



June 1, 2016

**VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

**Re: Comments Regarding Environmental Assessment for the Atlantic Bridge Project, Docket No. PF 15-12-000**

Dear Secretary Bose:

Riverkeeper, Inc. submits the following comments regarding the Environmental Assessment (EA) dated May 2016 for the proposed Atlantic Bridge Project, Docket No. PF 15-12-000. As Riverkeeper indicated in its scoping comments, FERC should require a full Environmental Impact Statement (EIS) rather than an EA due to the potentially significant impacts of the proposed Atlantic Bridge Project, especially when those impacts are considered along with the cumulative impacts of the Applicant's two other extension projects involving the same pipeline - the Algonquin Incremental Market ("AIM") Project and the Access Northeast Project.<sup>1</sup>

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<sup>1</sup> Please refer to Riverkeeper's prior comments on the AIM Project and the entire record of environmental issues raised by the public in FERC Docket Nos. PF 13-16 and CP 14-96. Riverkeeper's prior comments on the AIM Project are incorporated fully by reference herein and include: Riverkeeper Comments Regarding Scope of the Environmental Impact Statement for the Algonquin Incremental Market Project (Oct. 15, 2013), FERC Docket No. PF 13-16-000, Accession No. 20131015-5388; (Doc-less) Motion to Intervene of Riverkeeper Inc. (Apr. 8, 2014), FERC Docket No. CP 14-96-000, Accession No. 20140408-5156; Riverkeeper Comments on Abbreviated Application of Algonquin Gas Transmission, LLC for Certificate of Public Convenience and Necessity (Apr. 8, 2014), FERC Docket No. CP 14-96-000, Accession No. 20140408-5150; Riverkeeper Comments on Algonquin Incremental Market Project Draft Environmental Impact Statement (Sep. 29, 2014), FERC Docket No. CP 14-96-000, Accession No. 20140929-5231; Riverkeeper Supplemental Comments on Algonquin Incremental Market Project Draft Environmental Impact Statement (Oct. 1, 2014), FERC Docket No. CP-14-96-000, Accession No. 20141001-5340; Riverkeeper Letter re Call for an Independent Assessment of the Risk to Indian Point Energy Center Associated with the Proposed AIM Gas Transmission Pipeline (Jan. 16, 2015), FERC Docket No. CP-14-96-000, Accession No. 20150120-5189; Riverkeeper Letter re Final Environmental Impact Statement and Order Issuing Certificate and Approving Abandonment for the Algonquin Incremental Market Project

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. Riverkeeper is actively involved in public education, advocacy, and litigation surrounding the issue of shale gas extraction and related infrastructure, particularly because of the potential impacts on New York State's drinking water supplies.

For the reasons set forth below, Riverkeeper urges the Commission to properly review the environmental impacts of the Atlantic Bridge and related AIM and Access Northeast Projects as a whole. Further, given the Atlantic Bridge Project's numerous potentially significant environmental impacts, the Commission must prepare an EIS. The EIS must comprehensively evaluate the project's impacts to water quality, including stormwater runoff, disturbance of wetlands and buffer areas, stream crossing methods, degradation of downstream drinking water supply reservoirs, and discharge of hydrostatic test water.

### **I. Background: Interconnected Impacts of Numerous Pipeline Projects**

The Atlantic Bridge Project involves the replacement and expansion of approximately 18 miles of the existing Algonquin pipeline system in New York, Connecticut, and Massachusetts, as well as upgrade and/or construction of three compressor stations and construction involving a number of metering and regulating stations.<sup>2</sup> The Atlantic Bridge Project also entails modifications to facilitate south to north transportation on the Maritimes & Northeast pipeline system, to which the Algonquin pipeline system connects in Massachusetts.<sup>3</sup> Once in operation, the Atlantic Bridge Project is expected to provide up to 153,000 decatherms ("Dth")<sup>4</sup> per day of transportation service to delivery points along the Algonquin system and to the Maritimes & Northeast pipeline for delivery to points in New England and Canada.<sup>5</sup>

In New York State, the Atlantic Bridge Project will result in the take up and relay of approximately five miles of pipeline, replacing the existing 26 inch pipe with new 42

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(Mar. 30, 2015), FERC Docket No. CP 14-96-000, Accession No. 20150330-5292; Request for Rehearing of Riverkeeper, Inc. (Apr. 2, 2015), FERC Docket No. CP 14-96-001, Accession No. 20150402-5267.

<sup>2</sup> Scoping Notice at 4-5.

<sup>3</sup> Atlantic Bridge Draft Resource Report 1 at 1-1 – 1-2.

<sup>4</sup> One Dth is the energy equivalent of burning 1,000 cubic feet of natural gas.

<sup>5</sup> Scoping Notice at 4.

inch pipe, and the upgrade of one metering and regulating station.<sup>6</sup> The entire New York portion of the Atlantic Bridge Project is located in the New York City drinking water supply watershed and the Hudson River watershed. The majority of the New York portion of the project – approximately four miles – is located with the sensitive East of Hudson NYC watershed. The project site drains to the New Croton, Amawalk, and Muscoot Reservoirs, all of which are impaired waterbodies subject to Total Maximum Daily Loads for phosphorus and heightened protection criteria to limit further water quality impairment.<sup>7</sup>

The Atlantic Bridge Project is the second of three planned upgrades to the Algonquin pipeline system. The first is the AIM Project, which spans the states of New York, Connecticut, Rhode Island, and Massachusetts, and was recently approved by the Commission.<sup>8</sup> It involves the replacement and expansion of approximately 37 miles of the existing Algonquin pipeline system, the upgrade of multiple compressor stations, and the upgrade of existing and construction of new metering and regulating stations along the pipeline route.<sup>9</sup> Once in operation, the AIM Project is expected to provide 342,000 Dth per day of natural gas transportation service to city gate delivery points in Connecticut, Rhode Island, and Massachusetts.<sup>10</sup> The projected in service date for the AIM Project is November 2016.<sup>11</sup>

In New York State, the AIM Project involves the take up and relay of more than 15 miles of pipeline, replacing the existing 26 inch pipe with new 42 inch pipe, approximately two miles of new pipeline, and a new Hudson River crossing. The New York portion of the AIM Project also includes the upgrade of two compressor stations and two metering and regulating stations. The majority of the New York portion of the AIM Project is located within the Hudson River watershed, while approximately two miles of pipeline replacement and the expansion of the Southeast Compressor Station

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<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> New York State Department of Environmental Conservation, Phase II Phosphorous Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (2000).

