

171 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

PennEast Pipeline Company, LLC

Docket No. CP19-78-001

ORDER ON REHEARING AND STAY

(Issued June 18, 2020)

1. On March 19, 2020, the Commission issued an order under section 7 of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² authorizing PennEast Pipeline Company, LLC (PennEast) to amend³ its certificate granted in Docket No. CP15-558-000 (Amendment Order).⁴ On April 20, 2020, Delaware Riverkeeper Network and the Delaware Riverkeeper (collectively, Delaware Riverkeeper), filed a timely request for rehearing and stay of the Amendment Order. For the reasons discussed below, we dismiss or deny Delaware Riverkeeper's requests for rehearing and dismiss its request for stay.

I. Background

2. The Certificate Order authorized PennEast to construct and operate the PennEast Project, which comprises a 116-mile-long, 36-inch-diameter mainline pipeline; three lateral pipelines (the Hellertown, Gilbert, and Lambertville laterals); one compressor station; and various associated facilities.⁵ The PennEast Project is designed to provide up

¹ 15 U.S.C. § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,198 (2020) (Amendment Order).

⁴ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (2018) (Certificate Order), *order on reh'g*, 164 FERC ¶ 61,098 (2018) (Rehearing Order).

⁵ Certificate Order, 162 FERC ¶ 61,198 at P 5.

to 1,107,000 dekatherms per day of firm natural gas transportation service from receipt points in the eastern Marcellus Shale region to delivery points in New Jersey and Pennsylvania, terminating at a delivery point with Transcontinental Gas Pipe Line Company, LLC's interstate pipeline system in Mercer County, New Jersey.⁶

3. On February 1, 2019, PennEast filed an application proposing pipeline realignments and workspace changes on sections of PennEast's mainline in Luzerne, Carbon, Monroe, and Northampton Counties, Pennsylvania (Amendment Project). The Amendment Project is designed to respond to landowner concerns or requests and/or to address constructability concerns.⁷ The Amendment Order determined that the Amendment Project, if constructed and operated as described in the EA, and as modified by the order, will not have a significant environmental impact and is required by the public convenience and necessity.⁸

II. Procedural Matters

A. Motion for Stay

4. Delaware Riverkeeper requests that the Commission stay the Amendment Order, as well as the underlying Certificate Order, pending the Commission's decision on rehearing.⁹ This order addresses and denies Delaware Riverkeeper's request for rehearing of the Amendment Order. Accordingly, we dismiss Delaware Riverkeeper's request for stay of the Amendment Order as moot.

B. PennEast's Answer

5. On May 7, 2020, PennEast filed a motion for leave to answer and answer to Delaware Riverkeeper's request for rehearing and stay. Rule 713(d)(1) of the

⁶ *Id.* P 4. On January 30, 2020, PennEast filed an application to amend its certificate to construct the PennEast Project in two phases; Phase One would include project facilities from the pipeline's origin in Luzerne County, Pennsylvania, through milepost (MP) 68 in Northampton County, Pennsylvania; Phase Two would include project facilities from MP 68 to the project's terminus in Mercer County, New Jersey. (Phasing Amendment). *See* PennEast January 30, 2020 Amendment Application in Docket No. CP20-47-000 at 7-10. PennEast's Phasing Amendment is pending before the Commission.

⁷ Amendment Order, 170 FERC ¶ 61,198 at P 4.

⁸ *Id.* PP 13, 68.

⁹ Delaware Riverkeeper Rehearing Request at 7-8.

Commission's Rules of Practice and Procedure¹⁰ prohibits answers to a request for rehearing. Accordingly, to the extent PennEast responds to Delaware Riverkeeper's request for rehearing, and not its request for stay, we reject PennEast's filing.

C. Response to Comments and Request for Public Hearing

6. Delaware Riverkeeper argues that the Commission failed to allow for meaningful public participation in the amendment proceeding by not extending the comment period for the EA from 30 to 90 days, by failing to hold public comment sessions, and by not responding to the majority of its comments on the Environmental Assessment (EA).¹¹ With the exception of a single argument, addressed below, Delaware Riverkeeper merely repeats prior assertions made in its comments on the EA,¹² which the Commission addressed in the Amendment Order.¹³ Delaware Riverkeeper does not allege any error in the Commission's response in the Amendment Order. The NGA's rehearing requirement is intended "to give the Commission the first opportunity to consider challenges to its orders and thereby narrow or dissipate the issues before they reach the courts."¹⁴ By not addressing the particular findings and analysis in the Amendment Order, Delaware Riverkeeper's request for "rehearing" fails to accomplish this aim or comply with the Commission's regulations.¹⁵ Accordingly, for the reasons discussed in the Amendment Order and here, Delaware Riverkeeper's requests for rehearing on these matters are dismissed.

7. In addition to its reiterated arguments dismissed above, Delaware Riverkeeper takes issue with the Commission's explanation in the Amendment Order that Commission staff considered untimely comments and the Commission's statement that no landowners alleged that they were denied the opportunity to comment.¹⁶ While not disputing the Commission's factual statements, Delaware Riverkeeper asserts that

¹⁰ 18 C.F.R. § 385.713(d)(1) (2019).

¹¹ Delaware Riverkeeper Rehearing Request at 42-46.

¹² Compare Delaware Riverkeeper October 21, 2019 Comments at 5-7, with Delaware Riverkeeper Rehearing Request at 42-46.

