

162 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP16-4-001

ORDER DENYING AND DISMISSING REHEARING

(Issued February 27, 2018)

I. Introduction

1. In a February 2, 2017 order,¹ the Commission granted Tennessee Gas Pipeline Company, L.L.C. (Tennessee) certificate authority pursuant to section 7(c) of the Natural Gas Act (NGA)² and Part 157 of the Commission's regulations³ to construct, operate, and maintain certain pipeline facilities located in Wayne and Pike Counties, Pennsylvania (Orion Project).

2. Delaware Riverkeeper Network (Delaware Riverkeeper) timely sought rehearing of the February 2017 Order, arguing that: (1) the Commission's analysis under the National Environmental Policy Act of 1969 (NEPA)⁴ was flawed because it improperly segmented the Orion Project from other projects being undertaken by Tennessee and relied on an inaccurate baseline; and (2) the Commission failed to require Tennessee to submit all information necessary for determining the proper scope and safety impacts of the project.

¹ *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,110 (2017) (February 2017 Order).

² 15 U.S.C. § 717f (c) (2012).

³ 18 C.F.R. pt. 157 (2017).

⁴ 42 U.S.C. §§ 4321-4370f.

3. Allegheny Defense Project and Damascus Citizens for Sustainability (collectively, Environmental Intervenors) also request rehearing of the February 2017 Order, arguing that: (1) the Commission segmented its environmental analysis of the Orion Project by ignoring connected, cumulative, and similar actions; (2) the Environmental Assessment (EA) ignored radon and did not adequately analyze the project's cumulative impacts; and (3) the February 2017 Order violated the Certificate Policy Statement because it was based on a flawed environmental review.

4. Tennessee also sought rehearing of the February 2017 Order. Tennessee asserts the Commission erred when it granted Sierra Club's motion for late intervention.

5. For the reasons discussed below, we deny the rehearing requests filed by Delaware Riverkeeper and Environmental Intervenors and dismiss the rehearing request filed by Tennessee.

II. Background

6. The Orion Project includes two segments of pipeline looping: 8.2 miles of 36-inch-diameter natural gas pipeline loop (Loop 322) in Wayne County, Pennsylvania and 4.7 miles of 36-inch-diameter natural gas pipeline loop (Loop 323) in Pike County, Pennsylvania. The project also includes modifications to Tennessee's existing Compressor Station 323 in Pike County and construction of additional ancillary facilities at the up-stream and down-stream tie-in points.⁵

7. The Orion Project facilities will allow Tennessee to provide approximately 135,000 dekatherms per day (Dth/d) of west-to-east natural gas firm transportation service to three shippers on Tennessee's 300 Line: South Jersey Resources Group, LLC (South Jersey Resources); South Jersey Gas Company (South Jersey Gas); and Cabot Oil & Gas Corporation (Cabot Oil & Gas), all of which fully subscribed to the firm transportation capacity to be created. The contract path for these shippers spans from Tennessee's existing interconnect with Williams Field Services Company, LLC in Susquehanna County to an existing Tennessee interconnect with Columbia Gas Transmission, LLC in Pike County.

III. Procedural Issue

8. On August 10, 2017, Delaware Riverkeeper filed to supplement its rehearing request with an internal draft of Commission staff's environmental assessment that had not been issued for public comment. Delaware Riverkeeper asserts that this unissued

⁵ For a more detailed description of the Orion Project facilities, see the February 2017 Order, 158 FERC ¶ 61,110 at PP 3-5, and August 23, 2016 EA at 2-3.

draft EA contained previously undisclosed details regarding the compression alternative. Delaware Riverkeeper asserts that the compression alternative was inexplicably and unlawfully omitted from the final EA.

9. Section 19 of the NGA⁶ and Rule 713(b) of the Commission's Rules of Practice and Procedure⁷ require parties to file a request for rehearing within 30 days after the issuance date of any final decision or other final order in a proceeding. In this case, that date was no later than March 6, 2017.⁸ Both the Commission and the courts have consistently held that the 30-day requirement in section 19(a) is a jurisdictional requirement that the Commission does not have the discretion of waiving, even for good cause.⁹ Further, the Commission has interpreted this jurisdictional limitation as precluding it from considering a late-filed supplement or amendment to a timely filed

⁶ 15 U.S.C. 717r(a).

⁷ 18 C.F.R. § 385.713(b).

⁸ The 30th day after the February 2017 Order was Saturday, March 4, 2017. Pursuant to Rule 2007 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2007(a)(2), when a deadline falls on a weekend, the deadline is extended to the close of the next business day. Thus, the rehearing period closed on March 6, 2017.

⁹ See, e.g., *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1005 (D.C. Cir. 1987) (stating that “the Commission cannot waive the jurisdictional bar of [section] 19” of the Natural Gas Act); *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (holding that an identical 30-day time requirement to file a request for rehearing in the Federal Power Act (FPA) “is as much a part of the jurisdictional threshold as the mandate to file for a rehearing”); *Boston Gas Co. v. FERC*, 575 F.2d 975, 979 (1st Cir. 1978) (holding that the rehearing provision of the NGA is “a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion.”); *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,160, at P 3 (2012); *Louisiana Energy and Power Authority*, 117 FERC ¶ 61,258, at 62,301 (2006); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211, at P 10 (2005); *Texas-New Mexico Power Co. v. El Paso Electric Co.*, 107 FERC ¶ 61,316, at P 22 (2004); *California Independent System Operator Corp.*, 105 FERC ¶ 61,322, at P 9 (2003); *Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,169, at 61,546-47 (2001); *Columbia Gas Transmission Corp.*, 40 FERC ¶ 61,195, at 61,655 (1987). Although some of these cases were decided under the Federal Power Act, the rehearing provisions in the FPA and the NGA are identical and read in *pari materia*. See *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line v. Mobil Gas Service Corp.*, 350 U.S. 332 (1956).

request for rehearing.¹⁰ Thus, we reject Delaware Riverkeeper's supplement to its request for rehearing.

