

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits & Pollution Prevention

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August 25, 2016

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

RE: Docket No. CP15-115-000: New York State Department of Environmental Conservation Comments on the Environmental Assessment (EA) for the Proposed National Fuel Gas Northern Access 2016 Project ("Project")

Dear Secretary Bose,

The New York State Department of Environmental Conservation ("NYSDEC" or "Department") has reviewed the National Environmental Policy Act ("NEPA") Draft *Environmental Assessment* ("EA") issued for the referenced Project by the Federal Energy Regulatory Commission ("FERC") on July 27, 2016 and respectfully submits these comments in response to the Notice. These comments are, in part, intended to supplement the environmental reporting requirements found at 18 C.F.R. § 380.12.

In its letter dated November 21, 2014, the Department urged FERC to prepare an Environmental Impact Statement for the Project based on its scope and the potential for significant adverse environmental impacts. The Department reiterates this request given the potential significant impacts to water quality, including streams, wetlands, water quality dependent species and habitat. In the event that FERC decides to proceed with the EA, the EA must be supplemented to address the issues discussed in this letter, as well as the issues identified in the report filed by the United States Fish and Wildlife Service ("USFWS") on August 19, 2016 (copy attached).

In particular, the EA's does not sufficiently evaluate the Project's potential impact on water quality and related resources and what measures are necessary and appropriate to assure compliance with State water quality standards. Should the Department determine to issue a WQC for the Project, the Department will prescribe conditions necessary to avoid and minimize potential impacts and to adhere to water quality standards, including appropriate stream and wetland crossing methodologies, means to protect aquatic species and their habitat and wetlands, and other necessary measures to ensure compliance with State standards. In accordance with the Clean Water Act, 33 USC § 1341, these conditions will be included in the FERC license and it is important that the EA address these very same potential impacts.

Project Description

The Project is proposed by National Fuel Gas Supply Corporation and its subsidiary, Empire Pipeline, Inc. (collectively, "National Fuel" or "Project Sponsor"). As proposed, the Project would include new construction of approximately 97 miles of a 24-inch-diameter pipeline and associated pipeline



facilities, providing about 350,000 dekatherms per day (Dth/d) of natural gas from a receipt point in McKean County, Pennsylvania to an interconnection in Erie County, New York. The majority of the Project would be located in New York with approximately 74 miles cutting through Allegany, Cattaraugus, Erie, and Niagara Counties and will cross 180 streams, 7 ponds and 270 wetlands, including 34 wetlands that are part of 13 NYSDEC Regulated Freshwater Wetlands. The project more specifically includes:

- 97 miles of a new, 24-inch-diameter natural gas pipeline in McKean County, Pennsylvania and Allegany, Cattaraugus and Erie Counties, New York;
- 0.9 mile of 16-inch-diameter pipeline and 1.2 miles of 24 inch-diameter pipeline in Niagara County, New York;
- Interconnections and tie-ins in McKean, Allegany, Cattaraugus and Erie Counties;
- A new 22,000 horsepower compressor station in the Town of Pendleton, Niagara County;
- Addition of approximately 5,000 horsepower of compression at National Fuel Gas Supply's existing Porterville Compressor Station in the Town of Elma, Erie County;
- A new natural gas dehydration facility in the Town of Wheatfield, Niagara County;
- A metering, regulation and delivery station in Erie County;
- Mainline block valves in McKean, Allegany, Cattaraugus and Erie Counties; and
- Access roads and contractor/staging yards in McKean, Allegany, Cattaraugus and Erie Counties.

NYSDEC Review and Approvals

In accordance with Section 401 of the Clean Water Act, applicants seeking a federal license or permit for activities that may result in a discharge to navigable waters must obtain a Water Quality Certification¹ ("WQC") from NYSDEC indicating that the proposed activity will comply with State water quality standards. Federally-delegated or authorized permits, such as a Title V permit or a State Pollution Discharge Elimination System ("SPDES") Permits must also be approved and granted by NYSDEC. FERC typically directs applicants to obtain other state permits that are inextricably connected to the WQC, such as Article 15 (Stream Crossing) and Article 24 (Wetlands) permits. In addition, as further described below (Table A 8-1), a water NYSDEC water withdrawal permit would be required for the anticipated withdrawal of 3,336,313 gallons of water from Cattaraugus Creek.