¹³ Amendment Order, 170 FERC ¶ 61,198 at PP 21-24.

¹⁴ *Sierra Club v. FERC*, 827 F.3d 59, 69 (D.C. Cir. 2016).

¹⁵ See 18 C.F.R. § 385.713(c)(1) ("Any request for rehearing must: (1) [s]tate concisely the alleged error in the final decision or final order . . .").

¹⁶ Delaware Riverkeeper Rehearing Request at 44.

this explanation fails to account for “the chilling effect a short comment deadline can have on the public” and contends that members of the public were either dissuaded from commenting altogether, or provided less substantial comments, as a result of the comment deadline.¹⁷

8. Delaware Riverkeeper’s assertion is without merit. Notice of PennEast’s application was published in the *Federal Register* on February 25, 2019,¹⁸ and on March 15, 2019 Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed PennEast Pipeline Project Amendment, and Request for Comments on Environmental Issues* (NOI).¹⁹ The Commission mailed the NOI to 488 entities, including state and local governments, affected landowners, and other interested entities, all of whom who were invited to file comments regarding the potential environmental impacts of the Amendment Project.²⁰ Commission staff addressed all substantive comments received in response to the NOI in the EA, which was published on September 20, 2019 with a 30-day comment period.²¹ As explained in the Amendment Order, the 30-day comment period for the EA was an appropriate length, particularly for a project of this relatively small scope; however, if commenters failed to meet the 30-day comment deadline, the Commission still addressed their comments.²² Further, Delaware Riverkeeper’s assertions of a “chilling effect” resulting from not extending the comment period are not supported by the record.²³ No commenters raised such concerns during the proceeding, and no parties, aside from Delaware Riverkeeper, contend on rehearing that such an effect occurred. The opportunities provided to the public to participate in the proceeding were more than adequate. Therefore, Delaware Riverkeeper’s request for rehearing on this matter is denied.

¹⁷ *Id.*

¹⁸ 84 Fed. Reg. 6000 (Feb. 25, 2019).

¹⁹ Amendment Order, 170 FERC ¶ 61,198 at P 14; EA at 4.

²⁰ *Id.*

²¹ Amendment Order, 170 FERC ¶ 61,198 at P 16.

²² *Id.* P 22. We further note that as the Amendment Project consists of modifications to the PennEast Project, which had previously undergone an extensive public review and comment process, the majority of affected and/or interested parties would have been familiar with the PennEast Project.

²³ Delaware Riverkeeper Request for Rehearing at 44.

III. Discussion

A. Summary Denial

9. The vast majority of Delaware Riverkeeper's arguments on rehearing are nearly identical copies of Delaware Riverkeeper's October 21, 2019 comments on Commission staff's EA prepared for the Amendment Project. Specifically, Delaware Riverkeeper merely repeats its earlier filed comments on the EA that were addressed by the Commission in the Amendment Order regarding:

- Requests for an Environmental Impact Statement;²⁴
- Threatened and Endangered Species;²⁵
- Water Quality;²⁶
- Land Impacts and Vegetation;²⁷

²⁴ Compare Delaware Riverkeeper October 21, 2019 Comments at 3-4, with Delaware Riverkeeper Rehearing Request at 18-20; see Amendment Order, 170 FERC ¶ 61,198 at P 20 (citing EA at 145).

²⁵ Compare Delaware Riverkeeper October 21, 2019 Comments at 7-10, with Delaware Riverkeeper Rehearing Request at 47-64; see Amendment Order, 170 FERC ¶ 61,198 at P 49. We note that the Commission completed its consultation required for federally-listed species under the Endangered Species Act. 16 U.S.C. § 1536(a)(2) (2018); Amendment Order, 170 FERC ¶ 61,198 at P 49 (stating that U.S. Fish and Wildlife Service's Amended Biological Opinion determined that the Amendment Project would "not result in [e]ffects above what was analyzed in the November 28, 2017 [Biological] Opinion").

²⁶ Compare Delaware Riverkeeper October 21, 2019 Comments at 10-17, with Delaware Riverkeeper Rehearing Request at 52-64; see Amendment Order, 170 FERC ¶ 61,198 at PP 31-35.

²⁷ Compare Delaware Riverkeeper October 21, 2019 Comments at 19-22, with Delaware Riverkeeper Rehearing Request at 65-70; see Amendment Order, 170 FERC ¶ 61,198 at PP 44-46.

- Geology;²⁸
- Wetlands;²⁹
- Forest Impacts;³⁰
- Cultural Resources;³¹
- Environmental Justice;³²
- Socioeconomics;³³ and
- National Pollutant Discharge Elimination System Permitting.³⁴

²⁸ Compare Delaware Riverkeeper October 21, 2019 Comments at 19, with Delaware Riverkeeper Rehearing Request at 64-65; see Amendment Order, 170 FERC ¶ 61,198 at PP 29-30.

²⁹ Compare Delaware Riverkeeper October 21, 2019 Comments at 22-29, with Delaware Riverkeeper Rehearing Request at 70-82; see Amendment Order, 170 FERC ¶ 61,198 at PP 37-39.

³⁰ Compare Delaware Riverkeeper October 21, 2019 Comments at 29-33, with Delaware Riverkeeper Rehearing Request at 82-89; see Amendment Order, 170 FERC ¶ 61,198 at PP 44-46.