IV. Rehearing Requests

A. Delaware Riverkeeper Network

10. Delaware Riverkeeper's rehearing request repeats verbatim its comments on the EA.¹¹ The February 2017 Order addressed those comments, particularly those regarding segmentation,¹² the appropriate baseline for the Commission's environmental analysis,¹³ and engineering questions surrounding the flow velocity of Tennessee's system.¹⁴ On rehearing, Delaware Riverkeeper does not attempt to identify flaws in the analysis from the February 2017 Order, or to explain how the February 2017 Order failed to address the concerns expressed in Delaware Riverkeeper's earlier comments. 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."¹⁵ By not addressing the particular findings and analysis in the February 2017 Order, Delaware Riverkeeper's request for "rehearing" fails to accomplish this aim or comply with the Commission's regulations.¹⁶ Regardless, for the reasons stated in the

¹⁰ See *Old Dominion Electric Coop.*, 154 FERC ¶ 61,155, at P 8 (2016) (citing *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991) ("Any subsequent filing supplementing or revising that request is in essence a new request for rehearing and thereby precluded under section 313(a) of the [Federal Power] Act."); *Pub. Serv. Co. of New Hampshire*, 56 FERC ¶ 61,105, at 61,403 (1991) ("Commission precedent is clear that supplements to timely filed requests for rehearing, when filed after the expiration of the statutory [30]-day period, will be rejected.")).

¹¹ Compare Delaware Riverkeeper September 22, 2016 Comments with Delaware Riverkeeper February 14, 2016 Rehearing Request.

¹² February 2017 Order, 158 FERC ¶ 61,110 at PP 74-84.

¹³ *Id.* PP 113-118

¹⁴ *Id.* PP 34-40.

¹⁵ *Sierra Club v. FERC*, 827 F.3d 59, 69 (D.C. Cir. 2016).

¹⁶ See 18 C.F.R. § 385.713 (c)(1) ("Any request for rehearing must [s]tate concisely the alleged error in the final decision or final order").

February 2017 Order, the arguments advanced by Delaware Riverkeeper lack merit. Therefore, the Commission will deny rehearing.

B. Environmental Intervenors

1. Segmentation

11. Environmental Intervenor^s argue the Commission unlawfully segmented the environmental review of the Orion Project by not including Tennessee's Susquehanna West Project¹⁷ and Triad Expansion Project¹⁸ in the same environmental document.¹⁹ Environmental Intervenor^s assert that these three projects are connected, cumulative, and similar actions under Council on Environmental Quality (CEQ) regulations.²⁰

12. CEQ regulations require the Commission to include connected actions, cumulative actions, and similar actions in its NEPA analyses.²¹ "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal

¹⁷ Tennessee filed the Susquehanna West Project application on April 2, 2015, in Docket No. CP15-148-000. Commission staff issued an EA on March 17, 2016 (Susquehanna West EA), and the Commission granted certificate authority for the project on September 6, 2016. *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,156 (2016) (Susquehanna West Order). Requests for rehearing of the Susquehanna West Order are pending before the Commission.

¹⁸ Tennessee filed the Triad Expansion Project application on June 19, 2015, in Docket No. CP15-520-000. Commission staff issued an EA on June 15, 2016 (Triad Expansion EA), and the Commission granted certificate authority for the project on December 30, 2016. *Tennessee Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,254 (2016) (Triad Expansion Order), *order dismissing rehearing* 161 FERC ¶ 61,254 (2017) (Triad Expansion Rehearing Order).

¹⁹ See EA at 6 (map depicting the locations of the Orion, Susquehanna West, and Triad Expansion facilities and their contract paths).

²⁰ Environmental Intervenor^s Rehearing Request at 6-16.

²¹ 40 C.F.R. § 1508.25(a)(1)-(3).

actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”²²

a. Connected Actions

13. CEQ regulations define 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.²³ The February 2017 Order evaluated the relevant factors and concluded that the Orion, Susquehanna West, and Triad Expansion Projects are not connected actions.²⁴ We reaffirm that finding here.

14. The Orion Project does not “trigger” or mandate the construction or operation of either the Susquehanna West or Triad Expansion Projects.²⁵ The Orion Project is a stand-alone project that does not require the construction of any subsequent project to enable Tennessee to provide the contracted for transportation capacity. Further, there is no evidence that the reverse is true, i.e. that either the Triad Expansion or Susquehanna West Projects or both depend on construction of the Orion Project.²⁶

15. Nor are the three projects interdependent parts of a larger action.²⁷ Each is a discrete project providing a unique transportation path serving the specific needs of individual customers.²⁸ The Orion, Triad Expansion, and Susquehanna West Projects are separate, discrete loops located in separate counties. Triad Expansion is located 23.2 miles from Orion, and Susquehanna West is located 53.2 miles from Orion. The Triad

²² *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Delaware Riverkeeper*). Unlike connected and cumulative actions, an agency has some discretion about combining similar actions in the same environmental review. *See, e.g., Earth Island Inst. v. U.S. Forest Service*, 351 F.3d 1291, 1305-06 (9th Cir. 2003).

²³ 40 C.F.R. § 1508.25(a)(1).

²⁴ February 2017 Order, 158 FERC ¶ 61,110 at P 77.

