October 28, 2016

Via Email Only

Michael T. Higgins
Project Manager
New York State Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, 4th Floor
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Re: Comments on Clean Water Act Section 401 Water Quality Certification for Atlantic Bridge Project, Application ID No. 3-5599-00078/00001

Dear Mr. Higgins:

We submit these comments on behalf of Riverkeeper, Inc. ("Riverkeeper") regarding the application for a Clean Water Act Section 401 Water Quality Certification ("WQC") for the Atlantic Bridge Pipeline Project ("Atlantic Bridge Project"), Application ID No. 3-5599-00078/00001 ("WQC Application").[1] The WQC Application was made available to the public via notice in the New York State Department of Environmental Conservation's ("Department") Environmental Notice Bulletin on September 28, 2016. For the reasons set forth herein, the Department must deny the Atlantic Bridge Project's Clean Water Act Section 401 Water Quality Certification.

[1] Riverkeeper's comments also apply to Algonquin Gas Transmission LLC's ("Applicant" or "Algonquin") permit applications for Freshwater Wetlands (Article 24) and Title 5 Stream Disturbance (Article 15) permits. Both of these permit applications and the application for the Clean Water Act Section 401 Water Quality Certification were submitted in a combined, joint application (dated November 2015), and are subject to the same comment period. *See* New York State Department of Environmental Conservation (NYSDEC), Notice of Complete Application and Notice of Legislative Public Comment (Sept. 28, 2016).

First, for the reasons set forth herein, the WQC Application fails to demonstrate that the Atlantic Bridge Project will comply with New York State water quality standards. Second, as is set forth in detail below, the WQC Application does not contain sufficient information regarding stormwater runoff and fails to include detailed, site-specific control measures. Accordingly, for either or both of these reasons, the Department must deny certification pursuant to Section 401 of the Clean Water Act ("CWA"). In the alternative, the Department may require the Applicant to significantly supplement and resubmit its application for public review and comment. If that is the case, additional adverse environmental impacts with significant water quality implications, including but not limited to trench dewatering, wetlands mitigation, and setbacks for additional temporary workspace near waterbodies, must also be addressed[2] (none of which were sufficiently addressed in the WQC Application, necessitating a denial of the WQC for the Project), and the supplemental WQC Application for the Atlantic Bridge Project must be noticed for full public comment.

Finally, because our comments raise substantive and significant issues that may lead to the denial of the CWA § 401 WQC for the Atlantic Bridge Project, our comments warrant an adjudicatory hearing on the Department's CWA § 401 WQC determination and draft permits for the Atlantic Bridge Project. Notably, the public has been precluded from being able to meaningfully comment on the proposed project since because the Department has not made available any draft permits for the Atlantic Bridge Project. Nonetheless, there are substantive and significant concerns raised herein that warrant denial of both the Water Quality Certification and the attendant permits, as well as an adjudicatory public hearing on the WQC Application.

I. BACKGROUND

The proposed Atlantic Bridge Project expands the Spectra Energy Algonquin Gas Transmission and Maritimes & Northeast Pipeline systems, and is the "bridge" between the Algonquin Incremental Market ("AIM") pipeline project to its west and the Access Northeast pipeline system to its east.[3] It requires constructing approximately 6.3 miles of take-up and relay pipeline facilities on the Algonquin pipeline system, including approximately 4 miles of pipeline in New York State,[4] in order to replace the existing 26-inch diameter mainline pipeline with a 42-inch diameter pipeline in the existing

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[2] 6 NYCRR § 621.8(b); *see also* 624.4(c)(1)(iii) (defining "substantive" and "significant").

[3] *See* Spectra Energy, Atlantic Bridge webpage, http://www.spectraenergy.com/Operations/US-Natural-Gas-Operations/New-Projects-US/Atlantic-Bridge/ (last visited Oct. 24, 2016).