National Fuel submitted a WQC application on March 3, 2016 and an Air State Facility permit application on March 10, 2016. Along with these permit applications, the Department also intends to rely upon the NEPA EA in making any permit determinations and currently the EA does not provide the necessary analysis for this purpose. Finally, to the extent that project impacts endangered species or their habitat, the Department recommends that National Fuel obtain an endangered species "take" or "incidental take" permit to address potential impacts to these species.

NYSDEC Environmental Assessment (EA) Comments

As discussed below, the Department has identified numerous deficiencies with the EA that must be addressed in order adequately assess the potential environmental impacts of the Project. In particular, the EA does not sufficiently evaluate the Project's potential impact on water quality and related resources and what measures or alternative routing may be necessary and appropriate to assure compliance with State water quality standards, including protected streams and State freshwater wetlands. Indeed, the applicant is still in the processing of completing its analysis of stream crossing methodologies for the Department. Stream crossings have the potential to impact high quality streams that support trout and other threatened and endangered species.

¹ The review and issuance of a Water Quality Certification will also include approvals pursuant to Environmental Conservation Law (ECL) Article 15, Protection of Waters and Article 24, Freshwater Wetlands.

SECTION A - 7.b – Special Pipeline Construction Procedures

This section states “*waterbodies...are typically crossed using conventional excavator type equipment and wet- or dry-crossing techniques, providing there is perceptible flow at the time of crossing*” and that “*wet-crossing (open-cut) method entails trenching directly through the waterbody*”.

The Department will not approve wet stream crossings as a part of the Section 401 WQC, and previously conveyed this to National Fuel Gas’ consultant in letters dated September 21, 2015 and August 4, 2016 (copies attached). Wet stream crossings do not comply with WQC standards and should not be included as viable options in the FERC application, EA or certification. High levels of sedimentation occur during this type of construction, which impact the best uses of the streams, including fish spawning habitat and mussel beds located downstream of the crossing.

This section further states that “*Some waterbodies, typically those that are either over 100 feet wide, contain protected species, or are associated with engineering constraints, may be crossed using the HDD method*” and “*National Fuel would return streambeds to their pre-construction contours to the extent possible*”. The width of a stream and the absence of a known threatened and endangered species are not sole criteria for the determination whether trenchless crossing should be evaluated and may be necessary.

In a discussion on stream trenching, on page 13f the EA states that after the pipe is lowered into “*the trench the trench would be backfilled with previously excavated materials and crowned to approximately 6 inches above its original elevation to compensate for subsequent settling*”.

The Department will not approve as a part of a WQC the placement of raised fill in a stream that is 6” higher than the stream bed. Such an action will wash away and result in a water quality violation.

On page 15, the first sentence in the Wetland Crossing section should be reworded to make it clear that *previously delineated* wetland boundaries will be marked in the field prior to construction. The current wording suggests that wetland boundaries may be *re-delineated*, which could lead to unidentified impacts and would not be acceptable to the Department.

Table A 8-1 – State and Federal Permits, Approvals and Consultations

As stated in the Department’s November 21, 2014 letter to FERC, temporary water withdrawals for the purposes of construction, dewatering, hydrostatic testing, or aquifer testing, where the volume withdrawn is less than an average of 100,000 gpd in any consecutive thirty-day (30) consecutive period (3 million gallons during a 30 day period) would be exempt from these requirements. However, if the quantity withdrawn is less than an average of 100,000 gpd, the evaluation must include procedures to ensure that water withdrawals do not compromise the required bypass flow (the minimum stream flow at any particular stream point necessary to protect fisheries resources). ECL 15-1501, 6 NYCRR 601.6.

Based on the information provided in Table B.b-2 of the EA, the Project will withdraw more than 3.36 million gallons from Cattaraugus Creek for hydrostatic testing, which will occur in a period of less than 30 days. The exemption from permitting does not apply. As a result, a NYSDEC water withdrawal permit will be required and table A.8-1 needs to be revised to reflect this approval.

