 F.3d 1220, 1228(10th Cir. 2008) (emphasis added); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006). In other words, the anti-segmentation rule prevents applicants and agencies from thwarting their NEPA obligations by chopping projects into smaller components in order to avoid considering their collective impact and to "conceal the environmental significance of the project or projects." *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005).

An agency "impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate pieces under consideration." *Delaware Riverkeeper Network* 753 F.3d 1304, 1313. In *Delaware Riverkeeper Network*, the court

found that the Commission had unlawfully segmented environmental review of four separate proposals by the same pipeline companies to upgrade different sections of the same line. In concluding that the projects were "inextricably intertwined" as part of the same pipeline, the court relied on facts showing a physical, functional and temporal nexus between the four proposals – such that [t]he end result is a new pipeline that functions as a unified whole thanks to the four interdependent upgrades." 752 F.3d at 1308-1309. Accordingly, the court found that the Commission should have considered the separate units as part of a single environmental review.

The Atlantic Bridge and Access Northeast Projects are temporally, geographically and functionally connected and therefore, should have been subject to a single environmental impact statement under 40 C.F.R. §1508.25(a) and *Delaware Riverkeeper v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014). As described below, the record is thick with evidence of the connection between the projects - in the form of maps showing the continuity of the pipeline as well as an Algonquin official's reference to Atlantic Bridge as the "Trojan Horse" that paves the way for future infrastructure.

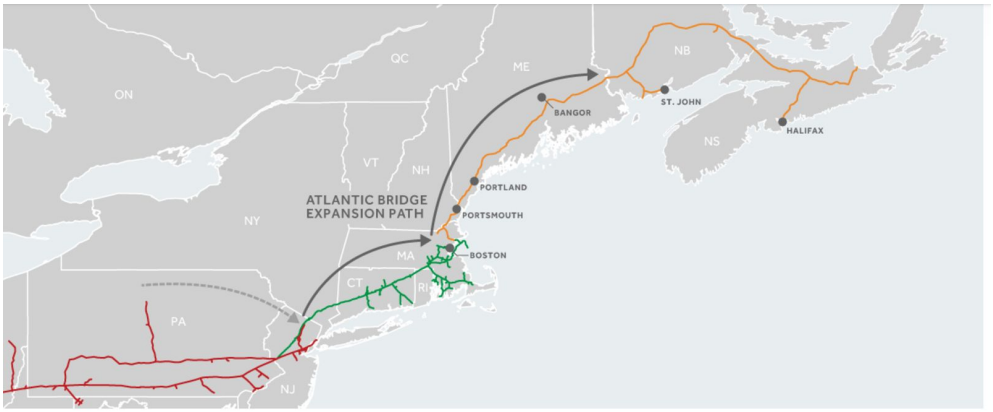
1. Atlantic Bridge and Access Northeast Are Functionally Connected.

The Atlantic Bridge and Access Northeast Projects are functionally connected. Access Northeast and Atlantic Bridge have a similar purpose in "expanding Spectra Energy's Algonquin and Maritimes systems." The projects will also function as a unified whole to support a linear pipeline system.

The projects are also geographically and temporally proximate. Indeed, they could not be any closer: the Access Northeast project will add an additional 10,000+ horsepower

unit on the Weymouth Compressor Station site. For this reason, Spectra officials have referred to the Weymouth Compressor Station as a "Trojan Horse," laying a path for future development. And as shown on the timeline, *supra,* the AIM, Atlantic Bridge and Access Northeast development timelines overlap.