[4] WQC Application, at 1-1.

pipeline ROW.[5] The Atlantic Bridge Project also includes modifications at three existing compressor stations, five existing metering and regulating stations, and one existing regulator station, as well as the construction of one new compressor station and one new regulating and metering station.[6]

The entirety of the Atlantic Bridge Project is located within the Hudson River and New York City drinking water supply watersheds. Specifically, the majority of the Atlantic Bridge Project—approximately 3.2 miles—is located within the Croton Watershed, part of the sensitive East-of-Hudson New York City drinking water supply watershed. The Project site drains to the New Croton, Amawalk, and Muscoot Reservoirs, all of which are impaired waterbodies subject to Total Maximum Daily Load ("TMDL") limitations for phosphorous and heightened protection criteria to limit further water quality impairment.[7]

The Atlantic Bridge Project crosses 21 streams in total: 8 perennial[8] streams, 8 intermittent[9] streams, and 5 ephemeral[10] streams.[11] Three of these streams are "protected streams" as defined by the Department's regulations.[12] Only one stream will be crossed using horizontal direction drill ("HDD") method, while the remaining 20 streams will be crossed using dry crossing construction methods.[13] Additionally, the

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5 NYSDEC, Notice of Complete Application and Notice of Legislative Public Comment (Sept. 28, 2016).

6 WQC Application, at 1-1.

7 NYSDEC, Phase II Phosphorous Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (2000).

8 "A perennial stream has flowing water year-round during a typical year and under normal circumstances, supports fish and macroinvertebrates." WQC Application, at 5-1.

9 "Intermittent streams will typically flow continuously during wet seasons but may be dry for a portion of the year." WQC Application, at 5-1.

10 "Ephemeral streams flow only for a short period following major precipitation events." WQC Application, at 5-1.

11 NYSDEC, Notice of Complete Application and Notice of Legislative Public Comment (Sept. 28, 2016).

12 *See* 6 NYCCR Part 608.

13 *Id.*; *see also* WQC Application, at Section 6.0.

Atlantic Bridge Project will disturb 15 wetlands, including 9 federally-regulated wetlands and 6 State-regulated Freshwater Wetlands (A-34, A-4, A-39, A-2, and ML-10), although three of these wetlands are not expected to be crossed by the proposed replacement pipeline.[14]

The Atlantic Bridge Project requires federal approval by the Federal Energy Regulatory Commission ("FERC"), and the Applicant submitted an application to FERC for a Certificate of Public Convenience and Necessity in 2015. FERC conducted an environmental review of the Project pursuant to the National Environmental Policy Act ("NEPA"), and Riverkeeper submitted comments regarding scope of the NEPA review for the Atlantic Bridge Project[15] as well as on the NEPA environmental assessment undertaken by FERC,[16] both of which are incorporated fully herein and attached hereto as Exhibits A and B, respectively. Our comments raised concerns regarding a number of issues related to water quality and the Atlantic Bridge Project's likely impacts on the New York City drinking water supply. We also took issue with FERC's failure to undertake an appropriate and sufficient review of the Atlantic Bridge Project through the NEPA process. Unlike the AIM pipeline segment of the project, FERC refused to require a full environmental impact statement for the Atlantic Bridge Project, the next segment of the overall pipeline project.

In November 2015, shortly after submitting its application to FERC, Algonquin applied to the Department for certification under Clean Water Act Section 401, 33 U.S.C. § 1341, that the Atlantic Bridge Project will comply with New York State water quality regulations. Without such certification, the Applicant cannot obtain federal approval for the project.[17]

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[14] NYSDEC, Notice of Complete Application and Notice of Legislative Public Comment (Sept. 28, 2016).

[15] Riverkeeper Comments Regarding Scope of Environmental Review for the Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (June 10, 2015), attached hereto as **Attachment A**.

[16] Riverkeeper Comments Regarding Environmental Assessment for the Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (June 1, 2016), attached hereto as **Attachment B**.