²⁵ *Id.* PP 78-79; *see also* 40 C.F.R. § 1508.25(a)(1)(i).

²⁶ 40 C.F.R. § 1508.25(a)(1)(ii).

²⁷ *Id.* § 1508.25(a)(1)(iii).

²⁸ *See* EA at 6 (map of Tennessee Line 300 Projects).

Expansion Project will serve one shipper with facilities that stand independent of the Orion Project facilities.²⁹ Similarly, the Susquehanna West Project will serve one shipper with facilities that stand independent of the Orion Project facilities.³⁰ Susquehanna West and Triad Expansion would move forward in the absence of the Orion Project.

16. Tennessee filed binding precedent agreements with South Jersey Resources, South Jersey Gas, and Cabot Oil & Gas.³¹ None of these shippers are also shippers on either Susquehanna West or Triad Expansion. Thus, the Orion Project is self-contained because it does not rely on the Triad Expansion and Susquehanna West Projects for its justification. Denial of one or both of these other projects would not affect the Orion Project, nor the service sought by South Jersey Resources, South Jersey Gas, and Cabot Oil & Gas and Tennessee's ability to provide it.³²

17. Environmental intervenors rely on *Delaware Riverkeeper*, where the court found that four pipeline proposals were interdependent parts of a larger action and therefore connected actions because the four projects would result in "a single pipeline" that was "linear and physically interdependent" and because the projects were financially interdependent.³³ In *Delaware Riverkeeper*, the Court noted that the four upgrade projects at issue in that case comprised a "complete overhaul" of the entire Eastern Leg of the pipeline resulting in "a new pipeline that functions as a unified whole."³⁴ The

²⁹ Triad Expansion Order, 157 FERC ¶ 61,254 at P 74.

³⁰ Susquehanna West Order, 156 FERC ¶ 61,156 at PP 51-52.

³¹ Tennessee October 9, 2015 Application at 2.

³² See *Coalition on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987) ("The proper question is whether one project will serve a significant purpose even if a second related project is not built.").

³³ *Delaware Riverkeeper*, 753 F.3d at 1314-17. In the Commission order under review in *Delaware Riverkeeper* (Tennessee's Northeast Upgrade Project proceedings, Docket No. CP11-161-000), the Commission observed that the proposed facilities "will build upon the additional capacity created by the Market Component of its 300 Line Project" and that the 300 Line Project Market Component facilities "have made it possible to achieve the capacity increase of the Northeast Upgrade Project at a lower cost than would have been possible absent the construction of the 300 Line Project Market Component facilities." *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at P 22 (2012) (emphasis added), *order on reh'g*, 142 FERC ¶ 61,025 (2013).

³⁴ *Delaware Riverkeeper*, 753 F.3d at 1308-09.

Court emphasized that there are no offshoots to the Eastern Leg such that the “gas enters the system at one end, and passes through each of the new pipeline sections . . . on its way to extraction points beyond the Eastern Leg.”³⁵

18. Similar facts do not exist here. As described above, the Susquehanna West, Triad Expansion, and Orion Projects do not serve to “fill in the gaps”³⁶ to create a singular pipeline that moves gas from a common receipt point through the pipeline constructed under each of the three projects before being delivered.³⁷

19. Moreover, unlike the projects at issue in *Delaware Riverkeeper*, here there is no evidence that any of the three projects financially depend upon or financially benefit from the other projects. Indeed, Environmental Intervenors do not challenge the Commission’s finding that the Orion, Susquehanna West, and Triad Expansion Projects have independent financing under long-term contracts.³⁸ On rehearing, Environmental Intervenors particularly emphasize the timing of the three projects.³⁹ While project timing in *Delaware Riverkeeper* was important,⁴⁰ timing alone is insufficient to turn three otherwise unrelated projects into connected actions.

20. Environmental Intervenors assert the Commission reads into the definition of connected actions in section 1508.25(a)(1) a geographic factor that does not belong.⁴¹ But section 1508.25(a)(1) requires connected actions to be “closely related,” and

³⁵ *Id.*

³⁶ *Id.* at 1310.

³⁷ *See id.* at 1311.

³⁸ February 2017 Order, 158 FERC ¶ 61,110 at P 79. Tennessee proposed an incremental recourse rate for firm transportation service on the Orion Facilities. *Id.* P 5.

³⁹ Environmental Intervenors Rehearing Request at 9-10.

⁴⁰ *Delaware Riverkeeper*, 753 F.3d at 1314.

⁴¹ Environmental Intervenors Rehearing Request at 11.

geographic distance is part of the equation.⁴² In this case, the Orion, Susquehanna West, and Triad Expansion are indeed geographically distinct from one another. The nearest Susquehanna West and Triad Expansion facilities are 53.2 miles and 23.2 miles, respectively, from the Orion Project facilities.⁴³ Accordingly, we reaffirm that, because the Orion Project is unrelated to the Susquehanna West and Triad Expansion Projects, they are not connected actions.⁴⁴

b. Cumulative Actions

21. Environmental Intervenors assert that the Susquehanna West, Triad Expansion, and Orion Projects are cumulative actions and must be considered in a single environmental analysis.⁴⁵ The Environmental Intervenors argue that the three projects have the potential to produce cumulatively significant impacts on air quality because all three are within the same air quality control region.⁴⁶

22. 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.”⁴⁷ 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

⁴² *E.G., Jackson Cty., N. Carolina v. FERC*, 589 F.3d 1284, 1291 (D.C. Cir. 2009) (rejecting a finding of segmentation where the hydroelectric projects were “geographically distinct”).

⁴³ EA at B-12, table 5.