In addition water withdrawals that do not meet the permitting threshold still must be analyzed in the EA, therefore the EA must evaluate the potential impacts that such water withdrawals could have on the habitat and species in these streams.

SECTION B 2.a – Impacts and Mitigation

The 6th bullet on page 39 references NYSDEC Region 8. This should reference NYSDEC Region 9.

SECTION B 2.b – Surface Water Impacts

Page 41 states that water with classifications A, B, and C may have additional standards of (T), (TS) which indicate that they may support trout populations, or may support trout spawning (NYSDEC, 2016c). Streams in New York State that have attained a higher use, most commonly expressed by an ability to support trout, are subject to the regulatory protection of a standard of (T) or (T/S). This follows the Clean Water Act requirement to adhere to anti-degradation policy which requires that a waterbody maintain its current water quality standard at all times, including during construction and operation of a Project.

Page 44 states that *“Sixty-nine waterbodies would be crossed by access roads using bridges or existing culverts”*. The Department will not authorize temporary stream crossings for access roads and the main pipeline path using culverts. Only free span temporary bridges that do not involve the use of any fill within waterbodies will be authorized as a part of the WQC.

Page 44 states that *“Long-term impacts associated with pipeline operations and maintenance would be relatively minor and limited to periodic clearing of the vegetation within the permanent right-of-way at waterbody crossings”*. The loss of a natural fully vegetated riparian buffer will negatively affect adjacent stream quality when less than 100' wide. The creation of a permanent ROW will create unmitigated long term impacts that negatively affect stream ecology.

SECTION B 2.b – Water Use for HDDs and Hydrostatic Testing

Fisheries of Special Concern and Essential Fish Habitat

Page 65 states that *“Hydrostatic testing could result in entrainment of fish larvae and temporarily reduced water flow causing stress to fish species”*. Hydrostatic testing requires specific plans regarding the volume and effect upon waterbodies withdrawn from. The impact of water withdrawals, flow volumes and what pass-by flow will be maintained need to be thoroughly discussed and evaluated. A Department issued Water Withdrawal permit will need to be issued. Once testing is complete, the water must be suitably disposed of. It should be sanitized or released in an area that will allow filtration before reentering waterbodies and must not cause erosion.

Page 64 also states that *“No long-term impacts are anticipated after construction due to restoration of stream bottoms and regrowth of stream bank vegetation”*. The Department notes that morphological changes to the stream bed may occur as a result of significant bed disturbance during construction and subsequent destabilization. Pipeline exposure is also a risk factor long term and during storm events if not buried deep enough. Should this occur, further impacts to the stream will occur during the repair of exposed sites. National Fuel is in the process of preparing a scour analysis, as a component of the WQC application demonstrating that exposure will not occur on a site specific basis. Further, the loss of riparian vegetation will cause long term impacts.

SECTION B 10.b Waterbodies and Wetlands

The EA should identify the need for a mitigation and planting plan for all cold water stream crossing locations to ensure that riparian vegetation necessary to maintain thermal stream conditions is maintained. The Department is evaluating the same in connection with its review of the WQC application.

SECTION B 2.b – Impacts and Mitigation

Page 42 of this section indicates that *“the highest levels of sediment would be generated by the open-cut crossing method, which National fuel plans to use for streams larger than 25 feet wide where dry crossing and HDD or conventional bore methods are not feasible”*. It is further stated that *“the wet open-cut method is proposed for one waterbody crossing at Buffalo Creek in Erie County”*. As noted above, the Department will not approve wet stream crossings as a part of our Section 401 WQC. Wet stream crossings do not assume to comply with WQC standards and should not be included as viable

options in the FERC application or the EA.

Page 43 states that FERC has reviewed National Fuel's *Inadvertent Return Contingency Plan for Horizontal Directional Drilling* and finds it acceptable. The Department believes that this statement is premature given the ongoing discussion of stream crossing methods between the Department and National Fuel.