[17] CWA § 401(a).

In New York, the Atlantic Bridge Project involves crossing 21 streams and 15 wetlands, including the disturbance of over 10 acres of wetlands.[18] Of the 21 streams that will be impacted by pipeline construction, 20 will be crossed using a dry crossing technique which involves damming or diverting any perceptible flow and digging a trench through the streambed, destroying the benthic ecosystem. Eight of the streams are Class C fresh surface waters, one is designated a Class C(TS) water, and the remaining thirteen streams are Class D fresh surface waters. Only one stream will be crossed using HDD and only because that stream is located in close proximity to the Taconic Parkway, which the Applicant has proposed installing the pipeline under using the HDD method.[19]

Stormwater runoff and downstream turbidity caused by construction of the Atlantic Bridge Project within the New York City drinking water watershed will also potentially impact the New Croton, Amawalk, and Muscoot Reservoirs, part of the Croton watershed system. The New Croton Reservoir (partial Class AA and partial Class A fresh surface water) serves as the terminal reservoir for the Croton system, and, along with the Amawalk (partial Class A and partial Class A(TS)) and Muscoot (Class A) Reservoirs, is an impaired waterbody subject to TMDLs for phosphorus and heightened protection criteria to avoid further impact.[20]

The Atlantic Bridge Project is the second of three upgrades to the Algonquin pipeline system. The first is the AIM Project, which spans the states of New York, Connecticut, Rhode Island, and Massachusetts. Among other things, it involves the replacement and expansion of approximately 37 miles of the existing Algonquin pipeline system, including, in New York State alone, replacing and expanding 15 miles of existing 26-inch pipeline with new 42-inch pipeline, adding approximately 2 additional miles of new 42-inch pipeline, and a new Hudson River crossing. The majority of the AIM Project is located within the Hudson River watershed, while approximately 2 miles of pipeline replacement and the expansion of a compressor station are located within the same portion of the New York City drinking water supply watershed as the Atlantic Bridge Project. The third upgrade project is the Access Northeast Project, which will result in nearly 14 miles of pipeline construction and replacement with the new 42-inch pipeline, among other improvements, in both the Hudson River and New York City drinking water supply watershed. And similar to the Atlantic Bridge Project, the

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[18] Approximately 2 miles of the roughly 6 miles of the Atlantic Bridge Project will be located in the State of Connecticut.

[19] The HDD technique involves directional boring from the banks of the river, underneath the riverbed, to install new pipeline.

[20] *See* NYSDEC, Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (June 2000).

Access Northeast Project almost the entire Access Northeast Project (approximately 13 miles) will occur in the sensitive Croton watershed, part of the New York City drinking water supply system. The cumulative impacts of these projects—or more correctly, different segments of the same pipeline route—exacerbate the water quality impacts of each segment, although the impacts of each leg individually are enough to impair water quality for the impacted resources.

II. THE DEPARTMENT MUST DENY THE CWA § 401 WATER QUALITY CERTIFICATION BECAUSE THE APPLICATION FAILS TO DEMONSTRATE THAT THE ATLANTIC BRIDGE PROJECT WILL COMPLY WITH NEW YORK STATE WATER QUALITY STANDARDS

Section 401 of the Clean Water Act requires anyone applying for a federal license or permit to conduct an activity which "may result in a discharge to navigable waters" must first obtain certification that the activity complies with applicable state water quality standards.[21] Specifically, in order to grant a CWA § 401 WQC, the state must be able to certify that any potential discharge from the proposed project "will comply with the applicable provisions of sections [301], [302], [303], [306], and [307]" of the CWA.[22] Clean Water Act § 401(d) further provides that a state may condition the grant of a WQC, and provides that the WQC "shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant . . . will comply with any applicable effluent limitations and other limitations, under section [301 or 302 of the CWA] . . . and with any other appropriate requirement of State law set forth into such certification."[23]

In accordance with New York State regulations, the Department may only issue a WQC if the agency finds that the applicant has "demonstrated compliance" with applicable water quality standards.[24] This State requirement is more stringent than federal regulations, which only require a certifying state to find that "there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards.[25] If the WQC is denied by the State, "no license or

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21 CWA § 401(a).