³¹ Compare Delaware Riverkeeper October 21, 2019 Comments at 33, with Delaware Riverkeeper Rehearing Request at 89; see Amendment Order, 170 FERC ¶ 61,198 at P 50.

³² Compare Delaware Riverkeeper October 21, 2019 Comments at 41, with Delaware Riverkeeper Rehearing Request at 93; see Amendment Order, 170 FERC ¶ 61,198 at PP 53-54.

³³ Compare Delaware Riverkeeper October 21, 2019 Comments at 41-43, with Delaware Riverkeeper Rehearing Request at 93-96; see Amendment Order, 170 FERC ¶ 61,198 at P 51.

³⁴ Compare Delaware Riverkeeper October 21, 2019 Comments at 53, with Delaware Riverkeeper Rehearing Request at 113-114; see Amendment Order, 170 FERC ¶ 61,198 at P 42.

10. On rehearing, Delaware Riverkeeper makes no attempt to identify errors in the Commission's analysis of these issues in the Amendment Order or demonstrate how the Amendment Order failed to address Delaware Riverkeeper's concerns expressed in their earlier filed comments. Accordingly, for the reasons previously articulated as to each of these matters, we deny Delaware Riverkeeper's requests for rehearing.

B. Segmentation

11. Delaware Riverkeeper contends that the Commission segmented its review of the PennEast Project, the Amendment Project, PennEast's proposed Phasing Amendment,³⁵ and the Adelpia Gateway Project, Docket No. CP18-46.³⁶ Delaware Riverkeeper argues that, through the original PennEast Project, the Amendment Project, and PennEast's proposed Phasing Amendment, PennEast is essentially proposing what Delaware Riverkeeper terms a "New PennEast Project,"³⁷ which cannot proceed without the Adelpia Gateway Project.³⁸ Thus, Delaware Riverkeeper asserts that an EIS must be prepared for the "New PennEast Project" examining "an entirely different purpose and need" and environmental baseline than the original PennEast Project.³⁹

12. As an initial matter, with the exception of Delaware Riverkeeper's assertion that the Commission impermissibly segmented its environmental review of the Amendment Project from the larger PennEast Project, Delaware Riverkeeper raises allegations of the Commission's failure to assess the environmental impacts of the Amendment Project as part of a "New PennEast Project," or in addition to the Adelpia Gateway Project or Phasing Amendment, for the first time on rehearing. Delaware Riverkeeper had the opportunity to raise these issues with the Commission prior to the issuance of the order. Notice of Adelpia's application was issued on January 23, 2018,⁴⁰ and notice of PennEast's application for its proposed Phasing Amendment was issued

³⁵ *See supra* note 6.

³⁶ *Adelpia Gateway, LLC*, 169 FERC ¶ 61,220 (2019), *order on reh'g*, 171 FERC ¶ 61,049 (2020).

³⁷ Delaware Riverkeeper Rehearing Request at 8-18.

³⁸ *Id.* at 15.

³⁹ *Id.* at 9.

⁴⁰ *See* January 23, 2018 Notice of Adelpia's Application in Docket No. CP18-46-000.

on February 12, 2020⁴¹ – over a month before the issuance of the Amendment Order. Moreover, Delaware Riverkeeper has raised its concerns regarding a “New PennEast Project” in the Phasing Amendment proceeding, where they will be given appropriate consideration.⁴² The Commission looks with disfavor on parties raising issues for the first time on rehearing that could have been raised earlier, and Delaware Riverkeeper does not provide any justification for why it did not raise these matters earlier.⁴³ Accordingly, Delaware Riverkeeper’s assertions that the Commission impermissibly segmented its review of the Amendment Project from the Adelpia Gateway Project and PennEast’s proposed Phasing Amendment are dismissed.

13. In any event, we find that the Commission did not impermissibly segment its review of the various projects. “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”⁴⁴ Council on Environmental Quality (CEQ) regulations define

⁴¹ See February 12, 2020 Notice of PennEast’s Application in Docket No. CP20-47-000. We note that Amendment Project’s EA was issued on September 20, 2019, and PennEast submitted its Phasing Amendment application over four months later, on January 30, 2020. PennEast did not participate in the Commission’s prefilings process for its proposed Phasing Amendment, and accordingly, Commission staff did not have any indication that PennEast was even contemplating the Phasing Amendment, much less any information regarding the Phasing Amendment that would have allowed staff to assess the potential for cumulative impacts between the Amendment Project and proposed Phasing Amendment.

⁴² See Delaware Riverkeeper’s March 30, 2020 Comments in Docket No. CP20-47-000.

⁴³ See *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 764 (2004) (“Persons challenging an agency’s compliance with NEPA must ‘structure their participation so that it . . . alerts the agency to the [parties’] position and contentions,’ in order to allow the agency to give the issue meaningful consideration.”) (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978)); see also *Balt. Gas & Elec. Co.*, 91 FERC ¶ 61,270, at 61,922 (2000) (“We look with disfavor on parties raising on rehearing issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.”); *Nw. Pipeline, LLC*, 157 FERC ¶ 61,093, at P 27 (2016) (“We dismiss the Cemetery’s argument that EA’s indirect impacts analysis was deficient because the Cemetery raises this argument for the first time on rehearing.”).