Table B 2.b-1 Waterbodies Crossed by Horizontal Directional Drill ("HDD")

This table identifies six HDD crossings of five streams in New York State. Given that the Project will involve the crossing of approximately 260 waterbodies, six proposed HDD crossings represents a very small percentage. It is however obvious that with the exception of two of the locations, (Ischua Creek between mileposts 62.6 and 62.2 and Buffalo Creek between mileposts 96.8 and 96.5) that the proposed HDD crossings have been driven by the need to cross major highways, such as Interstate 86 and State Route 400, and not for the primary purpose of eliminating stream impacts.

Section B 2.c Wetland Resources

- The first paragraph on page 48 of the EA states that just three wetlands are associated with the EMP-03 route whereas there appear to be ten or more federal wetlands (one of which is also state-regulated, Wetland TE-6) associated with that route according to recent wetland delineation shapefiles. Further, Appendix E does not summarize wetland crossings for the EMP-03 line. This sentence should therefore be revised and the EA should analyze and potential impacts to these wetlands.
- The first two sentences of the last paragraph on page 48 address the proposed crossing of federal wetland 272a along the south side of Buffalo Creek. The conclusion that the wetland complex will be crossed by HDD is accurate based on the HDD info in Table B.2b-1.
- The remainder of the last paragraph on page 48 addresses wetland concerns associated with the Pendleton Compressor Station site. It is suggested that a separate paragraph be dedicated to this significant area of local concern. The word "mapped" should be removed from the last sentence of the paragraph since Department staff have field confirmed the Wetland TE-9 boundary at that site and found it to be considerably different than the mapped wetland boundary. Department staff concur that there will be no state wetland impacts or 100-foot adjacent area impacts at the proposed compressor station site.
- The Impacts and Mitigation sub-section lacks reference to landscape-level avoidance and minimization of wetland impacts achieved through National Fuel's route siting process (e.g., ROW location adjacent to existing ROW's, etc.). Department staff believe that is a significant shortfall in the EA which needs to be addressed before the project can be approved in a manner consistent with Corps of Engineers and NYSDEC permit issuance standards. It should be noted that the USFWS letter dated August 19, 2016 has expressed a similar concern.
- The last paragraph on page 49 refers to conversion of 5.2 acres of forested wetland and 1.3 acres of scrub-shrub wetland whereas all other references to those acreages (including Table B.2.c-1) are 5.3 and 1.5 acres, respectively. These figures need to be corrected.
- The last paragraph on page 49 should specifically state that the conversions of forested and scrub-shrub wetlands are considered permanent impacts that require compensatory mitigation.
- The last full sentence on page 50 states that NYSDEC determined there would be no wetland impacts associated with the two compressor stations and dehydration facility. The word

“wetlands” should be revised to read “NYSDEC freshwater wetlands”. As written, this statement is incorrect.

- The reference to “timber riprap” in the third bullet near the center of page 51 needs to be clarified. This is an inaccurate term and should say “timber mats”, unless it is referring to corduroy or some other form of brush matting, and if so, should be identified as such. The Department typically prefers the use of timber mats.
- The EA indicates that National Fuel plans to monitor affected wetlands for three years to assess re-vegetation success or failure (based on the parameters bulleted out starting near the bottom of page 51). Generally the Department requires a minimum of 5 years of monitoring especially pertaining to invasive species monitoring, where monitoring should include specific performance standards (versus the subjective wording of the last bullet). In addition, 10 years monitoring of tree plantings designed to compensate for conversion of forested wetlands and regulated 100-foot adjacent areas will be necessary. The invasive species monitoring is discussed in more detail under Section B.3.a.
- The third full paragraph on page 52 describes an approach for addressing agency concerns such as compensatory mitigation of permanent and certain temporary wetland impacts (i.e., conversion of forested and scrub-shrub wetlands). The paragraph concludes that mitigation type and location would be determined by the agencies. As noted in the August 19, 2016 USFWS letter, National Fuel needs to prepare a conceptual mitigation plan for agency and public review.
- The reference in the third full paragraph on page 52 to 6.6 acres should be changed to 6.8 acres (i.e., 5.3 acres of PFO and 1.5 acres of PSS).
- The fourth full paragraph on page 52 concludes that the project will not “represent a significant impact on wetland resources”, supported substantially by the assumption that mitigation measures yet to be defined will minimize and compensate for temporary and permanent wetland impacts. Absent the identification and discussion of the effectiveness of mitigation in this EA, such conclusions are premature. Again, the USFWS letter expressed similar concerns see the first full paragraph on page 3 of the letter).
- The last paragraph on page 52 describes ATW in or near wetlands without providing any details about the acreage of wetlands involved. This paragraph should be revised to provide such details (including any anticipated conversion of forested or shrub wetlands) and also to clearly state whether those impacts are factored into the overall wetland impact acreage. Mitigation will be required by the department for any permanent wetland conversion and such mitigation needs to be reflected in the EA.