22 *Id.*

23 CWA § 401(d); *see also PUD No. 1 v. Wash. Dep't of Ecology*, 511 U.S. 700, 707-708 (1994).

24 6 NYCRR § 608.9(a).

25 40 CFR § 121.2(a)(3).

permit shall be granted."[26] As set forth below, Algonquin has failed to demonstrate that the Atlantic Bridge Project will comply with New York State water quality standards, and therefore the Department must deny the CWA § 401 WQC for the Atlantic Bridge Project.

A. Applicable New York State Water Quality Standards

The Atlantic Bridge Project will disturb 21 streams as part of the pipeline replacement and upgrading project. Additionally, the New Croton Reservoir, in the Croton watershed, will be adversely affected by stormwater runoff and any upstream increases in turbidity due to construction activities. These waterbodies cover a wide range of surface water classifications, and are subject to a number of water quality standards encompassing designated best usages, narrative water quality criteria, and numerical water quality criteria set forth in 6 NYCRR Parts 701, 702, 703, and 704; have TMDLs imposed for reservoirs in the NYC drinking water supply watershed; and are subject to the New York State Clean Water Act antidegradation policy.

1. Designated Best Usages

Eight of the waterbodies (all perennial streams) to be crossed by the Atlantic Bridge Project are designated as Class C, with three of those waterbodies also designated as trout spawning water, or Class C(TS).[27] The best usages designated for Class C waters is fishing; "[t]hese waters shall be suitable for fish, shellfish and wildlife propagation and survival [and] for primary and secondary contact recreation."[28] For the Class C(TS) stream, additional protections are applied including "any water quality standard, guidance value, or thermal criterion that specifically refers to trout, trout spawning, or trout waters, or trout spawning waters."[29]

The remaining 13 waterbodies to be crossed by the Atlantic Bridge Project are designated as Class D, with the best usages designated as fishing, and although these waters "will not support fish propagation," they "shall be suitable for fish, shellfish and wildlife survival" as well as "for primary and secondary contact recreation."[30]

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26 CWA § 401(a).

27 *See* WQC Application, Appendix A, at C4-1, Table C-4.

28 6 NYCRR § 701.8.

29 6 NYCRR § 701.25(b).

30 6 NYCRR § 701.9.

Additionally, the New Croton Reservoir is a partial Class AA and partial Class A water, the Muscoot Reservior is a Class A water, and the Amawalk Reservoir is a partial Class A and partial Class A(TS) water.[31] Both Class AA and Class A fresh surface waters have the designated best use as "a source of water supply for drinking, culinary or food processing purposes; primary and secondary contact recreation; and fishing" and the "waters shall be suitable for fish, shellfish and wildlife propagation and survival."[32] For the Class A(TS) additional protections are applied including "any water quality standard, guidance value, or thermal criterion that specifically refers to trout, trout spawning, or trout waters, or trout spawning waters."[33]

2. Applicable Narrative Standards

There are a number of narrative water quality standards that are applicable to the construction of the Atlantic Bridge Project. First, in most state classified waters, including all those impacted by the Project, no increase in turbidity is allowed "that will cause a substantial visible contrast to natural conditions."[34] Additional applicable narrative water quality standards that apply to the waters impacted by the project are: no phosphorous is allowed in "amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages"; no alternation in flow is allowed that will "impair the waters for their best usages; and no toxic and other deleterious substances in amounts that will "impair the waters for their best usages."[35]

3. Applicable Numerical Standards

Numerical standards for dissolved oxygen (DO) also apply to the waterbodies impacted by the Atlantic Bridge Project. In (nontrout) Class C waters, "the minimum daily average shall not be less than 5.0 mg/L, and at no time shall the DO concentration be less than 4.0 mg/L."[36] For Class C(TS) waters, "the DO concentration shall not be less

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31 6 NYCRR § 864.6, Table I.