⁴⁴ *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

connected actions as those that: (i) automatically trigger other actions, which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; (iii) are interdependent parts of a larger action and depend on the larger action for their justification.⁴⁵

14. Cumulative actions are those “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”⁴⁶ In turn, a cumulative impact is defined by the CEQ regulations as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”⁴⁷ As the U.S. Court of Appeals for the D.C. Circuit has explained, the question of whether multiple actions are cumulative and “must be assessed together” depends on whether the projects will have “cumulatively significant impacts.”⁴⁸

15. According to CEQ regulations, when proposed actions are “similar,” the agency “may wish” to assess them in the same document and “should do so” when a single document provides “the best way to assess adequately the combined impacts of similar actions.”⁴⁹ Similar actions are those “which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁵⁰ Unlike connected and cumulative actions, analyzing similar actions together in a single environmental document is not mandatory.⁵¹

⁴⁵ 40 C.F.R. § 1508.25(a)(1) (2019).

⁴⁶ 40 C.F.R. § 1508.25(a)(2).

⁴⁷ 40 C.F.R. § 1508.7.

⁴⁸ *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 51 (D.C. Cir. 2015).

⁴⁹ 40 C.F.R. § 1508.25(a)(3).

⁵⁰ *Id.*

⁵¹ See *San Juan Citizens' Alliance v. Salazar*, CV00379REBCBS, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) and noting that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions’”); see also *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 999-1001 (9th Cir. 2004) (emphasizing that agencies are only required to assess

1. PennEast Project

16. Regarding Delaware Riverkeeper's assertion that the EA for the Amendment Project impermissibly segmented that project's impacts from those of the larger PennEast Project, Delaware Riverkeeper largely repeats similar assertions made in its comments on the EA⁵² and addressed by the Commission in the Amendment Order.⁵³ As the Commission prepared an EIS for the PennEast Project and the purpose of the Amendment Project is to reduce the environmental impacts of that project, based on post-certificate discussions with landowners and other information that was not available when the PennEast EIS was prepared, segmentation is not an issue here.⁵⁴ Further, Delaware Riverkeeper does not assert any error in the Commission's analysis of this issue in the Amendment Order. Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper's request for rehearing on this matter.

2. Adelphia Gateway Project

17. Delaware Riverkeeper fails to explain how the Commission segmented its environmental review of the Adelphia Gateway Project and the Amendment Project. The Adelphia Gateway Project and PennEast's Amendment Project are not connected actions, as neither project triggers the other, or depends on the other for their justification; nor is there any indication either project cannot, or will not, proceed without the other. Regardless of whether or not the Adelphia Gateway Project were constructed, PennEast could still incorporate the Amendment Project's route modifications into the PennEast Project's route; similarly, without these modifications to the PennEast Project's route, the Adelphia Gateway Project would be able to proceed. The EA here included the Adelphia Gateway project in its cumulative impacts analysis,⁵⁵ ultimately determining that there would be no cumulatively significant impacts on resources. Accordingly, the Adelphia Gateway Project and the Amendment Project are not cumulative actions. Finally, we find that analyzing the projects in a single document is neither necessary nor the best

similar actions in a single NEPA document when the agency determines that is the best way to do so) and *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1306 (9th Cir. 2003).

⁵² Compare Delaware Riverkeeper October 21, 2019 Comments at 3-4, with Delaware Riverkeeper Rehearing Request at 18-19.

⁵³ Amendment Order, 170 FERC ¶ 61,198 at P 19.

⁵⁴ *Id.*

⁵⁵ EA at 118, tbl. B.10.2-1.

way to evaluate them, particularly when both projects were subject to rigorous environmental review.

3. Phasing Amendment

18. Delaware Riverkeeper similarly fails to demonstrate that the Commission's environmental review of the Amendment Project was impermissibly segmented from review of PennEast's proposed Phasing Amendment. The Amendment Project consists of four discrete route modifications that PennEast proposed to address landowner concerns or constructability issues,⁵⁶ and, as noted above, the purpose of the Phasing Amendment is to construct and place the PennEast Project into service in two phases.⁵⁷ Neither the Amendment Project nor the Phasing Amendment trigger one another, nor does either project need the other in order to proceed. If we had not approved the Amendment Project, and the proposed Phasing Amendment were approved, PennEast would simply construct the PennEast Project in two phases, without the route modifications. Similarly, were we to deny PennEast's proposed Phasing Amendment, the PennEast Project could proceed with the route modifications, but would not be constructed in phases. Thus, neither proposal triggers, or is dependent on, the other, and the proposals have substantial independent utility from one another.⁵⁸ Accordingly, the Amendment Project and proposed Phasing Amendment are not connected actions.

19. Further, Delaware Riverkeeper has not demonstrated that the environmental impacts of the Amendment Project, when combined with the potential impacts of the Phasing Amendment, would be cumulatively significant such that they should be considered in a single EA or EIS. Similarly, given the scale of the route modifications approved in the Amendment Order, and the small scale of additional construction proposed in PennEast's Phasing Amendment,⁵⁹ we find that analyzing the projects in a single document is neither necessary nor the best way to evaluate the projects' impacts.

⁵⁶ See Amendment Order, 170 FERC ¶ 61,198 at PP 5-8.

⁵⁷ See *supra* note 6

⁵⁸ In evaluating whether multiple actions are, in fact, connected actions, courts have employed a "substantial independent utility" test, which the Commission finds useful for determining whether the criteria for a connected action are met. See *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); see also *O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project "can stand alone without requiring construction of [other projects] either in terms of the facilities required or of profitability").