<sup>8</sup> Federal Energy Regulatory Commission, Order Issuing Certificate and Approving Abandonment for the Algonquin Incremental Market Project, FERC Docket No. CP 14-96-000 (issued Mar. 3, 2015) (“AIM Project Order”).

<sup>9</sup> *Id.* ¶ 4-6.

<sup>10</sup> *Id.* ¶ 1.

<sup>11</sup> Federal Energy Regulatory Commission, Algonquin Incremental Market Project Final Environmental Impact Statement, FERC Docket No. CP 14-96-000 (issued Jan. 23, 2015) (“AIM Project FEIS”) at 2-37.

are located within the same portion of the NYC watershed as the Atlantic Bridge Project.

In fact, the Atlantic Bridge Project continues construction in Yorktown, New York at the precise location where the AIM Project ends.<sup>12</sup> All four miles of pipeline replacement proposed as part of the Atlantic Bridge Project in Westchester County, New York were originally proposed as part of the AIM Project. According to the Applicant's July 2013 Draft Environmental Report for the AIM Project, the initial project proposal involved take up and relay of 26 inch pipe with 42 inch pipe in approximately six miles of the NYC watershed in Cortlandt, Yorktown, and Somers, New York.<sup>13</sup> The AIM Project was later modified, and the portion of the project in the NYC watershed was shortened to an approximately two-mile segment from Cortlandt to Yorktown. An approximately four-mile segment in Yorktown and Somers was removed from the project.<sup>14</sup> That same four-mile segment – take up and relay of 26 inch pipe with 42 inch pipe from Yorktown to Somers – has now been re-proposed as part of the Atlantic Bridge Project.<sup>15</sup>

Algonquin, jointly with Maritimes & Northeast Pipeline, LLC, requested permission to begin the pre-filing review process for the Atlantic Bridge Project on January 30, 2015 – one week after the Commission issued the Final Environmental Impact Statement for the AIM Project – and was granted pre-filing approval on February 20, 2015.<sup>16</sup> The Applicant plans to submit its application for a Certificate of Public Convenience and Necessity for the Atlantic Bridge Project no later than September 2015.<sup>17</sup>

The third planned upgrade to the Algonquin pipeline system is the Access Northeast Project, which involves upgrades to the Algonquin and Maritimes & Northeast pipeline systems for the purposes of expanding natural gas transportation

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<sup>12</sup> Algonquin Gas Transmission, LLC, Algonquin Incremental Market Project Environmental Report, Resource Report 1 – General Project Description, FERC Docket No. CP 14-96-000 (Feb. 2014) (“AIM Project Resource Report 1”), Appendix 1A; Atlantic Bridge Draft Resource Report 1, Appendix IA.

<sup>13</sup> Algonquin Gas Transmission, LLC, Algonquin Incremental Market Project Environmental Report, Draft Resource Report 1, FERC Docket No. PF 13-16-000 (Jul. 2013), Appendix 1A.

<sup>14</sup> AIM Project Resource Report 1, Appendix 1A.

<sup>15</sup> Atlantic Bridge Draft Resource Report 1, Appendix 1A.

<sup>16</sup> Federal Energy Regulatory Commission, Approval of Pre-Filing Request: Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (issued Feb. 20, 2015).

<sup>17</sup> *Id.*

service to New England. The Access Northeast Project, in combination with the AIM and Atlantic Bridge Projects, is expected to provide an additional 1.5 billion cubic feet per day of capacity on the Algonquin pipeline system.<sup>18</sup> The Applicant plans to request pre-filing review beginning in late 2015, file an application for a Certificate of Public Convenience and Necessity in 2016, and place the Access Northeast Project in service by November 2018.<sup>19</sup> Specific details regarding project construction have not yet been made publicly available.

## **II. The Commission has Impermissibly Segmented Environmental Review of the Atlantic Bridge, AIM, and Access Northeast Projects.**

The Applicant continues to claims in its EA that “[t]he Atlantic Bridge Project is an unconnected single action that has independent utility irrespective of any other projects, including the AIM and ANE Projects.” That is inaccurate.

The Atlantic Bridge, AIM, and Access Northeast Projects are connected, cumulative, and similar actions that must be evaluated together.<sup>20</sup> Pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4231 *et seq.*, and its implementing regulations at 40 C.F.R. Parts 1500-150, an EIS must include:

- 1) connected actions, including those that are “interdependent parts of a larger action and depend on the larger action for their justification;”
- 2) cumulative actions, “which when viewed with other proposed actions have cumulatively significant impacts;” and
- 3) similar actions, “which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.”

40 C.F.R. § 1508.25(a). Accordingly, “[a]n 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

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<sup>18</sup> Spectra Energy, Access Northeast: A New England Energy Reliability Solution, available at: <http://www.spectraenergy.com/Operations/New-Projects-and-Our-Process/New-Projects-in-US/Access-Northeast> (“Spectra Website”).

<sup>19</sup> *Id.*; see also FAQs: About Access Northeast, available at: <http://accessnortheastenergy.com/faqs/faq-about-access-northeast> (“Access Northeast Project Website”).