32 6 NYCRR § 701.5.

33 6 NYCRR § 701.25(b).

34 6 NYCRR § 703.2.

35 *Id.*

36 6 NYCRR § 703.3.

than 7.0 mg/L from other than natural conditions."[37] For Class D waters, the DO concentration "[s]hall not be less than 3.0 mg/L at any time."[38]

4. TMDLs for NYC Drinking Water Supply Reservoirs

The New Croton, Amawalk, and Muscoot Reservoirs are impaired waterbodies subject to TMDLs for phosphorous. The Reservoirs are currently exceeding the phosphorous TMDL and require reductions in order to meet prescribed load allocations.[39] As a result, any new addition of phosphorous to the New Croton, Amawalk, and Muscoot Reservoirs constitutes a violation of water quality standards.

5. Antidegradation Policy

In accordance with the CWA, state water quality standards must also include a statewide antidegradation policy, which in New York, is set forth in the Department's 1985 Water Quality Antidegradation Policy.[40] The Department implements the Antidegradation Policy through technology based and water quality based controls, as well as the use of classifications and water quality criteria contained in New York's water quality standards. The Antidegradation Policy requires that existing in stream uses must be maintained and protected.[41] State antidegradation policies must be implemented in a manner "consistent with existing uses of the stream"[42] and "no activity is allowable . . . which could partially or completely eliminate any existing use."[43] Thus, an applicant for water quality certification pursuant to CWA § 401 must demonstrate compliance with both designated and existing uses.[44]

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37 *Id.*

38 *Id.*

39 *See* NYSDEC, Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (June 2000), at 29.

40 NYSDEC, Organization and Delegation Memorandum No. 85-40, Water Quality Antidegradation Policy (Sept. 9, 1985).

41 *Id.*; *see also* 40 CFR § 131.12(a).

42 *PUD No. 1 v. Wash. Dep't of Ecology*, 511 U.S. at 719 (internal quotations omitted).

43 *Id.*, 511 U.S. at 718-719 (internal quotations omitted).

44 Existing uses which are actually attained in the water body on or after November 28, 1975 must be maintained and cannot be (even partially) eliminated, whether or not such uses are included in the water quality standards as designated uses. 40 CFR §§

B. The Atlantic Bridge Project Fails to Demonstrate Compliance with New York State Water Quality Standards Such That the Water Quality Certification Must Be Denied

The Atlantic Bridge Project is likely to result in numerous potentially significant environmental impacts, including violations of the New York State water quality standards. Additionally, given the Project's location in the sensitive New York City drinking water supply watershed, any impacts to water quality from the Project have the potential to further degrade the drinking water supply reservoirs that serve millions of New Yorkers. The environmental assessment of the Atlantic Bridge Project by FERC as part of the NEPA process was so egregiously inadequate that the Department cannot rely on that so-called analysis for its consideration of the Project.[45] Finally, the WQC Application suffers from an utter lack of sufficient detail on the specific environmental and water resources impacts such that the Department must follow its precedent laid down in the Constitution Pipeline case and *deny* the CWA § 401 WQC for the Atlantic Bridge Project.

1. The WQC Application Lacks Critical Information

First, an in-depth discussion of stormwater runoff and detailed, site-specific plans for stormwater management and discussion of stormwater control—including a Stormwater Pollution Prevention Plan ("SWPPP")—are missing from the WQC Application. By failing to include an in depth discussion of likely impacts from stormwater runoff and detailed, site-specific stormwater management plans, including a SWPPP, the WQC Application utterly fails to demonstrate that the Atlantic Bridge Project will comply with water quality standards. As discussed below, poorly controlled stormwater runoff will result in the violation of a number of water quality standards governing turbidity, phosphorous, dissolved oxygen, best usages, and antidegradation. In order to receive certification pursuant to CWA § 401, the Applicant must demonstrate as part of the WQC Application that stormwater runoff from the Atlantic Bridge Project will not result in violations of New York water quality standards; they have failed to do so in this case.