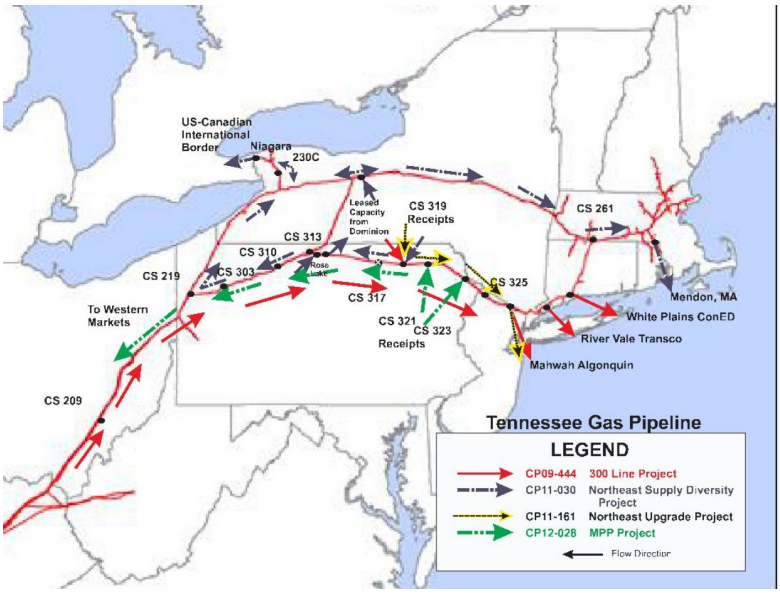
The map below shows the continuous, linear nature of the three projects, making clear that they all comprise part of a single, pipeline highway:[29]



Even more telling, however, is the comparison between the above chart showing the linear, interconnected and overlapping nature of the three Algonquin projects, and the Tennessee Gas pipeline system below which was the subject of the *Delaware Riverkeeper* case which found that the Commission had segmented review:[30]

[29] As shown on the map, AIM Project is red, Atlantic Bridge is green and Access Northeast is yellow.

[30] Map taken from Commission Order on Remand, Tennessee Gas Pipeline Co., L.L.C., 153 FERC ¶ 61,215 (2015) and shows the four projects that the D.C. Circuit determined had been segmented.



In short, if the *Delaware Riverkeeper* court concluded that the Commission unlawfully segmented review of the four projects shown on the above map, it would surely reach the same conclusion for the AIM, Atlantic Bridge and Access Northeast Projects which are even more geographically proximate and tightly linked.

2. The Commission erred in concluding that the Access Northeast Project was not a "proposal."

The Commission rejected all segmentation claims, explaining that NEPA only applies to proposals (Certificate Order P.81) and that Access Northeast project was not a proposal because it was, and remains in the pre-filing stage. The Commission is wrong. A project in the pre-filing stage would qualify as a "proposal" under the CEQ regulations, because it is an action that can be meaningfully evaluated. *See* 40 C.F.R. §1508.23. Projects in pre-filing before the Commission can and indeed, are meaningfully evaluated. During pre-filing, a project sponsor must submit an application and a dozen draft resource reports

summarizing the project's impacts. Moreover, the scoping process takes place during pre-filing which identifies issues for environmental review. Indeed, if a pre-filing project is *not* a proposal subject to NEPA as the Commission claims, then what is the purpose of conducting the scoping process during the pre-filing phase? In short, contrary to the Commission's asserted position, the Access Northeast project is a proposal subject to NEPA and as such, it was unlawful for the Commission to segment the Access Northeast project from the Atlantic Bridge project for purposes of environmental review.

E. The Commission Violated NEPA and the CEQ Regulations by Failing to Consider the Direct and/or Indirect Cumulative Impacts of (a) Reasonably Foreseeable Infrastructure, Such as the Addition of the Access Northeast Project; and (b) Marcellus Shale development?

The Commission FERC failed to adequately support its conclusions that the Atlantic Bridge and Access Northeast projects do not result in significant cumulative impacts. NEPA requires such an analysis because "[e]ven a slight increase in adverse conditions . . . may sometimes threaten harm that is significant. One more factory … may represent the straw that breaks the back of the environmental camel." *Grand Canyon Trust v. FAA*, 290 F.3d 339, 343 (D.C. Cir. 2002) (quoting *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2nd Cir. 1972)). In *Hodel*, the Court found that:

> Although the FEIS contains sections headed "Cumulative Impacts," in truth, nothing in the FEIS provides the requisite analysis. … The few times the FEIS *does* discuss the [cumulative impact], it makes only conclusory remarks, statements that do not equip a decisionmaker to make an informed decision about alternative courses of action or a court to review the [Environmental Protection Agency] Secretary's reasoning.

Hodel at 297.