Section B 3.a Exotic and Invasive Species

- The one paragraph summary of invasive species occurrence within the project area at the top of page 55 is clearly inadequate coverage of this significant ecological concern. The last paragraph on page 57 essentially acknowledged this fact and further recommends, prior to construction, that National Fuel develop a final invasive species plan in coordination with applicable agencies. See additional invasive species comments under Section B.3.c.
- The last sentence in this section states that invasive species in the project area are typically found at road crossings. The Department does not agree with this characterization as pre-construction surveys for invasive species have not yet been completed. This need to be addressed and corrected/revised.

Section B 3.b Sensitive Vegetation Communities

- All references to NYSDEC “sensitive vegetation communities” (and iterations thereof) should be replaced with the proper NYNHP term “significant natural communities”.
- The reference in the first sentence of this paragraph to three such communities needs to be changed to “three known” communities since others may very well exist in the project area but simply have yet to be recorded by NYNHP. National Fuel’s field surveys focused on presence/absence of the known communities in the general vicinity of the existing records, and did not appear to survey for such communities elsewhere.
- Similarly, the conclusion in the last sentence of this paragraph should state that the Project would not affect any “known” communities.
- It is possible that there could be additional “sensitive” communities (other than NYNHP communities) within the project area (e.g., forests on highly erodible soils) that have not been addressed in this section. This needs to be addressed.

Section B 3.c Vegetation Impacts and Mitigation

- The reference in the last paragraph on page 55 to the permanent conversion of 14.1 acres of vegetation to industrial use should specify that the impacted vegetation communities are primarily agricultural and open lands – no forest and little shrubland occurs within the proposed compressor station and dehydration facility sites.
- The first paragraph on page 56 notes that disturbed areas will be replanted with “seed mixes developed by a local agronomist”. The Department will likely require reseeding of freshwater wetlands (and possibly in federal wetlands as well) and regulated adjacent areas with native seed mixes as a part of the WQC approval, if granted.
- The second paragraph on page 57 refers to 33.3 acres of “interior habitat”, based on forest >300 feet from an existing edge. It is unclear how this threshold distance was determined. This needs to be clarified.
- The last paragraph on page 57 recommends that, prior to construction, National Fuel develop a final invasive species plan in coordination with applicable agencies. Such a recommendation is appropriate and essential and such a plan must include pre-construction surveys to document baseline invasive species conditions. Considering the significant survey time that will entail, it is recommended that National Fuel NFG conduct such surveys during the current or next growing season.
- The first full paragraph on page 58 concludes that the project will “have long-term, but minor impacts on forested vegetation”, supported in part by the assumption that a yet to be defined invasive species control plan will minimize such impacts. As previously noted, absent an agency-approved invasive species control plan, this conclusion is premature.
- The conclusions regarding wetlands vegetation impacts in two paragraphs near the bottom of page 59 are premature, as are the general wetland impact conclusions in Section B.2.c, since such comments were based on yet-to-be-released mitigation and invasive species control plans.

Section B 4.b Wildlife

- As noted above in Section B.3.b, all references to NYSDEC “sensitive” communities on page 66 should be replaced with the proper NYNHP term “significant natural communities”.

- The conclusion in the last sentence of the fourth paragraph on page 66 needs to be revised to state that “known occurrences of significant natural communities” would not be affected by the project.
- It is recommended that the chorus frog paragraph be moved to Section 4.d (T&E and Special Status Species).