131.12(a)(1), 131.3(e), and 131.10(h)(1). Existing use protections apply to all waters. *Ohio Valley Envtl. Coalition v. Horinko,* 279 F. Supp. 2d 732, 740 (S.D. W.Va. 2003) (citing 40 CFR § 131.12(a)(1)). As the U.S. Environmental Protection Agency has observed, the antidegradation policy "protects the highest use attained in the water body on or after November 28, 1975." *Id.,* 279 F. Supp. 2d at 751.

[45] *See, generally,* Riverkeeper Comments Regarding Environmental Assessment for the Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (June 1, 2016), **Attachment B** hereto.

The Applicant is required to obtain coverage under the State Pollutant Discharge Elimination System ("SPDES") Stormwater General Permit for Construction Activities. However, the fact that the Applicant will have to obtain coverage under this permit at some unspecified later date does not excuse its failure to properly evaluate stormwater impacts in the WQC Application. The Department is charged with determining whether or not the Atlantic Bridge Project will violate New York State water quality standards. It simply cannot make that determination without information regarding the extent of the site-specific stormwater and erosion and sediment controls that will be employed during and after project construction, as well as a pollutant loading analysis for phosphorous.

Further, the Department and the public have no way of knowing whether or not the Applicant will be able to obtain SPDES permit coverage for stormwater discharges. To our knowledge, the Applicant has not yet submitted a Notice of Intent and final SWPPP for coverage under the SPDES Stormwater General Permit for Construction Activities. Not all projects—particularly those subject to heightened criteria due to construction within the New York City watershed—are able to obtain such coverage without making modifications to project plans and/or construction phasing schedules.[46]

As discussed above, the Department may only issue certification pursuant to CWA § 401 if it finds that the Applicant has demonstrated compliance with applicable water quality standards. The Department may not certify that the Atlantic Bridge Project as currently configured will comply with water quality standards based on an assumption that stormwater controls yet to be developed will ensure that the Project does not result in discharge of pollutants such as turbidity and phosphorous.

Second, the Wetlands Mitigation Plan is devoid of the necessary level of detail to ensure that appropriate precautious and restoration and mitigation measures are undertaken by the Applicant. An example of this is the lack of specific information as to which re-seeding mixes will be used in which areas following wetland disturbances.[47] The types of vegetation used to re-establish the impacted wetlands is crucial to determining whether the project complies with the necessary regulations and requirements. Without this information, neither the public nor the Department has sufficient information to determine whether water quality standards will be complied with by the Atlantic Bridge Project.

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[46] The SWPPP for the portions of the Atlantic Bridge Project within the NYC drinking water supply watershed must also be approved by the New York City Department of Environmental Protection.

[47] *See, generally,* WQC Application, at Appendix E, Wetland Mitigation Plan.

Additionally, the NEPA environmental assessment undertaken by FERC is so egregiously inadequate that the Department cannot reasonably rely upon it for its CWA § 401 WQC determination.[48] As the Department noted when it denied the WQC for the Constitution Pipeline Project: "failure to adequately address [environmental] concerns limit[s] the Department's ability to assess the impacts and conclude that the Project will comply with water quality standards."[49] Here, the Applicant has failed to demonstrate that construction of the Atlantic Bridge Project will comply with New York State water quality standards, and the Department must deny the Water Quality Certification for the Project.