⁴⁴ *See* Susquehanna West Order, 156 FERC ¶ 61,156 at P 54; Triad Expansion Order, 157 FERC ¶ 61,254 at PP 72-77; February 2017 Order, 158 FERC ¶ 61,110 at PP 74-84.

⁴⁵ Environmental Intervenors Rehearing Request at 13-15.

⁴⁶ Environmental Intervenors Rehearing Request at 14 (“All three projects, located in Tioga, Bradford, Susquehanna, Wayne, and Pike Counties, Pennsylvania, are within the same air quality control region (“AQCR”).”). Both Wayne and Pike Counties are in the Northeast Pennsylvania – Upper Delaware Valley Interstate air quality control region. EA at 61.

⁴⁷ 40 C.F.R. §1508.25(a)(2).

actions taking place over a period of time.”⁴⁸ As the Ninth Circuit explained in a case cited by Environmental Intervenors,⁴⁹ the question of whether multiple actions “constitute cumulative actions that must be analyzed together is” circular in nature and depends on whether the projects will have “cumulatively significant impacts.”⁵⁰

23. In this case, the Susquehanna West, Triad Expansion, and Orion Projects are not “cumulative actions” because they do not produce cumulatively significant impacts.⁵¹ As discussed in detail below,⁵² the Orion Project EA considered both the Susquehanna West and Triad Expansion Projects in its investigation of potential cumulative impacts and adequately explained why those projects would not result in cumulative impacts. The Commission’s environmental analysis determined that the Orion Project’s cumulative impacts would be localized and not expected to be felt beyond the immediate vicinity of the project.⁵³ Indeed, the Commission found that the Orion Project impacts are almost all contained within or adjacent to the construction work areas.⁵⁴ Further, the Commission’s environmental analysis found that there is no geographic overlap of impacts from the

⁴⁸ 40 C.F.R. § 1508.7.

⁴⁹ Environmental Intervenors Rehearing Request at 14 (citing *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993-97 (9th Cir. 2004) (finding cumulative impacts analysis of a proposed timber sale insufficient where it failed to fully discuss the incremental impacts of successive timber sales)).

⁵⁰ *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 999 (holding that whether the federal government’s four proposed timber sales which were originally conceived as a single project but ultimately divided into four separate, but immediately adjacent projects, were “cumulative actions” that must be discussed in a single NEPA document an “open issue”).

⁵¹ February 2017 Order, 158 FERC ¶ 61,110 at P 90. *See* EA at 77 (finding that the Triad Expansion and Susquehanna West Projects are “not within the region of influence for cumulative impacts” and therefore “would have minimal to no impact on resources in the vicinity of the Orion Project and would not contribute to cumulative impacts for the Orion Project”).

⁵² *See infra* PP 31-37.

⁵³ February 2017 Order, 158 FERC ¶ 61,110 at P 90 (“The project’s impacts on resources would be minimal, temporary, and contained within or adjacent to the temporary construction right-of-way or additional temporary workspaces.”).

⁵⁴ February 2017 Order, 158 FERC ¶ 61,110 at P 90.

Susquehanna West, Triad Expansion,⁵⁵ and Orion Projects as the Orion Project facilities are 53.2 miles and 23.2 miles from the Susquehanna West and Triad Expansion Project facilities, respectively.⁵⁶

24. The fact that three projects coexist in the same air quality district does not necessarily mean that those projects will have cumulative effects. The EA's use of a geographic scope was reasonably based on the extent of effects. Nonetheless, the Orion and the Triad Expansion Projects would have de minimis new emissions within the air quality control region, as both projects only entail construction of new pipeline and ancillary facilities.⁵⁷ As such, both Orion and Triad Expansion will generate only a minor amount of new fugitive emissions related to construction and are not considered to have operational air quality impacts.⁵⁸

25. Thus, we affirm our prior determination that the Susquehanna West and Triad Expansion Projects are not cumulative actions.

c. Similar Actions

26. 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."⁵⁹ 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

⁵⁵ EA at 77.

⁵⁶ EA at B-12.

⁵⁷ See Triad Expansion EA at 47 (no new facilities containing stationary emission sources, no new emission generation units, and no existing emission generating units would be modified by project); see also EA at 64 (same). Conversely, a compressor facility is a source of air emissions.

⁵⁸ EA at 73; Triad Expansion EA at 59 and 62.

⁵⁹ 40 C.F.R. § 1508.25(a)(3).

geography.”⁶⁰ Unlike connected and cumulative actions, analyzing similar actions together in a single environmental document is not mandatory.⁶¹

27. Environmental Intervenors assert the Commission failed to explain why the Susquehanna West and Triad Expansion Projects are not similar actions despite their similar timing.⁶² As the February 2017 Order found, the Orion Project facilities are 53.2 miles and 23.2 miles from the Susquehanna West and Triad Expansion Project facilities, respectively, and the Orion Project impacts are almost all contained within or adjacent to the construction work areas.⁶³ Collective review would needlessly delay review of these three projects while providing minimal meaningful analysis because the narrow geographic scope of impacts associated with the Orion Project all occurring within or adjacent to the construction work areas. Accordingly, the Commission continues to find that analyzing the projects in a single document is neither necessary nor the best way to evaluate them. It is important to remember, however, that all three projects are subject to rigorous environmental review. Commission staff issued environmental documents for each project, and each of these documents must independently pass scrutiny under NEPA and applicable CEQ regulations. We find that the EAs produced for these projects have met these regulations.