Section B 4.d Threatened and Endangered and Special Status Species

- The “Northern Harrier”, a State listed threatened species, and “Short-eared Owl”, a State listed endangered species, are discussed sections on pages 81-82, however, no mention is made of potential impacts from Project noise levels. The EA should address potential impacts to these species in light of the noise analyses in Section B.4.b (starting at the bottom of page 67). Department staff has engaged with National Fuel regarding potential project impacts to these species at the Killian Road site included concerns about the potential for compressor station noise to significantly disrupt foraging (in light of the significant role hearing plays for both species).
- Until the Department receives and approves the 2016 breeding season survey report, revised grassland mitigation plan for the Killian Road site, and the *Migratory Bird Habitat Conservation Plan*, Department staff cannot concur with the conclusion at the end of the last full paragraph on page 81 that impacts to northern harrier would be minimized until referenced in that same paragraph.
- The "Plants" section at the bottom of page 82 should open with a brief summary of known T&E plant species records from NYNHP (similar to the opening of the Sensitive Vegetation Communities section on page 55). Such language should make it clear that the agency correspondence was limited to “known” occurrences of T&E plant species, since others may very well exist in the project area but simply have yet to be recorded by NYNHP. The opening should also state that National Fuel’s field surveys focused on determining presence/absence of the known species in the general vicinity of the existing records, and did not appear to survey for T&E plant species elsewhere in the project area.
- The conclusions on pages 82-83 state that impacts to creeping sedge, false hop sedge, and Schweinitz’s sedge are not expected. While the conclusion for false hop sedge actually said impacts “would not be significant”, Department staff believe it would be more appropriate to conclude that impacts are “not expected” since surveys for the species did not actually locate the plant.
- It is the Department’s understanding that National Fuel has additional T&E plant surveys scheduled for August/September 2016 (e.g., stiff-leaf goldenrod, Shumard oak, shellbark hickory). The EA will need to be amended with the results of those additional surveys.
- Assuming the additional surveys do not identify any occurrences of T&E plant species and/or National Fuel adjusts work areas to avoid any newly found occurrences, the ultimate conclusion at the end of this sub-section can, at best, be that the Project will not affect any “known” occurrences of T&E plant species.

Section B 5.a Public Land, Recreation and Special Interest Areas

It should be documented that the temporarily relocating the three trails would be necessary during forest clearing operations as well as trenching and backfill operations.

There are also three forest access crossings that need to be reinforced for heavy equipment

crossing. Further, trees will need to be cut and piled for the clearing of the ROW. Stumps and other non-commercial woody debris created will also need to be chipped/ground up or disposed of on site in a manner approved by the Department. The Department would like to ensure that the timing of this work be scheduled so it is outside the high recreation use time.

The Department needs to specify seed mixtures and soil amendments to be used for restoration after the construction and to ensure that topsoil is segregated and replaced in proper order so trees can again be grown in the temporary work spaces.

The EA does not provide a specific diagram showing how the easement will be co-located along current utilities through Bear Creek State Forest. However, it appears that from reviewing the mile post diagram on page 256 in Appendix A, the gas pipeline would be laid on the boundary between the NYSDEC and National Grid property boundary. This appears to indicate that 25' of permanent easement would be on National Grid property and 25' on NYSDEC property. If this is accurate, then only 2.24 acres would be in permanent easement on NYSDEC property, not 4.5 acres as stated.

The Department will require that all dewatering filter bags be removed from the property upon completion of construction.

The EA indicates that the Finger Lakes Trail Commission will be notified but there is indication that the NYSDEC Regional Lands & Forest staff will be notified. Notification of NYSDEC Lands and Forest staff is critical.

Section B 8.a and Section B 10.g. Air Quality

The Department relies on FERC's environmental assessment as the basis for assessments of the air emissions associated with this project including, most importantly, emissions from the proposed and existing compressor stations and associated infrastructure. This evaluation should include a full assessment of alternatives and potential mitigation of emissions, including but not limited to mitigation achieved by compliance with federal and state regulations. Further discussion and evaluation is necessary to meet these requirements including, but not limited to, the specific examples that follow.