Finally, the Department's decision to deny the CWA § 401 WQC for the Constitution Pipeline Project is directly applicable to the Atlantic Bridge Project's WQC Application. That decision is an important and powerful precedent of the State implementing the CWA to protect New York's waterways, and because the WQC Application is similarly devoid of requisite information, and because the likely water quality impacts of the Atlantic Bridge Project are so similar to the Constitution Pipeline Project, that precedent should be binding here, resulting in a denial of the CWA § 401 WQC for the Atlantic Bridge Project.

2. If the WQC Application is Supplemented and Resubmitted, Additional Issues Regarding the Applicant's Construction and Mitigation Plans Must Be Addressed

Despite the lack of critical, and necessary, information in the WQC Application to determine compliance with State water quality standards, numerous adverse water quality-related impacts are likely to occur from the construction of the Atlantic Bridge Project. As submitted, the WQC Application does not demonstrate that the Project will comply with water quality standards, for the reasons set forth below, the Department's must deny the CWA § 401 WQC. If, however, the WQC Application is supplemented and resubmitted, *at a minimum*, the following adverse environmental impacts and water quality concerns must be addressed in order to demonstrate compliance with water quality standards. Should the WQC Application be amended, supplemented, and/or resubmitted, Riverkeeper reserves its right to publically comment on that new Atlantic Bridge Project WQC Application at that time.

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[48] *See* Riverkeeper Comments Regarding Environmental Assessment for the Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (June 1, 2016), **Attachment B** hereto.

[49] Letter from John Ferguson, NYSDEC, to Lynda Schubring, Constitution Pipeline Co, LLC (Apr. 22, 2016) (denying Constitution's application for certification under Section 401 of Clean Water Act) ("Constitution Pipeline WQC Denial"), at 3, *available at* http://www.dec.ny.gov/docs/administration_pdf/constitutionwc42016.pdf.

a. Increased Erosion and Pollutants from Stormwater Runoff

Unless strictly controlled, stormwater runoff during construction of the Atlantic Bridge Project, as well as long term changes in stormwater runoff quality, quantity, velocity, and drainage patters post-construction, will result in violations of water quality standards governing turbidity, phosphorous, dissolved oxygen, best usages, and/or the Department's Antidegradation Policy for the 21 waterbodies directly impacted by the project construction and the New Croton, Amawalk, and Muscoot Reservoirs.

Stormwater runoff from the Atlantic Bridge Project is likely to increase turbidity. 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, thereby increasing turbidity.[50] 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.[51] 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 runoff transports to waterbodies. Sediment particles also shield pathogenic microorganisms, such as *Giardia* and *Cryptosporidium*, from detection, which can result in waterborne disease outbreaks. 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.[52]

Increases in turbidity from stormwater runoff may also hinder best usages for all classes of waterbodies crossed by and affected by the Atlantic Bridge Project. The increase in suspended sediment, as well as the toxic materials and pathogens that can bind to sediment particles, may impair the use of Class AA and A waters—including the New Croton, Amawalk, and Muscoot Reservoirs—as sources of drinking water supplies. Suspended sediment also degrades aquatic wildlife and fish habitat, which would impair the use of Class C and D waters for fishing and fish and wildlife propagation and/or survival.

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50 *See* USEPA, Construction Site Management Measure III: Construction Activities, *available at* http://water.epa.gov/polwaste/nps/czara/ch4-3a.cfm.

51 *Id.*

52 NYSDEC, New York Standards and Specifications for Erosion and Sediment Controls (Aug. 2005), at 1.3.

In addition to impairing the best usages of the waterbodies impacted by project construction, any increases in turbidity as a result of stormwater runoff will violate the narrative water quality standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." This standard applies across all classes of waterbodies affected by the Atlantic Bridge Project.

Increased turbidity also affects dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved oxygen trout spawning waters, as well as Class AA, A, C, and D waters generally. As set forth above, New York State has set strict numerical limitations for dissolved oxygen in nontrout and trout spawning waters, and those limits apply to all waters impacted by the Atlantic Bridge Project. A rise in turbidity increases biological oxygen demand in surface waters, which in turn decreases the level of dissolved oxygen. Therefore, any increased levels of turbidity caused by stormwater runoff from the Atlantic Bridge Project will in turn result in decreased levels of dissolved oxygen and further harm to aquatic life.