In the instant case, FERC's abbreviated, conclusory statements in its DEIS and FEIS

provided an inadequate analysis of the cumulative impacts, similar to *Delaware Riverkeeper*, where this Court held that:

> FERC's EA for the Northeast Project states, in conclusory terms, that the connected pipeline projects were "not expected to significantly contribute to cumulative impacts in the Project area." ... This cursory statement does not satisfy the test enunciated in *Grand Canyon Trust*. The EA also contains a few pages that discuss potential cumulative impacts on groundwater, habitat, soils, and wildlife, but only with respect to the Northeast Project. It is apparent that FERC did not draft these pages with any serious consideration of the cumulative effects of the other project upgrades on the Eastern Leg of the 300 Line. [40] In light of the close connection between the various sections of the line that have been upgraded with new pipe and other infrastructure improvements, FERC was obliged to assess cumulative impacts by analyzing the Northeast Project in conjunction with the other three projects.

Delaware Riverkeeper at 1319-20.

In the present case, FERC's review of the two projects does not reflect the type of meaningful evaluation of the cumulative effects contemplated by NEPA. Instead, the Commission's statements regarding cumulative impacts are either conclusory or inaccurate. For example, incredibly, the Certificate Order states that Algonquin's modeling shows that "there would not be any significant cumulative impacts on air quality" as a result of construction of both the 7700 horsepower Weymouth Compressor Station and addition of the 10,000+ compressor contemplated by Access Northeast. Certificate Order P.110. But Algonquin's modeling downplays impacts in Weymouth because it evaluates the cumulative air quality impacts of all present and future compressor across the region. EA at 2-139. Because the stations are far apart from each other, naturally, the cumulative impacts are dissipated. Yet simply because project developments will not have widespread cumulative

impacts, they may have concentrated impacts at a particular site as is the case in Weymouth. In fact, the EA acknowledges that the combined effect of the Atlantic Bridge and Access Northeast projects will increase noise impacts at the site (which the EA says may be mitigated). The EA's finding that Atlantic Bridge and Access Northeast will have cumulative impacts on noise but not on air quality simply defies logic.

The Commission's remaining discussion of cumulative project impacts are largely conclusory. Repeatedly, the Certificate identifies a possible cumulative impact - for instance, on the economy, recreation, visual resources, vegetation, etc...and either asserts that the impact is likely to be minor. *See generally* EA 2-133 - 2-140 (discussing cumulative impacts). Alternatively, the EA will find that no cumulative impacts will result when the resources impacted - e.g., wetlands, water quality or air quality - are subject to additional permits. In these instances, the EA assumes that the permits will guard against cumulative impacts. The Commission's assumption begs the question: NEPA insists on cumulative impacts analysis to capture those impacts that are excluded from the permitting process to begin with since most permit proceedings look at only the direct impacts associated with the activity to be permitted and not the cumulative effects of those impacts. Thus, even if the Project must obtain Clean Water and Clean Air Act permits for the Atlantic Bridge Project - and eventually Access Northeast, because those state permit processes do not account for cumulative impacts, the Commission's assumption that these permits will guard against cumulative impacts is simply not rational.

2. Marcellus Impacts

Initially, the EA declined to consider the indirect cumulative impacts of the project on increased Marcellus shale development because "these developments would occur well over 10 miles from the project construction area." Certificate Order at P. 115. Following comments by Food & Water Watch pointing out that EPA does not endorse the practice of establishing a random boundary to delimit consideration of cumulative impacts, (Certificate Order at P. 115), the Commission engaged in a half-hearted effort to analyze the upstream and downstream project impacts. But the Commission's analysis (Certificate Order at P 118) is inadequate because as the Commission itself admits, the estimates of impacts are "generic in nature and reflect a significant amount of uncertainty." Certificate Order at 117. Thus, the Commission's resulting conclusion that the project impacts associated with Marcellus Shale extraction and production are minimal is unsupported by substantial evidence, and must be done over.

In addition, the Commission - contrary to guidance by EPA - appears to continue to take the position that it need not cumulative impacts outside a ten-mile radius of the project. The EA stated:

> "…. activities associated with Marcellus shale development would occur well over 10 miles from the Project construction area… As a result, the local resources that may be affected by Marcellus shale development would not be affected by the Project, and local resources affected by the Project would not be affected by development in the Marcellus shale region."[31]

[31] Order at P. 172, FERC Environmental Assessment, Atlantic Bridge Project, May 2, 2016, docket #CP16-9.