<sup>20</sup> Riverkeeper raised this issue with the Commission as part of its comments on the AIM Project, and has requested rehearing of the AIM Project Order partially on grounds that the Commission erred by segmenting environmental review of the three projects. See Request for Rehearing of Riverkeeper, Inc. (Apr. 2, 2015), Docket No. CP 14-96-001, Accession No. 20150402-5267.

should be under consideration.” *Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Commission*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

In *Delaware Riverkeeper Network*, the Court held that the Commission violated NEPA when it segmented environmental review of four separate proposals by Tennessee Gas Pipeline Company to upgrade different sections of the Eastern Leg of its 300 Line. Finding that the four projects were “certainly ‘connected actions,’” the Court explained:

“There is a clear physical, functional, and temporal nexus between the projects. There are no offshoots to the Eastern Leg. The new pipeline is linear and physically interdependent; gas enters the system at one end, and passes through each of the new pipeline sections and improved compressor stations on its way to extraction points beyond the Eastern Leg. The upgrade projects were completed in the same general time frame, and FERC was aware of the interconnectedness of the projects ... [t]he end result is a new pipeline that functions as a unified whole thanks to the four interdependent upgrades.”

752 F.3d at 1308-1309. The Court went on to dismiss claims that there were logical termini between any of the new upgrade segments or that any possessed substantial independent utility apart from the others, finding that the projects were “inextricably intertwined” as part of the same linear pipeline. *Id.* at 1315-1317.

The AIM, Atlantic Bridge, and Access Northeast Projects meet the regulatory requirements for consideration and evaluation together in one EIS. See 40 C.F.R. § 1508.25(a). As to the first criterion, as in *Delaware Riverkeeper Network*, the AIM, Atlantic Bridge, and Access Northeast Projects are connected actions without independent utility, as all are interdependent parts of a larger action: the upgrade and expansion of the Algonquin pipeline system. The AIM and Atlantic Bridge Projects involve upgrade and expansion of different segments of the Algonquin pipeline system in three of the same states, with several sections of both projects involving the take up of existing 26 inch pipe and replacing it with larger 42 inch pipe. In addition, the four miles of the Atlantic Bridge Project proposed within the NYC watershed were originally proposed as part of the AIM Project, and later separated into different project proposals.

While construction details regarding the Access Northeast Project have not yet been made publicly available, information announced by Spectra Energy, the Applicant’s parent company, make clear that it is inextricably intertwined with the AIM and Atlantic Bridge Projects. According to Spectra, Access Northeast involves “expanding Spectra Energy’s Algonquin and Maritimes & Northeast systems.”<sup>21</sup>

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<sup>21</sup> Spectra Website.

Despite Spectra's claim that the three projects are independent, its description of the Access Northeast Project notes that the "AIM expansion project will begin to de-bottleneck the pipeline system by winter of 2016, helping to enhance reliability and reduce natural gas price volatility in New England."<sup>22</sup> Spectra also estimates total pipeline capacity expansion by adding all three projects together, noting that combined with the AIM and Atlantic Bridge Projects, the Access Northeast Project will increase capacity on the system 150% by 2018.<sup>23</sup>

The finished projects will function as a unified whole. The Algonquin pipeline is linear, running in a line from New Jersey through New York, Connecticut, Rhode Island, and Massachusetts before connecting with the Maritimes & Northeast pipeline system. Together, these projects upgrade and expand sections of the same linear pipeline system that will deliver gas to Northeast consumers and the Maritimes & Northeast pipeline system. All three projects are also closely connected in time, with each coming online exactly one year after the other from 2016 through 2018: first the AIM Project in November 2016, then the Atlantic Bridge Project in November 2017, and finally the Access Northeast Project in November 2018.

As to the second criterion, the AIM, Atlantic Bridge, and Access Northeast Projects are cumulative actions. The Commission improperly segmented the review of these projects, as each would affect many of the same resources in the same area, and the combined, incremental effect of each has the potential to be cumulatively significant. The Commission recognized that the AIM and Atlantic Bridge Projects are cumulative actions with "facilities within the same area of influence."<sup>24</sup> The Access Northeast Project is being constructed in the same area, during the same general timeframe, and will likely affect many of the same resources as the AIM and Atlantic Bridge Projects. It is also being undertaken by the same company, meaning that details regarding project plans and likely impacts should be readily available to the Commission upon request.

Finally, as to the third criterion, the AIM, Atlantic Bridge, and Access Northeast Projects are similar actions. The Atlantic Bridge and Access Northeast Projects are certainly reasonably foreseeable, given that both have been publicly announced and the Atlantic Bridge Project has begun FERC pre-filing review. Both projects also share many similarities with the AIM project with respect to project components, construction activities, and likely environmental impacts that provide a clear basis for evaluating their environmental consequences together.

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<sup>22</sup> Access Northeast Project Website.

<sup>23</sup> Spectra Website.

<sup>24</sup> AIM Project Order ¶ 118.

The Applicant has evaded review of the full scope and impacts of the AIM, Atlantic Bridge, and Access Northeast Projects. The three project segments, if not addressed by the Commission *as a whole*, will allow the Applicant to avoid the required NEPA review. Each of the three projects involves upgrade and expansion of the same pipeline system, and Spectra is touting the increased system capacity that will result from completion of all three projects. The Applicant benefits from the overall capacity upgrades from these three projects, but segmenting the environmental review obfuscates the environmental impacts and costs of the combined ‘complete’ project. The separated and segmented review denies the public its right to review the combined impacts, and denies the opportunity for meaningful participation and comment on the combined projects’ costs to the environment and communities. Thus, the purpose of NEPA is undermined and thwarted for the impacted communities.