⁵⁹ We reiterate that PennEast's proposed Phasing Amendment would simply split the construction and placement into service of the PennEast Project into two segments of

C. Cumulative Impacts

20. Delaware Riverkeeper asserts that the Amendment Order was insufficient, as it relied on an EA which did not fully evaluate cumulative impacts “along the full length of the project.”⁶⁰ Delaware Riverkeeper states that the EA failed to assess the full scope of cumulative impacts along the length of the PennEast Project,⁶¹ and did not assess the direct and indirect GHG emissions from the project, the impacts of induced upstream natural gas production, as well as the “social costs” of the GHG emissions from the “New PennEast Project.”⁶²

1. Cumulative Impacts Along Full Length of PennEast Project

21. Delaware Riverkeeper’s assertion that the EA failed to assess the cumulative impacts along the entire length of the PennEast Pipeline repeats, verbatim, the same allegations from its comments on the EA, and includes no effort to allege error in the Commission’s analysis in the Amendment Order.⁶³ As stated in the Amendment Order, this proceeding is limited to the four route modifications included in PennEast’s Amendment Project, and the scope of the EA was appropriately limited to those route modifications.⁶⁴ Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper’s request for rehearing on this matter.

2. Cumulative Impacts with Other Pipelines

22. Delaware Riverkeeper asserts that the Commission failed to address the Amendment Project’s cumulative impacts along with other projects, including natural

pipeline, which the Commission has already analyzed in the Certificate Order. The only construction associated with either phase of PennEast’s proposed Phasing Amendment would be the proposed Church Road Interconnects, which would consist of a metering and regulation station and two interconnections, located on property owned by PennEast. See PennEast’s January 30, 2020 Phasing Amendment Application at 10, in Docket No. CP20-47-000.

⁶⁰ Delaware Riverkeeper Rehearing Request at 23.

⁶¹ *Id.* at 24-25.

⁶² *Id.* at 25-37.

⁶³ Compare Delaware Riverkeeper October 21, 2019 Comments at 33-34, with Delaware Riverkeeper Rehearing Request at 24-25.

⁶⁴ Amendment Order, 170 FERC ¶ 61,198 at PP 17, 24.

gas pipeline projects in the area on forests, air emissions, and water resources.⁶⁵ In making these assertions, Delaware Riverkeeper merely repeats identical arguments made in its comments on the EA,⁶⁶ which the Commission addressed in the Amendment Order.⁶⁷ Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper's requests for rehearing on these matters.

3. GHG Emissions and the Social Cost of Carbon

23. With the exception of arguments regarding impacts from induced natural gas production and the Social Cost of Carbon, discussed below, Delaware Riverkeeper repeats assertions in its comments on the EA that the Commission improperly ignored the direct and indirect GHG emissions that would occur as a result of the construction and operation of the Amendment Project.⁶⁸ This issue was fully addressed in the EA⁶⁹ and in the Amendment Order.⁷⁰ Accordingly, for the reasons stated in the Amendment Order and above,⁷¹ Delaware Riverkeeper's request for rehearing on this matter is denied.

24. Delaware Riverkeeper contends that the Commission must assess the impacts of "existing and reasonably foreseeable" shale gas development and production that would be "advanced, induced, and supported" if the Commission approves "Phase I and the New PennEast Project."⁷² In support, Delaware Riverkeeper incorporates the results of a self-commissioned report, prepared by Synapse, Inc. and submitted by Delaware Riverkeeper in comments on PennEast's proposed Phasing Amendment, which provides an estimate of the number of wells required by both the PennEast Project and the

⁶⁵ Delaware Riverkeeper Rehearing Request at 38-42.

⁶⁶ Compare Delaware Riverkeeper October 21, 2019 Comments at 37-41, with Delaware Riverkeeper's Rehearing Request at 38-42.

⁶⁷ Amendment Order, 170 FERC ¶ 61,198 at PP 44-46, 57-58.

⁶⁸ Delaware Riverkeeper Rehearing Request at 25-28, 36-37.

⁶⁹ EA at 98-102.

⁷⁰ Amendment Order, 170 FERC ¶ 61,198 at PP 59-60.

⁷¹ See *supra* P 6.

⁷² Delaware Riverkeeper Rehearing Request at 28-29.

Adelphia Gateway Project, as well as estimates of the GHG emissions from these wells.⁷³ Citing the same study, Delaware Riverkeeper further asserts that the Commission must assess the social costs of these emissions.⁷⁴

25. As an initial matter, the Synapse, Inc. study is introduced in this proceeding for the first time on rehearing, which is not permissible, since such a practice would create a moving target and prevent administrative finality.⁷⁵ Further, as noted in the Amendment Order, the Amendment Project would have no impact on the capacity of the PennEast Project or otherwise impact its receipt or delivery points.⁷⁶ We find that neither the Synapse, Inc. study nor Delaware Riverkeeper demonstrate how amending PennEast's certificate to include the Amendment Project's route modifications would induce upstream natural gas production.

26. Regarding Delaware Riverkeeper's claim that the Commission must assess the climate impacts of the emissions from wells required by both the PennEast Project and the Adelphia Gateway Project, Delaware Riverkeeper again relies on the inadmissible Synapse, Inc. study.⁷⁷ Regardless, Delaware Riverkeeper again fails to demonstrate that approval of the Amendment Project would result in climate impacts that the Commission failed to consider.⁷⁸ Moreover, even if Delaware Riverkeeper had properly raised such allegations, the Commission has provided extensive discussion on why the Social Cost of Carbon tool is not appropriate for project-level NEPA review.⁷⁹

⁷³ *Id.* at 28-33.