EPA has made clear that the Commission's approach is not acceptable. With regard to the previously approved AIM expansion project, the Environmental Protection Agency (EPA) stated:

> The EIS should have more fully considered the potential for increased gas production associated with the development of the related pipeline capacity. In addition, we note that the FEIS [Final Environmental Impact Statement] discussion continues to make reference to gas extraction occurring more than 10 miles from the proposed project location as a rationale for limiting the discussion of cumulative impacts. **Geographic proximity is not in and of itself the standard for NEPA's requirement to consider impacts that have a reasonably close causal relationship to the proposed federal action.**"[32]

Similarly, in comments on Spectra's AIM Final Environmental Impact Statement (FEIS), EPA states:

> EPA notes and agrees with FERC staff acknowledgement that 'disparate sources of greenhouse gas (GHG) emissions individually contribute to the global climate change issue.' … we continue to believe that FERC should avoid the comparison of project related GHG emissions to those associated with an entire regions. The goal of the analysis should not be to make emissions seemingly more or less significant; rather, it should be to disclose the emissions from the project in a manner that allows for an informed discussion of the emissions and measures that can be taken to address them... We also continue to recommend that FERC consider relevant studies regarding methane leaks and emissions."[33]

The Commission's failure to undertake rigorous review of impacts associated with Marcellus Shale violates NEPA and the CEQ regulations and is inconsistent with

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[32] PA Region 1 Comments on FERC's Final Environmental Impact Statement on Spectra's AIM Expansion Project, CP14-96-000, March 2, 2015 at 5 (emphasis added).

[33] *See* EPA Region 1 Comments, *supra* footnote 5.

EPA's position on this matter. Accordingly, the Certificate Order should be vacated, with instructions to the Commission to undertake a NEPA-compliant evaluation of the cumulative impacts of shale extraction.

F. The Commission violated NEPA and the CEQ regulations by failing to prepare an environmental impact statement for the project.

Under NEPA, the Commission is required to prepare an environmental impact statement for major actions that significantly impact the human environment. To determine whether an EA or EIS is required, an agency considers both the significance of the impacts and whether the impacts are "likely to be highly controversial." *See* 40 C.F.R. §1508.27. The Atlantic Bridge Project, and particularly the compressor station readily satisfy both tests.

1. Controversial Action

In order for an action to be highly controversial, there must be a "dispute over the size, nature or effect of the action, rather than the existence of opposition to it." Under this definition, the Atlantic Bridge project qualifies as controversial because of disputes over the nature and effect of the action. On the one hand, project opponents have documented dozens of impacts that the project will have on safety, health and environmental resources. On the other hand, both Atlantic Bridge and the Commission view the project impacts as minor and imply that intervenors have exaggerated the harms. Because the sides are so far apart in their views of project impacts, an EIS should have been required to allow for more extensive review and resolution of these factual disputes.

2. Significant Impacts

An impact's "significance" is determined with reference to the context of the action

and the severity of the impact. *See* 40 C.F.R. §1508.23(a)-(b); *see also City of Seneca v. Cheney*, 12 F.3d 8, 12 (2nd Cir. 1993)(stating that an EIS is required when "a contemplated action will affect the environment in a significant manner or to a significant extent, with significance defined in terms of both context and intensity.") The Commission did not take into account either the context or significance of the Project's environmental impacts and as a result, erroneously concluded that an EA would suffice. The Commission erred.

In this proceeding, the context of the proposed action should have been dispositive on the need for an EIS. The context of the Weymouth Compressor station is this: the project will sit in close proximity to heavily populated and heavily trafficked areas, 200 feet from a bridge, immediately atop a small park and in a coastal area which it will be subject to storm surges and flooding. Although perhaps when viewed in a vacuum, a 7700 hp compressor station may not seem significant to the Commission, that perception changes when the compressor station is sited in a highly populated areas.

The compressor station also has significant adverse impacts more appropriately studied in an EIS. These include all of the issues described in this rehearing petition, including impacts on wetlands, erosion and drinking water[34] which demand more than the cursory review undertaken by the EA. Accordingly an EIS must be required.

G. The Commission Violate the CEQ's Final Guidance on Climate Change and Greenhouse Gas Emissions.

The Commission committed two errors with respect to its failure to consider the project's climate change impacts. First, the Commission did not properly apply the new

[34] *See* Riverkeeper Comments to FERC (June 10, 2015).