### **III. The Commission Must Prepare an EIS for the Atlantic Bridge Project.**

#### *A. NEPA Environmental Review Options: Environmental Assessment or Environmental Impact Statement.*

NEPA requires federal agencies proposing “major Federal actions significantly affecting the quality of the human environment” to evaluate the proposed impacts in an EIS. 42 U.S.C. § 4332(C); *see also Winter v. Nat’l. Res. Def. Council, Inc.*, 555 U.S. 7, 15-16 (2008) (“NEPA requires federal agencies to the fullest extent possible to prepare an EIS for every major Federal action” significantly affecting the environment) (internal quotations omitted). The EIS serves as “evidence that an agency has considered the reasonably foreseeable environmental effects of a proposed major action” before deciding to commence the action. *City of New York v. Slater*, 145 F.3d 568, 570 (2d Cir. 1998) (quoting *Town of Orangetown v. Gorsuch*, 718 F.2d 29, 34 (2d Cir. 1983)).

An environmental assessment (“EA”) represents a less rigorous NEPA review. In this application, the Commission has decided to commence the environmental review by conducting an EA.<sup>25</sup> However, if the EA identifies significant, adverse environmental impacts, a more comprehensive and lengthier EIS must be completed. 40 C.F.R. § 1501.4; *see also Dep’t. of Transp. v. Pub. Citizen*, 541 U.S. at 757 (stating that the EA is a “concise public document” that “[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an [EIS]”) (quoting 40 C.F.R. § 1508.9(a)). Environmental impacts include:

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<sup>25</sup> See Scoping Notice.



“ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.”

40 C.F.R. § 1508.8.

Determinations of significance must include an analysis of both the context (*i.e.*, looking at society as a whole, including the affected region, affected interests, and the locality) and intensity (*i.e.*, the severity of the impact) of the potential impacts. 40 C.F.R. § 1508.27(a)-(b); *see also City of Seneca v. Cheney*, 12 F.3d 8, 12 (2d Cir. 1993) (stating that an EIS is required when a “contemplated action will affect the environment in a significant manner or to a significant extent, with significance defined in terms of both context and intensity”) (internal quotation marks omitted). Federal agencies must therefore determine significance by taking a “hard look” at each potential impact before commencing the proposed action. *Coal. for Responsible Growth and Res. Conservation v. U.S. F.E.R.C.*, 485 Fed.Appx. 472, 474 (2d Cir. 2012) (stating that a court’s role is to ensure that federal agencies determine significance through thorough consideration of the environmental consequences of a federal action); *Nat’l. Audubon Soc. v. Hoffman*, 132 F.3d 7, 14 (2d Cir. 1997) (requiring that courts must first consider whether an agency took a “hard look” at the possible effects of a proposed action). Courts have held that “[s]imple, conclusory statements of ‘no impact’ are not enough to fulfill an agency’s duty under NEPA’s EIS process.” *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1312 (D.C. Cir. 2014) (quoting *Found. on Eco. Trends v. Heckler*, 756 F.2d 143, 154 (D.C. Cir. 1985)). Agencies must always comply with “principles of reasoned decisionmaking, NEPA’s policy of public scrutiny, and [the CEQ’s] regulations” in order to avoid unfavorable judicial review of their NEPA submissions. *Id.*

*B. The Potentially Significant Environmental Impacts of the proposed Atlantic Bridge Project Require a Full Environmental Impact Statement.*

The Atlantic Bridge Project is likely to result in numerous potentially significant environmental impacts. Given the project’s location within the NYC watershed, impacts to water quality have the potential to further degrade drinking water supply reservoirs that serve millions of New Yorkers. Potentially significant environmental impacts from the Atlantic Bridge Project include, but are not limited to, the following.<sup>26</sup>

1. Increased Erosion and Pollutants from Stormwater Runoff

Unless strictly controlled, stormwater runoff during construction of the Atlantic

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<sup>26</sup> This is not to suggest that significant environmental impacts are limited to water quality. While Riverkeeper focuses here on the project’s potential water quality impacts, there are numerous likely impacts to other natural and community resources that have been raised by commenters.

Bridge Project – as well as long term changes in stormwater runoff quality, quantity, velocity, and drainage patterns post construction – will result in degradation of receiving waters. When construction activities remove vegetation and expose soils, forest canopies no longer intercept stormwater and root systems no longer hold soils in place. Construction site runoff can erode exposed soils and transport sediment to receiving waters, increasing turbidity.<sup>27</sup> In fact, without sound erosion controls in place, construction sites can discharge more than 1,000 tons of sediment per acre per year.<sup>28</sup> In contrast, forested lands contribute on average only one ton of sediment per acre per year, or 0.1% of the amount from construction site runoff.<sup>29</sup> Suspended sediment in aquatic systems degrades aquatic wildlife habitat, reduces species diversity and damages commercial and recreational fisheries.

In addition, nutrients and toxic materials, including pesticides, industrial wastes, and metals, can bind to silt and clay particles that stormwater runoff transports to waterbodies. Vegetation clearing during project construction and for right of way maintenance can cause nutrients, such as phosphorus, to be transported downstream during rain events rather than being assimilated by plants *in situ*. Long-term changes in hydrology and surface drainage patterns may also result from construction activities, particularly in areas, such as steep slopes, where changes in ground cover and topography can increase stormwater runoff, reduce the ability of natural systems to filter pollutants, and permanently alter drainage patterns.<sup>30</sup>

## 2. Wetland and Waterbody Degradation Due to Trench Construction

Construction of the Atlantic Bridge Project may also degrade wetlands and waterbodies due to trench excavation, blasting, and disturbance of 100-foot buffer areas. As an essential component of ecological systems, wetlands perform a number of important functions. Wetlands serve as water storage resources, absorbing and retaining flood and storm waters to reduce erosion and prevent downstream flooding. This storage capacity also allows for the recharge of surface waters, ground waters, and aquifers that may feed local drinking water supplies. Wetlands perform crucial filtration functions, trapping pollutants and nutrients such as nitrogen and phosphorus