⁷⁴ *Id.* at 34-36.

⁷⁵ *PaTu Wind Farm, LLC v. Portland Gen. Elec. Co., LLC*, 151 FERC ¶ 61,223, at P 42 (2015); *see also Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 15 (2010).

⁷⁶ Amendment Order, 170 FERC ¶ 61,198 at P 59, n.127.

⁷⁷ *See supra* P 24.

⁷⁸ *See generally* Delaware Riverkeeper Rehearing Request at 33-36 (arguing that the Commission failed to assess the social cost of emissions from the PennEast and Adelphia Gateway projects, but never asserting that the Commission failed to assess such costs for the Amendment Project); *see also* P 25 (noting that the Amendment Project would not impact the PennEast Project's capacity).

⁷⁹ *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197 at PP 275-297, *aff'd, Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at *2 (“[The Commission] gave several reasons why it believed

D. Safety

27. Delaware Riverkeeper asserts that the Commission failed to account for the safety risks to life and property that would occur as a result of construction and operation of the PennEast Project, particularly from pipeline explosions and/or scour.⁸⁰ Delaware Riverkeeper's assertions regarding pipeline scour merely repeat its earlier filed comments on the EA,⁸¹ which the Commission addressed in detail in the Amendment Order⁸² Delaware Riverkeeper fails to specify any errors in the Commission's analysis. Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper's request for rehearing on this matter.

28. Delaware Riverkeeper alleges that the Commission failed to account for the risk of pipeline explosions or fire, and the resulting damage.⁸³ As an initial matter, the Commission notes that Delaware Riverkeeper does not cite to any purported deficiencies in the EA or the Amendment Order; rather, Delaware Riverkeeper merely provides general information regarding the risks of pipeline accidents – identical to the

petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes."); *see also EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016); *Sierra Club v. FERC*, 672 F. App'x 38, (D.C. Cir. 2016); *350 Montana v. Bernhardt*, No. CV 19-12-M-DWM, 2020 WL 1139674, *6 (D. Mont. Mar. 9, 2020) (upholding the agency's decision to not use the Social Cost of Carbon because it is too uncertain and indeterminate to be useful); *Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt.*, 377 F. Supp. 3d 1223, 1239-41 (D. Colo. 2019) (upholding the agency's decision to not use the Social Cost of Carbon); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77-79 (D.D.C. 2019) (upholding the agency's decision to not use the Social Cost of Carbon); *see generally Transcontinental Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at PP 63-74) (explaining that the Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborating on why the Social Cost of Carbon is not a useful tool for determining whether GHG emissions are significant, and explaining that the Commission has no authority or reasoned basis to establish its own framework).

⁸⁰ Delaware Riverkeeper Rehearing Request at 90-93.

⁸¹ *Compare* Delaware Riverkeeper October 21, 2019 Comments at 38-40, *with* Delaware Riverkeeper's Rehearing Request at 90-93.

⁸² Amendment Order, 170 FERC ¶ 61,198 at P 56.

⁸³ Delaware Riverkeeper Rehearing Request at 90-91.

information Delaware Riverkeeper included in its comments on the EA.⁸⁴ Regardless, the EA provides an extensive discussion regarding the potential safety risks associated with construction and operation of the Amendment Project,⁸⁵ and determines that the Amendment Project would be constructed and operated safely.⁸⁶ We affirm this finding.

E. Alternatives

29. Delaware Riverkeeper contends that the Commission's alternatives analysis was flawed, and improperly relied on PennEast's statement of purpose and need for the Amendment Project, thereby failing to properly consider the no-action alternative, and other system alternatives to the PennEast Project.⁸⁷ Delaware Riverkeeper further argues that there is no need for the PennEast Project, and that Commission staff impermissibly relied on PennEast's stated purpose for the Amendment Project, narrowing the range of alternatives considered.⁸⁸ Delaware Riverkeeper asserts that a proper no-action alternative analysis would have included the PennEast Project not being built, as opposed to the route modifications in the Amendment Project not being incorporated into the PennEast Project route.⁸⁹ In addition, Delaware Riverkeeper argues that the alternatives analysis should have considered alternate construction practices to reduce construction impacts, as well as alternatives that would have avoided impacts to exceptional value wetlands, and the Appalachian Trail.⁹⁰

30. In making these assertions, Delaware Riverkeeper merely repeats its earlier filed comments on the EA,⁹¹ which the Commission addressed in the Amendment Order,⁹²

⁸⁴ Compare Delaware Riverkeeper October 21, 2019 Comments at 39, with Delaware Riverkeeper Rehearing Request at 90-91.

⁸⁵ EA at 109-15.

⁸⁶ *Id.* at 114.

⁸⁷ Delaware Riverkeeper Rehearing Request at 97-99.

⁸⁸ *Id.* at 101-105.

⁸⁹ *Id.*

⁹⁰ *Id.* at 99-101.

⁹¹ Compare Delaware Riverkeeper October 21, 2019 Comments at 43-46, with Delaware Riverkeeper Rehearing Request at 97-101.