CEQ guidance on evaluation of GHG emissions, and second, the Commission, also contrary to the CEQ guidelines ignored whether the project would interfere with Massachusetts' ability to meet its climate change goals.

By way of background, on August 2, 2016, CEQ finalized its guidance on how federal agencies should take GHG emissions and climate change impacts into account when conducting their NEPA review.[35] Going forward, agencies must now quantify and analyze the direct and indirect climate change impacts from a given project using GHG emissions as a proxy for climate change impacts. The Guidance directs agencies to look at the life-cycle GHG emissions of a project, including upstream activities, like natural gas extraction and downstream activities such as the foreseeable results of the project such as burning gas after transport. Finally, the Guidance requires agencies to quantify GHG emissions unless they can demonstrate that no tools exist for doing so. The quantification requirement prevents agencies from casually dismissing climate change impacts as overly speculative.

The EA summarily disregards the project's impacts on climate change effects. The EA found that GHG emissions would increase as a result of the Atlantic Bridge Project, but that nevertheless, these increased emissions were too small to impact on climate change, and that there is "no standard methodology to determine how a project's relative small incremental contribution to GHG emissions would translate into physical effects on the global environment. EA 2-143. Per the CEQ Final Guidance on GHG emissions, this is not an appropriate approach.[36]

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[35] Per the Federal Register Notice of Availability, the CEQ Final Guidance became effective August 5, 2016. 81 FR 51866 (Aug. 5, 2016).

[36] CEQ Final Guidance, at 11 (a statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the

The Commission committed a second error: despite repeated requests to address the issue, the Commission failed to discuss whether the Project will interfere with the targets outlined in the Massachusetts Global Warming Solutions Act (GWSA) to reduce greenhouse gas (GHG) emissions to 80% below 1990 levels by 2050 and 25% by 2020. The Massachusetts Supreme Judicial Court recently ordered the MA Department of Environmental Protection to issue rules reducing GHGs, finding that the GWSA "requires the department to promulgate regulations that address multiple sources or categories of sources of greenhouse gas emissions, impose a limit on emissions that may be released, limit the aggregate emissions released from each group of regulated sources or categories of sources, set emission limits for each year, and set limits that decline on an annual basis."[37] The CEQ Guidance acknowledges the relevance of state climate change goals. Specifically, the CEQ Guidance suggests that consistency with goals such as those outlined in Massachusetts' Global Warming Solutions Act (GWSA) should be included in agencies' environmental review:

> To provide a frame of reference, agencies can incorporate by reference applicable agency emissions targets such as applicable Federal, state, tribal, or local goals for GHG emission reductions to provide a frame of reference and make it clear whether the emissions being discussed are consistent with such goals."[38]

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nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA.")

[37] Isabel Kain & Others vs. Department of Environmental Projection, Supreme Judicial Court Docket SJC-11961, May 17 2016.

[38] . 14, Council on Environmental Quality *Revised Draft Guidance on the Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews*, December 18, 2014 at 11 *available at:* https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf.

The Certificate Order bypasses consideration of Massachusetts' climate change goals. *See* Certificate Order at P. 201. The Certificate Order appears to acknowledge the Massachusetts program (Order at P. 201) but without further discussion simply concludes that "the EA appropriately considered the GHG emission and climate change implications of the project." Because the Commission does not cite any evidence to support its conclusion, its finding regarding consideration of GHG emissions is arbitrary and capricious.

H. The Commission Violated NEPA by Failing to Take a Hard Look at Project Impacts and Independently Investigate the Applicant's' Claims Instead of Unquestioningly Accepting Them As True.

NEPA prohibits an agency from relying on conclusory statements by the applicants that are unsupported by data, authorities, or explanatory information. *Seattle Audubon Soc. v. Moseley*, 798 F. Supp. 1473, 1482 (W.D. Wash.), *supplemented,* 798 F. Supp. 1484 (W.D. Wash. 1992), *aff'd sub nom. Seattle Audubon Soc. v. Espy*, 998 F.2d 699 (9th Cir. 1993), and *aff'd in part, appeal dismissed in part sub nom. Seattle Audubon Soc. v. Espy*, 998 F.2d 699 (9th Cir. 1993). Instead, NEPA requires agencies to undertake a probing look at project impacts. Further, NEPA regulations specifically place a duty on the Commission to independently verify information submitted by the applicant in support of the project. The regulations state that "[t]he agency *shall independently evaluate* the information submitted and *shall be responsible* for its accuracy." 40 C.F.R. 1506.5; *see also Coalition*

for Healthy Ports v. Coal. for Healthy Ports v. United States Coast Guard, No. 13-CV-5347 (RA), 2015 WL 7460018 (S.D.N.Y. Nov. 24, 2015)