2. Radon

28. Environmental Intervenors assert the Commission erred in failing to consider the indirect effects to human health from elevated radon levels in natural gas that will be distributed to consumers after being transported over the Orion Project facilities, as compared to gas transported from the Louisiana-Texas Gulf Coast region.⁶⁴ We dismiss

⁶⁰ *Id.*

⁶¹ See *San Juan Citizens' Alliance v. Salazar*, CIV.A.00CV00379REBCB, 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.*, 387 F.3d at 999-1001 (emphasizing that agencies are only required to assess similar actions in a single NEPA document when the agency determines that is the best way to do so) and *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1306 (9th Cir. 2003).

⁶² Environmental Intervenors Rehearing Request at 15-16.

⁶³ February 2017 Order, 158 FERC ¶ 61,110 at P 90.

⁶⁴ Environmental Intervenors assert the natural gas from the Louisiana-Texas Gulf Coast region contains lower levels of radon than the gas that Environmental Intervenors presume will be flowing in the Orion Project facilities. They further claim that the longer
(continued ...)

this claim as the Commission's failure to address the potential impacts of radon is directly attributable to the Environmental Intervenors' failure to raise it.

29. On November 23, 2015, the Commission issued a Notice of Intent to Prepare an Environmental Assessment which commenced the scoping period for the project.⁶⁵ The Environmental Assessment was issued on August 23, 2016, and the comment period on the EA closed on September 22, 2016.⁶⁶ The Commission issued its decision in February 2017. At no point during that fifteen month period did any party raise any issue regarding the purported impacts of radon levels in natural gas. The Commission looks with disfavor on parties raising issues for the first time on rehearing that could have been raised earlier, particularly during NEPA scoping.⁶⁷ In light of Environmental

time required to transport natural gas from the Gulf results in a lower radon level by the time the gas is delivered to consumers. Environmental Intervenors Rehearing Request at 16-19.

⁶⁵ See EA at 4. See also *Supplemental Notice of Intent to Prepare an Environmental Assessment*, 80 Fed. Reg. 76,464 (2015) ("Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA.").

⁶⁶ Notice of Availability of the Environmental Assessment for the Proposed Orion Project, 81 Fed. Reg. 59,208 (2016) ("Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be.").

⁶⁷ See *Baltimore Gas & Electric 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."); *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 *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978)).

Intervenors' failure to raise the radon issue in a timely fashion, we dismiss their request for rehearing on this issue.⁶⁸

30. Alternatively, even if the radon issue were properly before us, we would find that the argument lacks merit. The Commission has addressed similar radon-related issues in previous orders. In those orders, the Commission explained that studies demonstrate that radon exposure from Marcellus sourced gas will be below average indoor and outdoor radon levels.⁶⁹ Accordingly, we find the EA was not deficient with respect to radon.

3. Cumulative Impacts

31. Environmental Intervenors assert the Commission failed to take a hard look at the cumulative impacts of the Orion Project along with other past, present, and reasonably

⁶⁸ Cf. *Northwest 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.”)

⁶⁹ *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 102 (2015), *reh’g denied* 154 FERC ¶ 61,048 (2016) (“Studies have demonstrated that levels of radon in interstate pipelines carrying gas from the Marcellus shale will be below average indoor and outdoor radon levels.”). See also *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,043, at PP 48-56 (2012) (“our review incorporated representative available and adequate quantitative and qualitative data ... and [the Commission] accordingly affirm[s] our finding that the project’s potential transportation of Marcellus-sourced gas will not pose a health hazard to end users”); *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 122 (2016) (finding that “the risk of radon exposure and its progeny resulting from” a natural gas infrastructure project “will not be significant”); *Transcon. Gas Pipe Line Co., LLC*, 155 FERC ¶ 61,016, at P 131 (2016) (“These studies and literature demonstrate that radon concentrations in Pennsylvania Marcellus Shale sourced gas would remain below the [U.S. Environmental Protection Agency] action level and the Indoor Radon Abatement Act long-term goal. We continue to find that the risk of exposure to radon in natural gas is not significant.”); *Constitution Pipeline Co., LLC*, 154 FERC ¶ 61,046, at P 155 (2016) (“The final EIS cited several studies finding that indoor radon concentrations from use of natural gas in the home are unlikely to pose a radiological hazard to users.”); Algonquin Incremental market Project January 23, 2015 Final Environmental Impact Statement, Docket No. CP14-96-000, at 4-241 through 4-245 (Algonquin Incremental Market Project) (“Based on the analysis above, we find that the risk of exposure to radon is not significant.”).

foreseeable future actions such as the Susquehanna West and Triad Expansion Projects, and shale gas development projects.⁷⁰

32. CEQ defines cumulative impacts 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 regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”⁷¹ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

33. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”⁷² CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”⁷³ Further, a cumulative impact analysis need only include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”⁷⁴ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative effects analysis.⁷⁵ A meaningful cumulative impacts analysis must identify five things: “(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected *in that area* from the proposed project; (3) other actions-past, present, and proposed, and reasonably foreseeable-that have had or are expected to have impacts *in the same area*; (4) the impacts or expected impacts from these other actions; and (5) the

⁷⁰ Environmental Intervenors Rehearing Request at 16-22, 25-27.

⁷¹ 40 C.F.R. § 1508.7.

⁷² *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

⁷³ CEQ, Considering Cumulative Effects Under the National Environmental Policy Act at 8 (January 1997), https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf, (1997 CEQ Guidance).

⁷⁴ *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2nd Cir. 1975).

⁷⁵ See CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2-3 (June 24, 2005) (2005 CEQ Guidance).

overall impact that can be expected if the individual impacts are allowed to accumulate.”⁷⁶

a. Susquehanna West and Triad Expansion

34. Environmental Intervenors argue that the Commission should have included the Susquehanna West and Triad Expansion Projects in its cumulative impacts analysis.⁷⁷ We disagree.