⁹² Amendment Order, 170 FERC ¶ 61,198 at PP 61-66.

and fails to specify any errors in the Commission's analysis. Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper's request for rehearing on this matter. In addition, regarding Delaware Riverkeeper's assertion that the larger PennEast Project is not needed, these comments have been addressed in PennEast's certificate proceeding,⁹³ and are outside the scope of this proceeding, which is limited to the Amendment Project's route modifications.⁹⁴

F. Critical Lands

31. Delaware Riverkeeper states that the Commission failed to consider the Amendment Project's impacts on "critical lands."⁹⁵ Delaware Riverkeeper fails to provide a definition of "critical lands"; however, it states that the Commission did not consider the impacts of the PennEast Project on fishing, hunting, and wildlife viewing, and that Delaware Riverkeeper "volunteers" have documented threatened and endangered species habitat throughout the PennEast Project's route.⁹⁶ Delaware Riverkeeper further takes issue with PennEast's bog turtle survey practices, and asserts that the Commission failed to require compliance with the regulatory requirements for the proposed Appalachian Trail Crossing Realignment, as well as the "guidance, goals, and vision" of the management plan for the Wild and Scenic Lower Delaware River.⁹⁷

32. As an initial matter, in making these assertions, Delaware Riverkeeper merely repeats its earlier filed comments on the EA,⁹⁸ which the Commission addressed in

⁹³ See Certificate Order, 162 FERC ¶ 61,053 at PP 19-36; Rehearing Order, 164 FERC ¶ 61,098 at PP 14-23.

⁹⁴ See, e.g. *Central Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 117 (2d Cir. 2015) (explaining that the Commission has "broad discretion to address related issues in discrete proceedings" and, accordingly, it is permissible for the Commission to only address matters within the scope of the specific proceeding).

⁹⁵ Delaware Riverkeeper Rehearing Request at 105-110.

⁹⁶ *Id.* at 105-106.

⁹⁷ *Id.* at 107-110.

⁹⁸ Compare Delaware Riverkeeper October 21, 2019 Comments at 48-51, with Delaware Riverkeeper Rehearing Request at 105-110.

the Amendment Order⁹⁹ and fails to specify any errors in the Commission's analysis. Accordingly, for the reasons discussed in the Amendment Order and above,¹⁰⁰ Delaware Riverkeeper's request for rehearing on this matter is denied. We note, however, that the Amendment Project would cross one Pennsylvania State Game Land (SGL 168), for approximately 0.7 mile; this crossing is managed by the Pennsylvania Game Commission, which included mitigation measures in its license to PennEast to cross SGL 168.¹⁰¹ In addition, the EA determined that there would be no "appreciable effect" on visual resources.¹⁰² Regarding Delaware Riverkeeper's concerns about PennEast's representative's bog turtle survey practices, we note that PennEast, and any representatives, must obtain proper access authorization prior to entering property to conduct environmental surveys.

G. Horizontal Directional Drilling

33. Delaware Riverkeeper contends that the Commission should have, but failed, to require the use of horizontal directional drilling (HDD) as the default construction method for all crossings of streams, wetlands, forests, and communities.¹⁰³ In making these assertions, Delaware Riverkeeper merely repeats its earlier filed comments on the EA,¹⁰⁴ which the Commission addressed in the Amendment Order¹⁰⁵ and does not allege any error in the Commission's explanation that its EAs and EISs typically do not evaluate alternative construction practices (except for specific sites or locations where warranted or identified during scoping), and that CEQ regulations do not require the consideration

⁹⁹ Amendment Order, 170 FERC ¶ 61,198 at PP 36-39 (Stream Crossings and Wetlands); 43 (Wild and Scenic Rivers); 47-48 (Appalachian Trail Crossing Realignment); 49 (Threatened and Endangered Species).

¹⁰⁰ *See supra* P 10.

¹⁰¹ EA at 81.

¹⁰² *Id.* at 82.

¹⁰³ Delaware Riverkeeper Rehearing Request at 110-112.

¹⁰⁴ *Compare* Delaware Riverkeeper October 21, 2019 Comments at 52-53, *with* Delaware Riverkeeper Rehearing Request at 110-112.

¹⁰⁵ Amendment Order, 170 FERC ¶ 61,198 at PP 61, 64.

of alternative construction practices.¹⁰⁶ As the Commission discussed in the Amendment Order, each of the Amendment Project's four route modifications would include some modified construction practice;¹⁰⁷ however, site-specific conditions prevent the use of HDD as a default construction practice.¹⁰⁸ Accordingly, for the reasons previously articulated in the Amendment Order, we deny Delaware Riverkeeper's request for rehearing on this matter.

H. Adequacy of Information

34. Delaware Riverkeeper asserts that the information included in PennEast's application is inadequate and prevents the Commission from sufficiently assessing the environmental impacts of the project.¹⁰⁹

35. Delaware Riverkeeper merely provides a verbatim copy of the same alleged deficiencies Delaware Riverkeeper asserted in comments on the EA.¹¹⁰ Delaware Riverkeeper fails to substantiate these claims or cite to any error in the EA or the Amendment Order. The EA fully considers the impact that construction and operation of the Amendment Project would have on all relevant resources.¹¹¹ In assessing these and other impacts, Commission staff relied on a variety of studies and other reference materials, a complete list of which was provided to the public.¹¹² Under NEPA, agencies

¹⁰⁶ *Id.* P 64 (citing 40 C.F.R. § 1502.14 (2019) (stating that the alternatives analysis is in regard to the proposal, not the specific construction procedures to be used in furtherance of the proposal)).