Presenting accurate information is necessary to ensure a well-informed and reasoned decision, both of which are procedural requirements under NEPA. *See Vt. Yankee Nuclear Power Corp. vs Natural Resources Defense Council*, 435 U.S. 519, 558 (1978). In order to take the required hard look under NEPA, any agency may not rely on incorrect assumptions or data in in an EIS. *See Native Ecosys. Council vs U.S. Forest Serv.,* 418 F.3d 953, 964 and 965 (9th Cir. 2005).

The Commission's analysis here falls far short of what NEPA requires. The Commission did not attempt to undertake independent investigations of impacts - indeed, it spurned intervenors' requests to study the health and safety impacts of compressor stations on the surrounding community. The Commission also adopted virtually every factual representation by the applicant regarding purported lack of impacts to wetlands, safety, health, property values etc...but any time an intervenor provided conflicting evidence - even when documented by scientific studies - it was either ignored or challenged by the Commission.

NEPA is a prescient statute. Its authors implicitly recognized that parties impacted by government-sponsored infrastructure projects would face a tough road. Therefore, both NEPA and the CEQ regulations tried to level the playing field by forcing agencies to review, investigate, respond and take a "hard look" at environmental concerns raised by impacted communities. Blind reliance on material provided by applicant in the face of specific challenges is contrary to the Commission's duty to take a "hard look" at environmental

impacts, and the Commission's failure to take the requisite hard look here renders its decision arbitrary and capricious. *See Van Abbema v. Fornell*, 807 F. 2d 633, 642 (7th Cir. 1986).

I. The Commission Violate Executive Order 12898 By Failing To Ensure Adequate Opportunities to Environmental Justice Communities to Participate in the Decision-Making Process and Receive Added Protection from Adverse Project Impacts.

Although initially, Algonquin failed to identify environmental justice communities within .5 mile of the Weymouth Compressor Station, the EA does list two: Germantown and Quincy Point. Nevertheless, the Commission found no disproportionately adverse effects on environmental justice communities. With regard to process, the Commission claims that "all public documents were readily available to the public, including environmental justice communities during review" (Certificate Order P. 187) - which is an exaggeration if undersigned counsel's recent experience is any indication.[39]

As for disproportionate substantive (as opposed to procedural) impacts, the EA concluded that the project's overall impacts were minimal or non-existent - and therefore, there would generally be no impacts to environmental justice communities. The EA's response is useless since the purpose of the Environmental Justice review is to force agencies to focus on disenfranchised communities to avoid saddling them with infrastructure. It is possible that even if a project's overall impacts are minimal, the concentrated impacts on an

[39] During the past three weeks, undersigned counsel was unable to either access the FERC e-library search at all, or could perform a search but not download documents at least 50 percent of the time. Moreover, most of the outages took place on evenings and weekends - which is precisely when residents of environmental justice communities would be likely to review documents, since they would otherwise be at their jobs during working hours.

environmental justice community may still be acute. That is certainly the case here where environmental justice communities are consigned to live in the shadow of one, and subsequently two compressor stations.

The EA also adds insult to injury by suggesting that environmental justice communities will benefit from added jobs. Yet the record shows that the project will only create a tiny handful of jobs - while diminishing property values and thus defunding schools and other services that are relied on by EJ communities.[40]

The Commission's cursory and frankly, insulting assessment of impacts on environmental justice communities are inadequate under Executive Order 12898 on environmental justice and accordingly, the Certificate cannot be sustained.

J. The Commission's Order Violate its Third Party Contractor Rules by Relying on an EA Prepared by a Third-Party Contractor with a Conflict of Interest.

The Commission may engage third party contractors funded by the applicant to prepare environmental documents provided that they must complete and submit an Organizational Conflict of Interest ("OCI") Statement to demonstrate that they "have no financial or other conflicting interest in the outcome of the project."[41] In this matter, the Commission's selection of a third party contractor with ties to Spectra, Algonquin's parent corporation raised enough concerns to prompt Massachusetts Senators Warren and Markey to initiate an inquiry of the Commission's third-party practices.