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<sup>27</sup> U.S. Environmental Protection Agency, Construction Site Management Measure III. Construction Activities, available at: <http://water.epa.gov/polwaste/nps/czara/ch4-3a.cfm>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> New York State Department of Environmental Conservation, New York Standards and Specifications for Erosion and Sediment Controls (Aug. 2005) at 1.3.

and assimilating them in wetland vegetation. In addition, wetlands are biologically productive resources with abundant vegetation and shallow waters that provide diverse habitats for fish and wildlife species to flourish.<sup>31</sup>

The Applicant seeks to cross numerous wetlands by using construction methods that involve direct wetland disturbance: in most cases by digging a trench through a wetland, removing old pipe, enlarging the trench, installing new, larger pipe, and backfilling the hole.<sup>32</sup> Such construction can result in loss of wetland vegetation and biota and can hinder critical wetland function including filtration, storage, and recharge. Any blasting in wetlands is likely to exacerbate these impacts.

Construction and vegetation clearing within 100-foot wetland buffers can also impede wetland functions. Wetland buffers are important transitional areas that intercept stormwater from upland habitat before it reaches wetlands or other aquatic habitat. Other water quality benefits of buffer zones include reducing thermal impacts (shade), nutrient uptake, providing infiltration, reducing erosion, and restoring and maintaining the chemical, physical, and biological integrity of water resources.<sup>33</sup>

The Atlantic Bridge Project may also significantly impact waterbodies during trench crossing. Installation of pipe using trench crossing methods involves digging a trench through streambeds, and can result in numerous temporary and permanent impacts. Trench crossing can result in large increases in downstream sedimentation. Construction can also lead to lateral bank erosion and changes in stream channel morphology and stability, which can destabilize slopes and ultimately widen the stream.<sup>34</sup> Any use of in water blasting will likely exacerbate these impacts, as will construction, clearing, and siting of temporary workspace within 100-foot waterbody buffer areas.

### 3. Degradation of Downstream Drinking Water Supply Reservoirs

Increases in stormwater runoff, erosion, and sedimentation from project construction risks further impairing downstream drinking water supply reservoirs in the NYC watershed. Increases in suspended sediment, as well as the toxic materials and pathogens that can bind to sediment particles, may impair the use of the New

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<sup>31</sup> U.S. Environmental Protection Agency, Functions and Values of Wetlands, available at: <http://water.epa.gov/type/wetlands/outreach/upload/functions-values.pdf>.

<sup>32</sup> Atlantic Bridge Draft Resource Report 1 at 1-25 – 1-27.

<sup>33</sup> U.S. Environmental Protection Agency, Aquatic Buffer Model Ordinance, available at: <http://water.epa.gov/polwaste/nps/moll.cfm>.

<sup>34</sup> U.S. Environmental Protection Agency, *Urbanization and Streams: Studies of Hydrologic Impacts*, available at: <http://water.epa.gov/polwaste/nps/urban/report.cfm>.

Croton, Amawalk, and Muscoot Reservoirs as sources of drinking water supplies. Suspended sediment also degrades aquatic wildlife and fish habitat, which could also impair the use of these reservoirs for fishing, fish and wildlife propagation and survival, and recreation.

Stormwater runoff may also increase phosphorous loading to the New Croton, Amawalk, and Muscoot Reservoirs, all three of which are already impaired due to excess phosphorous. Vegetation clearing during project construction and for right of way maintenance can cause nutrients, such as phosphorus, to be transported downstream during rain events rather than being assimilated by plants *in situ*. Increases in algae growth due to phosphorus pollution can clog drinking water intakes and filters and impair the use of the reservoirs as drinking water supplies. Growth of algae, weeds and slimes also degrades aquatic wildlife and fish habitat, which could also impair the use of the reservoirs for fishing, fish and wildlife propagation and survival, and recreation.

#### 4. Impacts upon Threatened or Endangered Species

As proved by the attached report of Hudsonia provided to the Applicant for the AIM extension project, there exists many sensitive and indeed endangered plant species in the pipeline corridor in the Croton Watershed. Though placed on notice as to these sensitive species, the Applicant has not sought to investigate. Specifically, Hudsonia identified several rare and endangered species including two locations harboring the endangered Narrow-leaved sedge (*Carex amphibola*; NYNHP rank S1), the rare Bush's sedge (*Carex bushii*; New York Natural Heritage Program rank S3), the rare New Jersey tea (*Ceanothus americanus*; regionally-rare) and the butterfly-weed (orange milkweed; *Asclepias tuberosa*, also regionally-rare).

Dr. Kiviat also discovered an unidentified dodder species relating that it "may be one of several rare dodder species that occur in the Hudson Valley. (Several native dodders of meadows or shrublands could occur here, including *Cuscuta campestris* [S1, State Endangered], *Cuscuta compacta* [S3], *Cuscuta pentagona* [S3], and *Cuscuta polygonorum* [S1, State Endangered] [NEWFS 2013, Weldy et al. 2014].)"

None of the above species are identified in the EA.

#### **IV. The Environmental Impact Statement Must Include a Comprehensive Evaluation of Water Quality Impacts.**

NEPA requires federal agencies to "take a 'hard look' at environmental consequences" and "provide for broad dissemination of relevant environmental information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal citations omitted). The public availability of information regarding the

environmental impacts of a proposed action is central to NEPA, which requires agencies to make “high quality” information available to “public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b) (emphases added). Accordingly, “public scrutiny [is] essential to implementing NEPA.” *Id.* In situations where “data is not available during the EIS process and is not available to the public for comment ... the EIS process cannot serve its larger informational role, and the public is deprived of their opportunity to play a role in the decision-making process.” *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011).