¹⁰⁷ *Id.* P 64

¹⁰⁸ *See, e.g.*, EA at 8 (explaining that the Freemansburg Ave. Realignment is, in part, in response to geotechnical investigations revealing the presence of karst features, precluding the use of HDD in the area.)

¹⁰⁹ Delaware Riverkeeper Rehearing Request at 114-117.

¹¹⁰ *Compare* Delaware Riverkeeper October 21, 2019 Comments at 54-55, *with* Delaware Riverkeeper Rehearing Request at 114-17.

¹¹¹ *See* EA at 15-20 (Geology); 20-26 (Soils); 26-46 (Water Resources and Wetlands); 46-69 (Vegetation, Wildlife, and Threatened and Endangered Species); 69-70 (Cultural Resources); 70-85 (Land Use, Recreation, and Visual Resources); 85-92 (Socioeconomics); 92-109 (Air Quality and Noise); 109-115 (Reliability and Safety); 115-132 (Cumulative Impacts); 132-145 (Alternatives).

¹¹² EA at 146-52.

are “entitled to wide discretion in assessing . . . scientific evidence”¹¹³ and Delaware Riverkeeper fails to demonstrate that Commission staff’s reliance on this evidence prevented staff from fully considering the Amendment Project’s potential impacts. Accordingly, Delaware Riverkeeper’s request for rehearing on this matter is denied.

The Commission orders:

(A) Delaware Riverkeeper’s request for rehearing is hereby dismissed or denied, as discussed in the body of this order.

(B) Delaware Riverkeeper’s request for stay is hereby dismissed as moot, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹³ *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d at 1301.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PennEast Pipeline Company, LLC

Docket No. CP19-78-001

(Issued June 18, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissented from the Commission's order granting PennEast Pipeline Company, LLC (PennEast) a certificate of public convenience and necessity. As I explained, the record did not show a need for the pipeline and the Commission erred by finding that the pipeline was required by the public convenience and necessity when many permits and details about the proposed route remained unanswered.¹ Those issues, as well as a host of others, are now being litigated in the federal courts. The only issue before us today is rehearing of the Commission's order amending PennEast's originally certificated route. While I believe the amendments to the route—proposed in response to landowner and constructability concerns²—are supported by the record, I dissent in part from today's order because it violates both the Natural Gas Act³ (NGA) and the National Environmental Policy Act⁴ (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order, the Commission denies rehearing of its order amending PennEast's certificate to allow for discrete adjustments to the pipeline route (Project),⁵ but continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether

¹ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (2018) (Glick, Comm'r, dissenting at 1); see *PennEast Pipeline Co., LLC*, 164 FERC ¶ 61,098 (2018) (Glick, Comm'r, dissenting at 1).

² *PennEast Pipeline Company, LLC*, 170 FERC ¶ 61,198, at P 4 (2020) (Amendment Order).

³ 15 U.S.C. § 717f (2018).

⁴ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

⁵ *PennEast Pipeline Company, LLC*, 171 FERC ¶ 61,229 (2020) (Rehearing Order).

the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions resulting from the Project's construction of the amended route.⁶ That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁷ and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity.⁸ Claiming that a project has no significant environmental impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. The Commission's failure to meaningfully consider climate change forces me into dissenting from orders that I might otherwise support. The EA suggests the construction of the amended route would result in an incremental 31,000 metric tons of CO₂ annually,⁹ which might not be significant. But the Commission refuses to even engage in that analysis.¹⁰ Prior to issuing a section 7 certificate, the Commission must find both that the proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.¹¹ Although need for the Project is an important

⁶ Environmental Assessment at Tables B.8.2-5 – B.8.2-8 (EA); *see* Amendment Order, 170 FERC ¶ 61,198 at P 59 & n.126. The Amendment Order did not change the authorized transportation capacity of the PennEast Pipeline, therefore does not increase or change the operational or downstream GHG emissions. *See* Amendment Order, 170 FERC ¶ 61,198 at P 59 n.127; EA at 100; Rehearing Order, 171 FERC ¶ 61,229 at P 25.

⁷ Amendment Order, 170 FERC ¶ 61,198 at P 67; EA at 145.

⁸ Amendment Order, 170 FERC ¶ 61,198 at P 68; Rehearing Order, 171 FERC ¶ 61,229 at P 3.

⁹ EA at Tables B.8.2-6 – B.8.2-8 (EA); *see also* Amendment Order, 170 FERC ¶ 61,198 at P 59 & n.126.

¹⁰ *See* Rehearing Order, 171 FERC ¶ 61,229 at P 23; Amendment Certificate Order, 170 FERC ¶ 61,198 at P 60 (citing *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018)); *see also* *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 at P 67 ("Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change");

¹¹ *See Sabal Trail*, 867 F.3d at 1373 (explaining that section 7 of the NGA requires

consideration, need alone is not sufficient to find that the Project is consistent with the public interest. Instead, the Commission must also determine that the Project's benefits outweigh its adverse impacts, including its GHG emissions, which the Commission cannot do without meaningfully evaluating the impacts of those emissions. I cannot join an order that countenances such an incomplete assessment of a project's adverse impacts.

For these reasons, and those articulated previously,¹² I respectfully dissent in part.

Richard Glick
Commissioner

the Commission to balance “the public benefits [of a proposed pipeline] against the adverse effects of the project,’ including adverse environmental effects” (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015))).

¹² See, e.g., Amendment Order, 170 FERC ¶ 61,198 (Glick, Comm’r, dissenting in part).