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[40] *See* Letter of Councilwoman Rebecca Haugh, April 23, 2015 (describing EJ issues in and around Weymouth).

[41] *See* Commission Third Party Contractor Handbook, online at http://www.ferc.gov/industries/hydropower/enviro/tpc/tpc-handbook.pdf.

According to a report in the *DeSmog* blog, NRG, the contractor selected by the Commission to prepare the EA for the project failed to disclose its work for Spectra on a related gas pipeline. [42] Review of conflict of interest disclosure documents obtained by DeSmog from FERC through a Freedom of Information Act request, it emerged that while NRG acknowledged it was working at the time directly for Spectra on other projects, it did not include its work on PennEast. Spectra joined the PennEast consortium in October 2014 because the proposed pipeline will interconnect to its Algonquin Gas Pipeline, boosting its delivery capacities. NRG thus seems to have had a financial stake in Atlantic Bridge — the project it was being asked by FERC to independently assess.

Following inquiries by Senators Markey and Warren, in June 2016 - months after the completion of the EA and publication of the *de Smog* story, NRG filed a supplemental OCI statement on August 15, 2016. Certificate Order at 57. According to the Commission, the supplemental statement showed that NRG received less than one percent of its revenues from Spectra and therefore, was not in violation of the conflicts policy. Meanwhile, in November 2016, the *deSmog* blog discovered that the husband of the FERC project manager for Atlantic Bridge now works for Access Northeast, which potentially gives rise to a second conflict if the relationship was not disclosed.[43]

The Commission's resolution of the conflicts issue was too little, too late. NRG did

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[42] The story is online at https://www.desmogblog.com/2016/08/09/exclusive-documents-show-ferc-hired-contractor-did-not-disclose-work-related-spectra-pipeline-atlantic-bridge-project.

[43] *See* At this time it is not known whether the relationship was disclosed. See https://www.desmogblog.com/2016/11/1/exposed-husband-ferc-official-responsible-reviewing-new-spectra-energy-pipelines-consults-spectra-related-project
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not file a supplemental OCI until August 2016 --after the EA was already completed - when it should have filed an OCI and disclosed its relationship with Spectra prior to even being chosen to serve as the contractor on the EA.[44] The Commission's failure to ensure that NRG submitted an OCI *before* it was hired violates its Conflict of Interest regulations and warrants vacating the EA and correspondingly, the Certificate Order that relies on it.

J. The Commission's grant of a certificate under Section 7 of the Natural Gas Act was arbitrary, capricious, unsupported by substantial evidence and contrary to the "present and future public convenience and necessity.

The rehearing petition has already detailed ten separate legal bases for vacating the certificate. Yet there are dozens of other factual inaccuracies, mischaracterizations and oversights related to the project's impacts on recreation, the impact of arsenic ground contamination and vibrational noise on the herring population of the Fore River (not to mention on the human population of the region), the project's vulnerability to storm surges and many that the Commission ignored, which taken together undermine the reasonableness of the Commission's finding that the project serves the public convenience, and require rescission of the certificate.

V. REQUEST FOR STAY

The Commission's inability to rule on pending rehearing requests due to lack of a

[44] Courts take conflicts disclosures seriously. In one government contract case, the court suggested that there is "little doubt that "[a] government **contractor's** failure to disclose an **organizational conflict of interest** constitutes a false claim under the False Claims Act." *United States ex rel. Ervin & Assocs. v. Hamilton Sees. Group,* 370 F.Supp.2d 18, 51-52 (D.D.C. 2005) (citing *Harrison*, 352 F.3d at 916-17)." Although NRG is not a "government contractor" in the traditional sense (because it is hired by the Applicant, not the government), nevertheless, this case is a reminder that conflicts regulations are more than just procedural hurdles, but also have substantive consequences.

quorum means that the Coalition and its members are powerless to do anything but stand by and witness as the project moves forward. Justice demands that the Commission stay the certificate in entirety. This request easily satisfies the Commission's standard for a stay.