As an “environmental full disclosure law,” *Monroe Cnty. Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697 (2d Cir. 1972), NEPA “ensures that an agency will not act on incomplete information, at least in part, by ensuring that the public will be able to analyze and comment on an action’s environmental implications.” *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng’rs*, 674 F. Supp. 2d 783, 792 (S.D. W. Va. 2009) (internal quotation marks and citations omitted).

In order to comply with NEPA and take the requisite “hard look” at potentially significant environmental impacts, the Commission must comprehensively evaluate the following water quality and environmental impacts and mitigation measures in an EIS.

#### *A. Stormwater Runoff*

The EIS must include a comprehensive evaluation of potential stormwater impacts from the Proposed Project and those impacts should be addressed in a discrete section of the EIS that also evaluates impacts of erosion, runoff, and sedimentation of wetlands and surface waters in the NYC watershed. The evaluation of stormwater impacts must include a Stormwater Pollution Prevention Plan (“SWPPP”), prepared in accordance with New York State Department of Environmental Conservation requirements.<sup>35</sup> The Applicant should be required to submit a SWPPP as early in the environmental review process as possible to allow for thorough review and comment. A SWPPP is an important tool for mitigating any adverse impacts from stormwater runoff, and is necessary to fully understand the project’s potential for significant impacts on water resources. The EIS should also include a description of how construction will be phased to coordinate with control measures contained in the SWPPP.<sup>36</sup>

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<sup>35</sup> New York State Department of Environmental Conservation, SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-0-15-002 (issued Jan. 29, 2015) at 18-23, available at: [http://www.dec.ny.gov/docs/water\\_pdf/gp015001.pdf](http://www.dec.ny.gov/docs/water_pdf/gp015001.pdf).

<sup>36</sup> Absent special authorization and compliance with additional conditions, construction activities must be phased to avoid disturbance of greater than 5 acres of soil at any one time. *Id.* at 15.

The EIS must also include a detailed site-specific Erosion and Sediment Control Plan (“ES&C Plan”) to accommodate the variability in physical site features. Differences in topography, drainage patterns, soil types, saturation, and vegetation from site to site will require flexibility in the E&SC Plan to ensure that erosion and sediment do not contaminate surface water resources via stormwater runoff during and after site disturbance. A generic E&SC Plan is inappropriate for universal application to wetlands and riparian sites having inconsistent and often diverse physical characteristics.

*B. Impacts to Wetlands and 100-Foot Buffers*

As part of its consideration of impacts to water resources, the EIS must contain a comprehensive evaluation of likely impacts to wetlands and associated 100-foot buffer areas, including exhaustive delineation of all federal, state, and locally regulated wetlands and buffers, a complete analysis of wetland functions, and an evaluation of trenchless crossing methods for each wetland crossing proposed.

The EIS must contain a complete delineation of all wetlands and 100-foot buffer areas potentially impacted by the project. Field delineation is required to identify and evaluate the likely impacts to wetlands and buffer areas, and must identify wetlands and buffer areas regulated at the federal and state level, as well as locally-regulated wetlands and buffer areas. In New York, particularly within the NYC watershed, many municipalities have local wetland ordinances that provide for protection of wetlands and buffer areas. Delineation of locally-regulated wetlands and buffer areas and plans for compliance with these local ordinances should be included in the EIS, along with a quantification of wetland buffer disturbance.

In addition to delineating all wetlands and buffer areas likely to be impacted, the EIS should include a detailed analysis of wetland functions and mitigation plans for each potentially impacted wetland and/or buffer area. The analysis of wetland functions should include studies evaluating the hydrology, vegetation, and soils present, along with any fish and/or wildlife supported. The EIS should also include a comprehensive wetland mitigation plan.

Finally, the EIS must include an evaluation of trenchless crossing methods for each wetland crossing contemplated by the applicant. This evaluation should include information regarding alternate routes that might avoid the specific wetland crossing, the feasibility of using trenchless methods, and the environmental impacts likely to result from the use of trenchless versus trench crossing methods for each specific crossing proposed. In areas where the use of trenchless crossing methods may require the creation of additional temporary workspace outside of an existing right of way, the EIS should include a discussion of the impacts likely to result from any clearing or other disturbance outside the right of way, balanced against the likely impacts of using trench

crossing methods. Trenchless crossing should be utilized under the buffer area as well as within the wetland itself, and all workspace should remain outside the 100-foot wetland buffer area.

#### *C. Evaluation of Trenchless Crossing Methods for All Proposed Stream Crossings*

The utilization of trenchless crossing methods should be thoroughly investigated for each proposed waterbody crossing, and the likely environmental impacts of each proposed waterbody crossing must be comprehensively evaluated. Prior to construction, surface water testing should also be conducted to obtain baseline data for monitoring environmental impacts.

#### *D. Impacts to Downstream Drinking Water Supply Reservoirs*

In evaluating impacts to water resources, the EIS must specifically discuss likely impacts and mitigation within the NYC watershed and potential for degradation of the New Croton, Amawalk, and Muscoot Reservoirs. This analysis should detail all streams, wetlands, and waterbodies within the NYC watershed likely to be impacted by the Atlantic Bridge Project and the Applicant's detailed mitigation plans. Issues involving increases in stormwater runoff and disturbance to wetlands and buffer areas, discussed above, should be specifically evaluated for their potential to further degrade impaired East of Hudson drinking water supply reservoirs.

#### *E. Hydrostatic Test Water Discharges*

The EIS must include a detailed evaluation of the amount of water to be used, methods and rates of withdrawal, planned use of any additives, and specific withdrawal and discharge locations for all water to be used for hydrostatic testing of the pipeline prior to placement in service. Depending on project specifics, the amount of water used for hydrostatic testing, a method of verifying the structural integrity of constructed pipeline segments using pressurized water,<sup>37</sup> can be in the range of millions of gallons.