35. The EA determined the Orion Project had a geographic scope for potential cumulative impacts of: (a) 0.25 mile from the pipeline or aboveground facilities for construction-related air quality impacts; and (b) 0.5 mile with respect to vegetation and wildlife.⁷⁸ The EA identified projects (including the Susquehanna West and Orion Projects) as candidates for inclusion in the cumulative effects analysis.⁷⁹ For the sixteen projects found to be within the Orion Project’s geographic scope, the EA identified the resource area affected, i.e. forested land or air quality, and the potential cumulative impacts. The Susquehanna West and Triad Expansion Projects were not

⁷⁶ *TOMAC v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) (emphasis added) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002)). See also *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁷⁷ Environmental Intervenors Rehearing Request at 19-22. In a separate section, Environmental Intervenors advance an overlapping argument that the geographic scopes for vegetation and wildlife were too narrow, thereby improperly excluding some effects related to natural gas production in addition to the effects from the Susquehanna West and Triad Expansion Projects. Environmental Intervenors Rehearing Request at 23-25. Because the determination of an appropriate geographic scope is the common, determinative issue in both of these sections, this part of the order addresses the vegetation and wildlife geographic scope arguments as it pertains to natural gas production as well as the Susquehanna West and Triad Expansion Projects.

⁷⁸ EA at 73 (Table B.8-1).

⁷⁹ EA at 74 (“Table 5 of appendix B identifies present and reasonably foreseeable projects or actions occurring within the regions of influence of forested lands, forested and scrub-shrub wetlands, waterbodies, traffic, and noise.”); EA at B-12, Table 5 (identifying Susquehanna West as 53.2 miles from Orion and Triad Expansion as 23.2 miles from Orion).

included in this analysis as it was determined that the impacts of those projects were not within the Orion Project's geographic scope.⁸⁰

36. Environmental Intervenors rely heavily on *Delaware Riverkeeper*,⁸¹ which involved multiple projects that formed "almost 200 miles of continuous pipeline."⁸² Here, by contrast, the Orion Project facilities are 53.2 miles from the Susquehanna West Project facilities and roughly 23.2 miles from the Triad Expansion Project facilities.⁸³

37. Environmental Intervenors read out of the cumulative impact analysis the necessity to establish a geographic scope for potential cumulative impacts, which is a fact-specific determination that turns on the nature and location of the proposed facilities and the potentially affected resources. The need to establish a geographic scope is implicit in the definition of cumulative impacts, which refers to an "incremental impact," i.e. one that is in addition to something else. Indeed, the court in *Delaware Riverkeeper* recognized the necessity of identifying "the area in which the effects of the proposed project will be felt."⁸⁴ Determination of the geographic scope is fact specific, varying as a consequence of differences in proposed facilities, location of the facilities, and resources potentially to be affected, yet the Environmental Intervenors offer no record-based support for the proposition that effects from the Orion Project will extend beyond the 0.25-mile for construction-related air quality and 0.5-mile for forested land regions of influence.

b. Minimal and Temporary Resource Impacts

38. Environmental Intervenors next argue the Commission erred by concluding that, because the Orion Project's impacts on land use, recreation, visual resources, and fisheries would be minimal and temporary, the project would not significantly contribute

⁸⁰ February 2017 Order, 158 FERC ¶ 61,110 at P 90 ("The EA identifies the Susquehanna West and Triad Expansion Projects as potential projects for inclusion in the cumulative impact analysis and finds that these two projects are located outside the geographic scope of analysis for the Orion Project.").

⁸¹ Environmental Intervenors Rehearing Request at 20-21.

⁸² *Delaware Riverkeeper*, 753 F.3d at 1307.

⁸³ EA at B-12, Table 5.

⁸⁴ 753 F.3d at 1319.

to cumulative impacts on those resources.⁸⁵ Environmental Intervenors argue that this approach is contrary to the plain language of the CEQ's regulations and guidance.⁸⁶

39. The CEQ's regulations define "cumulative impact" 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 regardless of what agency (Federal or non-Federal) or person undertakes such other actions."⁸⁷

40. Small scale projects with minimal, temporary impacts are unlikely to contribute significantly to cumulative impacts. In that regard, the CEQ's guidance provides that a cumulative impact analysis should be proportional to the magnitude of the project's environmental impacts.⁸⁸ "Proposed actions of limited scope typically do not require as comprehensive an assessment of cumulative impacts as proposed actions that have significant environmental impacts over a large area."⁸⁹ Here, given the minimal or temporary nature of impacts from the Orion Project upon the identified resources, the Commission reasonably focused its analysis on those resource groups upon which the project could potentially have a significant cumulative impact.⁹⁰

c. Shale Gas Development

41. Environmental Intervenors also argue the EA failed to account for the past, present, and reasonably foreseeable future shale gas development in the Orion Project cumulative impacts analysis.⁹¹ However, the record demonstrates that Commission staff considered two permitted natural gas wells in the EA's cumulative impacts analysis.⁹²

⁸⁵ Environmental Intervenors Rehearing Request at 22-23 ("Just because the action under review may have a "minor" or "temporary" impact does not mean that, in the aggregate, it will not be collectively "significant.").

⁸⁶ *Id.*

⁸⁷ 40 C.F.R. § 1508.7.

⁸⁸ *See* 2005 CEQ Guidance at 3 ("The scope of the cumulative impact analysis is related to the magnitude of the environmental impacts of the proposed action.").

⁸⁹ *Id.*

⁹⁰ *See* February 2017 Order, 158 FERC ¶ 61,110 at P 89.

⁹¹ Environmental Intervenors Rehearing Request at 25-27.