In its Answer to the Town of Pendleton's Motion for an Extension of Time for Commenting on the Environmental Assessment dated August 24, 2016, National Fuel states that the PTE emissions for the Pendleton compressor station in the EA are based on the Air Permit applications which in turn were prepared based on the final engineering design of the Project facilities and included additional emissions controls above and beyond those in National Fuel's earlier Resource Report. These additional emission control should be specifically noted in the EA, The Department believes that the additional controls being proposed for Pendleton can be utilized at the Porterville compressor station to further reduce emissions from that facility

With respect to the analysis of cumulative impacts, the discussion in Section 10 should be revised to accurately characterize the analysis that was done for the Pendleton and Porterville compressor stations. A full cumulative impacts analysis was not required for these facilities and therefore was not performed. Moreover, Section B 10.g. should be revised to accurately reflect whether ROI is 50 kilometers or 50 miles since both distances are utilized in the section. The inventory of Department air emission sources may not be accurate and should be confirmed with the Department.

Additional specific comments on the air quality analysis include:

Table B 8.a-3

Since ozone is the only non-attainment contaminant for the area of this project the only pollutants to be listed should be NO_x & VOC. Listing all criteria pollutants just confuses the issue. Additionally, the column titled "PSD Significant Emission Rates (tpy)" should have PSD replaced with NNSR. It should

also be note the non-attainment status as moderate – such as: “NNSR Significant Emission Rates in Moderate non-attainment areas (tpy)”.

The first sentence in the first full paragraph on Page 107 should be revised to read as follows: *Emissions of VOCs and NOX (ozone precursor pollutants) from the proposed Pendleton Compressor Station and Wheatfield Dehydration Facility are below the **major stationary source** thresholds shown in table B.8.a-3 and would not be subject to NNSR review.*

The New Source Performance Standards section on page 108 should contain a discussion about the applicability of 40 CFR 60 Subpart OOOOa. This regulation will apply to some of the emission sources at Pendleton and Porterville Compressor Stations.

The statement on page 111 that “visible emissions are limited to 57 percent at any time” is incorrect and should be deleted.

The last paragraph on page 111 should be modified to read as follows:

*“The NYSDEC has also developed a policy providing guidance for the control of toxic ambient air contaminants, referred to as Policy DAR-1. The policy outlines procedures for evaluating toxic contaminants from air emission sources for which no state or federal ambient air quality standards exist with the objective of protecting the general public from adverse health effects from ambient air contaminants (NYSDEC, ~~1997~~ **2016**). The NYSDEC requested that an air quality analysis for formaldehyde be completed for the proposed modifications to the Porterville Compressor Station and Pendleton Compressor Station **to ensure ambient impacts of formaldehyde will be less than the acceptable guideline concentrations contained in** ~~under~~ Policy DAR-1. These analyses were provided along with the air permit applications for these two facilities submitted in February 2016 and are summarized below in “Operational Impacts and Mitigation.”*

The reference to Part 201 in the first paragraph on page 113 should be revised to reference Part 211.

On page 115 the following statement is made: “*Fugitive releases at aboveground facilities were included in tables B.8.a-5 and B.8.a-6*”. If the fugitive emissions at the aboveground facilities were included in these two tables then they should be revised to show the portion of emissions in those tables that are estimated to result from fugitive releases.

In Table B 8.a-10 on page 117 it appears that the two notes at the bottom of the table have been switched (i.e. Note “a” applies to Pendleton Station and note “b” applies to Porterville Station).

In Table B 8.a-11 on page 117, the reference to DAR-1 should be changed to: (NYSDEC, 2016). This is the most recent version of DAR-1.

Section B 10.i Climate Change

After reviewing the Council on Environmental Quality ‘Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews’ (“CEQ guidance”), the Department has identified the following issues that should be addressed in the EA:

- The amount of natural gas supplied by the project is stated as 350,000 dekatherms on page 2, but 847,000 dekatherms on page 161. The actual amount of natural gas supplied should be indicated as well as how this amount affects the estimate of cumulative greenhouse gas (GHG) emissions as measured in CO₂e.