As early in the review process as possible, Algonquin must be required to provide specific, detailed information regarding all water to be used for hydrostatic testing. This includes the amount of water to be used, along with methods and rates of withdrawal. If water is withdrawn from surface waters, the EIS must evaluate likely

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<sup>37</sup> Interstate Natural Gas Association of America, Hydrostatic Testing, available at: <http://www.ingaa.org/cms/82.aspx>.

impacts to fish and other organisms. If water is drawn from municipal sources, the EIS must assess potential adverse impacts on local supplies.

The EIS analysis must identify the sources for the water withdrawals and location(s) of its eventual discharge. Simply listing a waterbody or general area is not sufficient, as different waterbody sections may be more or less sensitive than others, or may support ecosystems or uses that are incompatible with large-scale water withdrawals. The identification of specific discharge locations is also critical, particularly if testing water is to be discharged into surface waters from which it was not withdrawn, and/or has been contaminated with harmful additives.

Finally, the Applicant does not discuss whether hydrostatic test water will be treated with any chemical additives, only that this water is “normally” obtained from water sources crossed by the pipeline and “discharged within suitable vegetated upland areas.”<sup>38</sup> This cursory statement leaves open the possibility that the Applicant will choose to use chemical additives, which is unacceptable within sensitive resources such as the NYC watershed. A prohibition on the use of chemicals during hydrostatic testing – which risks contaminating waterbodies and watersheds when the test water is disposed of – should be included in the EIS, as well as a condition of project approval.

#### *F. Flora and Fauna*

In examining Algonquin’s prior filings by its consultant TRC, Dr. Kiviat notes “[a]lthough common and a few rare plants are referenced in TRC (2014b), it is unclear how comprehensive a flora survey or rare plants survey was conducted by the Applicant’s consultants in Westchester County.” The same holds true for the EA.

Thus, Dr. Kiviat had recommended:

A thorough survey of vascular flora (higher plants) should be conducted throughout the ROW and all adjacent areas that may be disturbed by siltation or other impacts. This work should be conducted by experienced, independent botanists. The purpose is to identify and record the locations of all the flora so that construction and restoration can be managed successfully with minimal impact on native plant populations and minimal facilitation of the spread of nonnative plants.

Regarding rare animals, Kiviat stated “[t]he existing ROW contains potential or actual habitat for certain rare animals of conservation concern. He identifies the small-footed bat, Northern metalmark “very rare” butterfly as well as the bog turtle.

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<sup>38</sup> Atlantic Bridge Draft Resource Report 1 at 1-27.



However, the Applicant has not met any of those recommendations even though it intends to disturb these very same resources in extending the AIM project another 4 miles into the Croton Watershed. The Applicant should prepare a full EIS in order to adequately identify endangered and threatened flora and fauna and develop appropriate mitigation strategies.

**V. The FERC review should be supplemented by the legal requirements of the New York State Environmental Quality Review Act.**

The project's environmental review process must be held to the strictest standards of New York's environmental laws and regulations. Among these requirements is that the environmental review meet the requirements of both the federal National Environmental Protection Act and the New York State Environmental Quality Review Act. These dual review requirements would not only ensure a thorough and robust review of environmental impacts, but would require the significant and important requirement to minimize and to mitigate the impacts as required by New York State Law.

The environmental review process is a well-established requirement of both federal and state law. In this case, the number of potentially significant adverse impacts requires a full environmental impact statement under both federal and state law. The FERC regulatory process for the pipeline requires the full gamut of public comment and hearings, an environmental assessment, and an environmental impact statement. The review processes relate to and are in addition to the environmental and regulatory requirements of federal law and state law regarding air, land, and water releases, and general pipeline safety requirements.

Westchester and Putnam Counties, however, include many assets of statewide or regional significance that must be fully considered in the environmental impact statement process. The importance of complying with SEQRA and "forcing action" "to avoid, minimize and incorporate mitigative measures are clearly illustrated in the examples cited herein in Westchester and Putnam Counties.

SEQRA requires government agencies to take a "hard look" "at the environmental impacts before undertaking any action on projects like the proposed pipeline expansion and maintenance. ECL Article 8. The law and regulations broadly define "environment" for the purposes of the review of the project. Environment means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

6 NYCRR §617.2 (l). The Environmental Impact Statement is the mechanism of the environmental review and it is required to “systematically consider significant adverse environmental impacts.” 6 NYCRR §617.2(n). The purpose is to facilitate “the weighing of social, economic and environmental factors early in the planning and decisionmaking process.” *Id.* The Draft EIS must “assemble relevant and material facts upon which an agency’s decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives.” 6 NYCRR §617.9(b)(1). An EIS is required to be understandable and accessible by members of the public and must address “those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process.” 6 NYCRR §617.9(b)(2).

The reviewing or lead agency is required, as a matter of law, to respond to and address substantive comments made by members of the public. 6 NYCRR §617.9(8). An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. 6 NYCRR §617.2(n). The legal responsibilities of the reviewing agency for the EIS are procedural and substantive, with state law making clear that the lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it. 6 NYCRR §617.9(8). At the end of the EIS process, the lead agency is required to review all documents submitted by the Applicant for the project.

SEQRA requires that the substantive issues raised in the public comments submitted by members of the public be reviewed, and requires detailed findings of the reviewing agency. State law requires specified findings be made by the lead agency which include:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
- (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- (3) provide a rationale for the agency's decision;
- (4) certify that the requirements of this Part have been met;
- (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

6 NYCRR §617.11(d). The Final EIS, and the findings made by the lead agency, become the basis for agency decision regarding environmental impacts. The minimization and mitigation requirements exceed NEPA's procedural requirements

and should be applied to the environmental impacts occurring in New York. These “action forcing” SEQRA finding requirements can result in important and necessary protections and conditions that go beyond existing environmental law and regulation to address and mitigate potentially significant adverse impacts. There is precedent for environmental review that complies with the requirements of both NEPA and SEQRA. The review of the previous Tappan Zee Bridge proposal and the expanded transportation corridor project (Port Jervis, New York thru Port Chester, New York) was conducted pursuant to federal Transportation authorization and included a NEPA process of review. Although involving many state agencies, including Transportation and Environmental Conservation, and the Thruway Authority, and federal Department of Transportation, the agencies agreed that the review would be subject to the requirements of both NEPA and SEQRA. Thus, there multiple agencies and jurisdictions can and have conducted joint environmental review of significant projects far more involved and complex than the Access Northeast Pipeline expansion and modification.