The Commission evaluates stay requests under the Administrative Procedure Act, 5 U.S.C. §705, and will grant a stay when "justice so requires." *See, e.g., National Fuel*, 139 FERC ¶ 61,307 (2012)(reciting standards for a stay). The Commission considers several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing the stay may substantially harm other parties; and (3) whether a stay is in the public interest. The basis for a stay is fact specific and involves a balancing of all of these factors. *Virginia Petroleum Jobbers v. FERC*, 259 F.2d 921 (D.C. Cir. 1958)(listing factors considered in issuance of stay, including whether absence of stay will preclude future relief).

A. The Coalition and its Members Will Suffer Irreparable Harm in the Absence of A Stay.

To justify a stay, a party must demonstrate the prospect of injury that "must be both certain and great; it must be actual and not theoretical. *Wisconsin Gas v. FERC*, 788 F.2d 669, 674 (D.C. Cir. 1985). Moreover, the injury must be irreparable; mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date may defeat a claim of irreparable harm. *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d at 925.

Here, the irreparable harm that will result without a stay is self-evident. Although fortunately, without a CZMA consistency finding, Algonquin is prohibited from commencing construction, just the mere fact of holding an effective Certificate Order will given investors enough confidence to back continued development of the Access Northeast Project. Moreover, so long as the certificate remains effective and the companies can begin to mobilize equipment and contractors, the spectre of potential project construction looms heavy, making it impossible for homeowners to sell their residences in the face of uncertainty.

B. Grant of the Stay Will Not Harm Transco

Meanwhile, issuance of the stay will not harm Algonquin and Maritime. Without all of its federal permits, the companies cannot start construction anyway - and indeed, may never be able to if the CZMA certification is eventually denied as will likely be the case. Further, while it is expected that the companies will claim harm due to lost profits that may result from delays in completing and putting the project in service, these losses are purely economic and as such, do not justify a denial of a stay. *See Wisconsin Gas, supra* 788 F.2d 669, 674.

C. Stay Is In the Interest of Justice

A stay is in the interest of justice. The Coalition and its members have no recourse to advance their challenge to the project because without a Commission quorum, this Rehearing Petition will languish without a decision. The Commission regulations permit the Secretary to exercise delegated authority to issue a tolling order to afford more time for a decision - but there are no comparable proxies that can resolve a rehearing request. Moreover, given that

appointment of a FERC Commissioner does not appear to be a high priority for the Administration, four to six months may pass until a candidate is even appointed, and subsequently vetted by the Senate Energy Committee and voted on by the Senate.

Given the current situation, it is simply unfair to allow the companies to move ahead with this project while leaving the Coalition members in limbo, with no forum that can resolve their challenge to the pipeline. Indeed, the inequities of the current situation are so acute that two United States Senators - Elizabeth Warren and Ed Markey - took the highly unusual step of urging the Commission to rescind the certificate.[45] According to a joint letter by the Senators filed in the Commission docket on February 1, 2017:

> [Chairman Bay's] resignation would leave FERC without the necessary quorum to conduct its business, preventing opponents of the Atlantic Bridge project from having challenges to this pipeline approval heard by the commission.

Only rescinding the Certificate or granting a stay will eliminate this inequitable situation and serve the interest of justice.

VI. CONCLUSION

For the foregoing reasons, the Coalition urges the Commission to act within 30 days or less to **GRANT** this Petition for Rehearing and **VACATE OR RESCIND** the Certificate for the Atlantic Bridge Project. Alternatively, if the Commission is unable to dispose of the Certificate within 30 days and chooses to issue a tolling order to allow itself more time to consider the merits of this petition, the Commission **GRANT** a stay and order Algonquin and Maritimes to immediately cease all activity related to development of the Atlantic Bridge

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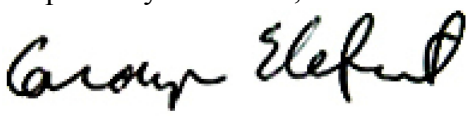
[45] *See Senators Warren and Markey Call on FERC to Rescind Certificate,* Mass Live, (Feburary 2, 2017), online at http://www.masslive.com/news/index.ssf/2017/02/sens_warren_and_markey_call_on.html.

Project until all administrative and judicial challenges to the Commission's order have been resolved.

Respectfully submitted,



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On behalf of Coalition members
listed on Attachment 1

Dated: February 24, 2017
Washington D.C.