- In the assessment of cumulative impacts from climate change on the project area (page 158-159), the EA refers to the 3rd National Climate Assessment (“Climate Change Impacts in the United States”) and to general climate impacts such as sea level rise. This information is too broad to be relevant for an assessment of impacts at the project area. The New York State ClimAid report is downscaled for the affected regions of the state and uses the more up-to-date IPCC AR5 models (<http://www.nyserda.ny.gov/climaid>). Two examples of information from ClimAid that could be relevant to this EA are the projected increase of an additional 42-47 days over 90°F and a 12-15% increase in precipitation by mid-century in the project area (ClimAid regions 1 and 2). Regardless of which data source is referenced, the EA should consider the potential need for mitigation actions for any equipment that is susceptible to heat or flooding (e.g., the modified Porterville compressor station is in proximity to the current 100-year floodplain²). CEQ guidance specifically recommends that federal agencies consider alternatives that would “make the actions and affected communities more resilient to the effects of a changing climate.”
- CEQ guidance recommends that direct and indirect GHG emissions be quantified in EA and EIS reviews and that these serve as a proxy for assessing potential climate change effects in place of an assessment of cumulative impacts. This EA only considers cumulative impacts and uses a comparison of estimated project emissions to total state GHG emissions as the basis for concluding that the project would not have any direct impacts on the project area. However, the EA makes a clear case that GHGs cause climate change and that climate change impacts the project area (page 158-159). The existence of other emission sources in New York and Pennsylvania does not preclude the need to mitigate GHG emissions associated with this project. As the CEQ guidance states, this type of comparison, “does not reveal anything beyond the nature of the climate change challenge itself.”
- Instead of comparing project emissions to sector, state, or nationwide emissions, CEQ recommends that agencies compare GHG emissions across alternative actions and consider mitigation measures. The total GHG emissions from the operation of the project are projected to be 136,929 metric tons per year as described on page 110 of the EA (this does not include indirect impacts).

Contrary to CEQ’s Guidance, there does not appear to be any discussion of GHG mitigation or a comparison of alternatives that identify reductions in GHG emissions, including methane. According to CEQ’s Guidance, “[a]gencies should consider the potential for mitigation measures to reduce or mitigate GHG emissions and climate change effects when those measures are reasonable and consistent with achieving the purpose and need for the proposed action. Such mitigation measures could include enhanced energy efficiency, **lower GHG-emitting technology**, carbon capture, carbon sequestration (e.g. forest, agricultural soils, and coastal habitat restoration), sustainable land management practices, and **capturing or beneficially using GHG emissions such as methane.**” (CEQ Guidance, pg. 18) (emphasis added)

In addition, CEQ emphasizes that “[a]gencies should discuss relevant approved federal, regional, state, tribal, or local plans, policies, or laws for GHG emission reductions or climate adaptation to make clear whether a proposed project’s GHG emissions are consistent with such plans or laws. For example, the Bureau of Land Management has discussed how agency actions in California, especially joint projects with the State, may or may not facilitate California reaching its emission reduction goals under the State’s Assembly Bill 32 (Global Warming Solutions Act).” (CEQ Guidance, pp. 28-29) Similarly, in this case, FERC’s evaluation should include consideration of the impact of the proposed

² Note: this appears to actually be in a 100-year floodplain when comparing the project map (sheet 26 of 32) with FEMA flood map 3602390009B.

Project on New York's ability to meet its emission reduction targets, including a 40% reduction of GHGs from 1990 levels by 2030.

Appendix E. Waterbody and Wetlands Crossing Tables

The wetland crossings table needs to be revised to include wetland crossings along the EMP-03 line in Niagara County.

Conclusion

Based on the Department's review of the EA and these comments, the EA is currently deficient and at a minimum needs to be supplemented and include an additional public comment period. Many details pertaining to this Project with respect to ensuring that the project will meet water quality standards remains incomplete and as such, it is clearly premature to conclude that the project will not have a significant impact on surface water resources. While at a minimum a supplemental EA is necessary, the Department believes that an EIS would be a better means to address the potential impacts and issues raised in this letter.

Thank you for the opportunity to comment on the EA. Please do not hesitate to contact me if you have any questions or comments.

Sincerely,



Michael T. Higgins
Project Manager
Major Projects Management

Attachments:

- NYSDEC Letter dated September 21, 2015
- NYSDEC Letter dated August 4, 2016
- USFWS Letter dated August 19, 2016

CC: FERC Service List