#### **VI. FERC must require relocation of pipeline facilities located nearby population centers and community assets.**

There must be no maintenance facilities located near schools, homes, parkland, or businesses to eliminate the possibility of exposure to any contaminants or chemicals of concern of any kind during routine operation or maintenance of the pipeline. Any such currently existing facilities near these locations must be assessed, and if possible, be moved to different locations along the right-of-way.

As the growing body of scientific knowledge demonstrates, there are a number of environmental concerns with natural gas extracted through the hydro-fracking process that is moving through the pipeline. These concerns present a clear and convincing case that any maintenance or operation structures or facilities be moved from areas where human interaction is possible or likely. For instance, the natural gas itself is known to contains radon, which is an odorless, tasteless, and colorless gas formed by the radioactive decay of Radium, Uranium and Thorium. The decaying process produces Radon and Lead which are a probable carcinogen, and Polonium, a radioactive carcinogen. These possible releases into the environment of contaminants that are known to attach to dust particles must also be an area of focus for the NEPA review.

There is no safe level of exposure to radon. Potential exposure to radioactive

contaminants to workers, and to people in the vicinity via air- borne exposure near PIG staging areas.

There are exposure pathways particularly with facility construction, maintenance, or operation near populated areas. Children, ballplayers, and hikers or unsuspecting visitors using these facilities must not become an exposure pathway. An assessment of all right-of-way facilities and assets must be conducted to identify where all possible exposure points currently exist and to identify which such facilities can be moved and where they should be relocated to avoid potential human exposure.

#### **VI. Independent environmental compliance monitors are needed for all pipeline work.**

There must be an independent environmental monitor for all upgrades, expansion, or replacement activities during any work on or along the Access Northeast Pipeline right-of-way.

The independent monitor must be truly independent with funding provided to a third party for the monitor, and the monitor must be legally obligated to report, daily, all violations to the relevant regulatory agency, whether municipal or New York State Department of Environmental Conservation or the federal Environmental Protection Agency.

The maintenance, upgrading, and operation of the pipeline creates opportunities for leaks of chemicals and pollutants into the air, water, and onto the land. As the record with respect to the transport of hydro-fracked gas demonstrates, there are chemicals and radioactive substances that are part of the gas as it moves through the pipeline and there are potential exposure risks during maintenance of the pipeline at the various PIG facility locations. It is not clear what worker safety or public health and safety protections will be required and put in place and any possible exposure point. Algonquin does not have a record of compliance with environmental laws and regulation and has documented environmental violations. In fact, in 2008, the company paid significant environmental penalties for violations of the Clean Water Act during construction activities in Rockland County New York for the Mahwah River relocation and crossing operations. Notably, the violations impacted the Mahwah River, a major tributary to the Ramapo River and a source of drinking water supply to millions of people. The violations and the penalty are found in New York State Department of

Environmental Conservation Order on Consent Case, In the Matter of Violation of Article 17 of the New York State Environmental Conservation Law by: Algonquin Gas Transmission, LLC, NO. R3-20081010-66.

The significance of these violations - the discharges to the waters of the United States - because of failure to comply with law during maintenance and construction activities is self-evident.

Since the Pipeline's right-of-way is in the New York City watershed, passes through or near lakes, streams and wetlands enroute, the possibility of violations and their impacts are numerous. Thus, environmental monitoring is necessary. The need to preemptively address and/ or prevent releases of chemicals or substances that may negatively impact the environment, local populations, and construction workers, requires an independent third party monitor to supplement and enhance enforcement activities of local, state, and federal agencies. This precaution would also assist an emergency situation. The releases or discharges of contamination that could result into the air, into the water, and onto the land warrant this additional daily oversight that will be required to report and an all violations as they occur.

## **VII. Public Health Impacts**

Based upon multiple human pathways of exposure possibly during maintenance, operation, or possible releases from the pipeline, a comprehensive Health Impact Assessment, as outlined by the Centers for Disease Control and the National Academy of Sciences must become a part of the environmental impact statement review and record for this proposal. The Health Impact Assessment must cover cumulative shortterm and long-term as well as direct and indirect impacts of all:

- I. infrastructure components of the compressor stations emissions and blowdowns;
- II. metering and regulating stations emissions; and,
- III. pipeline leakage prior to construction, during construction, during normal operations and during blowdowns and accidental release events

The analysis must address all materials and contaminants in the pipeline, including radium precipitate and radon and its decay products, including lead and polonium.

## VII. Conclusion

There are a number of potentially significant environmental impacts that may result from the proposed Atlantic Bridge Project. The proposal is one part of a “whole” natural gas pipeline infrastructure system that also includes the integral AIM Project and the Access Northeast Project. These three projects do not function alone, but have nonetheless been presented by the Applicant as separate projects. Riverkeeper urges the Commission to follow the requirements and intent of the National Environmental Policy Act and evaluate the impacts of the entire pipeline system proposal consisting of the Atlantic Bridge, AIM, and Access Northeast Projects. Further, the Commission must take a hard look at the Atlantic Bridge Project’s potentially significant environmental impacts in an EIS that includes a comprehensive evaluation of the project’s water quality impacts.

Thank you for the opportunity to comment on these important issues.

Sincerely,



James Bacon

Attorney for Riverkeeper