⁹² *See* EA at 79 and B-14, table 5.

Commission staff identified the distance between the two wells and the Orion Project facilities, and determined that these two wells were within the geographic scope of the Orion Project for cumulative impacts to wetlands because they were in the same watershed.⁹³

42. By contrast, the Commission concluded that future shale gas development upstream of the Orion Project is not reasonably foreseeable for purposes of the Orion Project's cumulative impacts analysis and thus was not included in the NEPA review.⁹⁴ A cumulative impacts analysis requires inclusion of impacts to the environment from "reasonably foreseeable future actions."⁹⁵ While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that where the Commission lacks meaningful information about potential future natural gas production within the geographic scope for potential cumulative impacts of a project affected resource, then production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.⁹⁶ Similarly, the Commission found that an analysis of cumulative impacts related to future shale gas development is outside of the Orion Project cumulative impacts scope because the exact location, scale, and timing of these facilities are unknown.⁹⁷ On rehearing, Environmental Intervenors have not raised any new contentions or a change in circumstances to persuade the Commission to reconsider its prior determination.

⁹³ February 2017 Order, 158 FERC ¶ 61,110 at P 99 (citing EA at 75). *See* EA at 82.

⁹⁴ February 2017 Order, 158 FERC ¶ 61,110 at P 99; EA at 7.

⁹⁵ 40 C.F.R. § 1508.7.

⁹⁶ February 2017 Order, 158 FERC ¶ 61,110 at P 87; *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 at P 120; *see also Sierra Club v. U.S. Department of Energy*, D.C. Cir. No. 15-1489, slip op. at 15-18 (August 15, 2017) (increased gas production not reasonably foreseeable when agency cannot predict the incremental quantity of natural gas that might be produced in response to an incremental increase in LNG exports); *Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 99-101 (2011) (holding that the extent and location of future Marcellus Shale wells and the associated development were not reasonably foreseeable with respect to a proposed 39-mile long pipeline located in Pennsylvania, in the heart of Marcellus Shale development), *on reh'g*, 138 FERC ¶ 61,104 (2012), *aff'd*, *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App'x 472, 474 (2d Cir. 2012).

⁹⁷ February 2017 Order, 158 FERC ¶ 61,110 at P 99.

43. Even if future shale gas development is reasonably foreseeable, granting rehearing would still be inappropriate because the February 2017 Order generally addressed land use, water consumption, and upstream GHG emissions associated with future shale gas development.⁹⁸ With the caveat that the conclusions were imprecise and subject to significant uncertainty,⁹⁹ the February 2017 Order relied on publicly-available studies sponsored by the U.S. Department of Energy, National Energy Technology Laboratory (NETL)¹⁰⁰ to quantify the number of acres of land that may be affected, the amount of water that may be consumed, and the amount of GHG emissions that may result on account of future shale gas development.¹⁰¹ Environmental Intervenors challenge the conclusions in the February 2017 Order by simply citing other assessments that estimate larger land impacts.¹⁰² We reject this challenge. The NETL studies cited in the February 2017 Order are credible.¹⁰³

4. Certificate Policy Statement

44. Environmental Intervenors assert the Commission improperly relied on the deficient EA to conclude that construction of the Orion Project will “avoid unnecessary disruptions of the environment” in violation of the Commission’s Certificate Policy Statement.¹⁰⁴ We disagree. Environmental Intervenors’ argument in this regard depends

⁹⁸ February 2017 Order, 158 FERC ¶ 61,110 at PP 100-103.

⁹⁹ *Id.* P 101 and P 103.

¹⁰⁰ *Id.* P 101 n.155 (citing Dep’t. of Energy and Nat’l Energy Tech. Laboratory, Life Cycle Analysis of Natural Gas Extraction and Power Generation, DOE/NETL-2015/1714, at 22, Table 3-6 (August 30, 2016) (2016 DOE/NETL Study)) and P 101 n.156 (citing Dep’t of Energy and Nat’l Energy Tech. Laboratory, Environmental Impacts of Unconventional Natural Gas Development and Production, DOE/NETL-2014/1651, (May 29, 2014) (2014 DOE/NETL Study)).

¹⁰¹ February 2017 Order, 158 FERC ¶ 61,110 at PP 101-103.

¹⁰² Environmental Intervenors Rehearing Request at 26-27.

¹⁰³ *See Sierra Club v. U.S. Department of Energy*, D.C. Cir. No. 15-1489, slip op. at 9-10, 21-22 (August 15, 2017) (citing a NETL study in support of Department of Energy’s estimate of potential GHG emissions from producing, transporting, and exporting LNG).

¹⁰⁴ Environmental Intervenors Rehearing Request at 27-28. *See Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, (*continued ...*)

upon their NEPA-related arguments, which we have addressed above.¹⁰⁵ In short, the EA thoroughly considered the environmental effects of the Orion Project and appropriately issued a finding of no significant impact.¹⁰⁶ Accordingly, we find that the process employed in this proceeding fully complies with the Certificate Policy Statement.

C. Tennessee Gas Pipeline Company, L.L.C.

45. On rehearing, Tennessee argues the Commission erred when it granted Sierra Club's untimely motion to intervene.

46. When it issued notice of Tennessee's application, the Commission designated November 16, 2015, as the deadline for interventions.¹⁰⁷ Sierra Club filed an out-of-time motion to intervene on July 14, 2016, citing no reason for the lateness of its intervention. Tennessee opposed Sierra Club's motion.¹⁰⁸ Citing Rule 214, which governs interventions,¹⁰⁹ the February 2017 Order granted Sierra Club's untimely request to intervene.¹¹⁰

47. Rule 214 provides that those seeking to intervene out-of-time must "show good cause why the time limitation should be waived."¹¹¹ Consideration of whether the movant "had good cause for failing to file the motion within the time prescribed" is one of five factors that the Commission "may" consider when granting a late intervention

90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹⁰⁵ See Environmental Intervenors Rehearing Request at 28 ("As explained above, FERC ignored the connected, cumulative and similar Triad Expansion and Susquehanna West Projects in its review of the Orion Project.").

¹⁰⁶ EA at 94.

¹⁰⁷ 80 Fed. Reg. 67,395 (2015).

¹⁰⁸ See Tennessee July 29, 2016 Answer at 2 ("First, Sierra Club's Motion fails to offer any excuse for its late intervention, much less show extraordinary circumstances or good cause why it should be allowed to intervene late.").

¹⁰⁹ 18 C.F.R. § 385.214(d) (setting forth factors the Commission may consider in acting on late interventions).

¹¹⁰ February 2017 Order, 158 FERC ¶ 61,110 at P 7.

¹¹¹ 18 C.F.R. § 385.214(b)(3).

request.¹¹² The Commission has granted late-filed motions to intervene in natural gas certificate proceedings when those motions were filed prior to the order on the merits, reasoning that those late interventions did not “unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.”¹¹³

48. In this case, we do not need to reach the merits of Tennessee’s request for rehearing. Because Tennessee conditionally received the authorizations it sought in the February 2017 Order and because Sierra Club did not seek rehearing of the February 2017 Order, Tennessee has not been harmed by granting Sierra Club’s late intervention. Thus, we dismiss Tennessee’s rehearing request for lack of aggrievement.¹¹⁴

49. Nonetheless, we take this opportunity to express our concern with the increasing degree to which participants in natural gas certificate proceedings have come to file late motions to intervene without adequately addressing the factors set forth in our regulations: whether there is cause for not filing the motion within the time prescribed;

¹¹² *Id.* § 385.214(d)(1).

¹¹³ *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,156, at P 11 (2016). *See also Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080, at P 42 (2016) (granting late filed interventions over objection of pipeline applicant noting the Commission’s liberal intervention policy under which the Commission generally allows late interventions at the early stages of such proceedings, but is more restrictive as a proceeding nears its conclusion); *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at n.8 (2017) (granting a motion to intervene filed 17 months after notice of application but six months before the certificate order issued); *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 9 (2016) (noting that the Commission’s practice in certificate proceedings generally is to grant motions to intervene filed prior to issuance of the Commission’s order on the merits); *Belmont Municipal Light Department et al. v. Central Maine Power Co.*, 156 FERC ¶ 61,198 P 34-36 (2016) (granting late intervention based on party’s “interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay” after noting objection to the late intervention request’s failure “to provide any cause for its inability to file its intervention within the prescribed time period”).

¹¹⁴ *See Triad Expansion Rehearing Order*, 161 FERC ¶ 61,046 at PP 4-5 (dismissing Tennessee’s request for rehearing of the Commission grant of late-filed interventions to Sierra Club and other environmental groups for failure to establish a concrete injury-in-fact).

the potential disruption caused by such late intervention; whether the movant's interest is not adequately represented by other parties; and any prejudice to existing parties.¹¹⁵

50. In light of the pattern noted here of failures to address our Regulations' requirements for late interventions,¹¹⁶ going forward we will be less lenient in the grant of late interventions. Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to "show good cause why the time limitation should be waived,"¹¹⁷ and should provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹⁸

51. We will look to our orders issued in hydroelectric proceedings for guidance when evaluating whether good cause exists for late intervention.¹¹⁹ In general, those orders require movants to explain why they should not be held to the Commission's expectation that entities should intervene "in a timely manner based on reasonably foreseeable issues arising from the applicant's filing and the Commission's notice of the proceeding."¹²⁰ In clarifying our policy in this manner, we note that we do not intend to reconsider any late-intervention that the Commission has already granted. Rather, as of the date of this order,

¹¹⁵ See 18 C.F.R. § 385.214(d)(1)(i)-(v). See also Tennessee July 29, 2016 Answer at 2.

¹¹⁶ See, e.g., *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 22 (2017) (granting multiple late-filed motions to intervene including one which was filed 20 months past the deadline over the protest of the pipeline applicant); *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at n.8 (2017) (experienced late movant intervened 17 months after deadline); *Transcontinental Gas Pipe Line Company, LLC*, 158 FERC ¶ 61,125, at P 13 and Appendix B (2017) (granting over 23 late filed motions to intervene, including Sierra Club's intervention which was filed over 15 months after deadline); and *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,156, at P 11 (2016) (experienced late movants intervened 7 and 16 months after deadline).

¹¹⁷ 18 C.F.R. § 385.214(b)(3).

¹¹⁸ *Id.* § 385.214(d).

¹¹⁹ See, e.g. *Alcoa Power Generating, Inc.*, 144 FERC ¶ 61,218, at P 13 n.9 (2013) (citing examples of orders denying late interventions where the movant failed to provide adequate justification to support its motion), *aff'd sub nom., New Energy Capital Partners v. FERC*, 671 Fed. Appx. 802 (D.C. Cir. 2016) (unpublished opinion).

¹²⁰ *Alcoa Power Generating*, 144 FERC ¶ 61,218 at P 13.

we will apply this revised practice in any new Natural Gas Act section 3 or section 7 proceeding and any pending section 3 or section 7 proceeding in which the deadline for filing timely interventions has not yet passed.

The Commission orders:

Delaware Riverkeeper's and Environmental Intervenors' rehearing requests are denied, and Tennessee's rehearing request is dismissed, in accordance with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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