Stormwater runoff from the Atlantic Bridge Project may also increase phosphorous in violation of water quality standards. 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*. As discussed above, the narrative water quality standard for phosphorus prohibits any increase that "will result in growths of algae, weeds and slimes that will impair the waters for their best usage." Increases in algae growth can clog drinking water intakes and filters and impair the use of Class AA and A waters as drinking water supplies. Growth of algae, weeds, and slimes also degrades aquatic wildlife and fish habitat, which would impair the use of all impacted waters for fishing and fish and wildlife propagation and survival. In addition, any increase in phosphorous loading to the New Croton, Amawalk, and/or Muscoot Reservoirs will violate water quality standards, as these reservoirs are currently impaired and subject to TMDLs for phosphorous which prohibit any new source of the pollutant.

Finally, degradation of water quality that impairs existing uses will violate the Department's Antidegradation Policy. As detailed above, stormwater runoff from the Atlantic Bridge Project has the potential to significantly lower water quality as a result of discharges of turbidity and phosphorous, as well as through impacts from turbidity including lower levels of dissolved oxygen, which is a serious concern for the waterbodies impacted by the Atlantic Bridge Project, particularly for trout spawning waters. Degradation in water quality will likely impair existing uses including drinking water, fishing, and fish and wildlife propagation and/or survival.

b. Waterbody and Wetland Degradation Due to Trench Construction

i. Trench Construction Impacts

As the Department acknowledged in its recent denial of the WQC for the Constitution Pipeline Project:

> The individual quality and integrity of streams form the primary trophic levels that support many aquatic organisms and enable the provision of stream ecosystems at large. Under the Project's proposal, many of the streams to be crossed present unique and sensitive ecological conditions that may be significantly impacted by construction and jeopardize best usages. For a number of reasons, streams that support trout and other cold water aquatic species are typically the most sensitive. The physical features of these streams include dense riparian vegetation often composed of old-growth trees which are free of invasive species and that shade and cool streams while also maintaining the integrity of adjacent banks or hillslopes. Undisturbed spring seeps provide clean, cold water and stable yet sensitive channel forms maintain the integrity of the stream itself and further preserve water quality. Biologically, these streams are vital in providing complex habitat for foraging, spawning and nursery protection by wild reproducing trout.[53]

The Atlantic Bridge Project is likely to significantly impact the streams in the right-of-way during trench crossing. For all but one of the streams crossed by the Project, the Applicant has proposed to use dry crossing method which involves damming or diverting water from the stream, digging a trench through the streambeds, and is likely to result in numerous temporary and permanent impacts and violations of the New York State water quality regulations. For example, trench crossing can result in large increases in downstream sedimentation, which, in this case, has the added impact of potentially impacting the New York City drinking water supply reservoirs. This construction method can also lead to lateral bank erosion and changes in stream channel morphology and stability, which can destabilize slopes and ultimately widen the stream.[54] Any use of in-water blasting will exacerbate these impacts, as will construction, clearing, and siting of temporary workspace within 100-foot stream buffer areas.

The Department expressed similar concerns—all of which apply to the Atlantic Bridge Project—when it denied the Constitution Pipeline Project's WQC explaining that:

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[53] Constitution Pipeline WQC Denial, at 3.

[54] USEPA, Urbanization and Streams: Studies of Hydrologic Impacts, *available at* http://water.epa.gov/polwaste/nps/urban/report.cfm.

Initially, 100 percent loss of stream and riparian habitat will occur within the [right-of-way] as it is cleared and the pipeline trenched across streams. The trenching of streams will destroy all in-stream habitat in the shorter term and in some cases could destroy and degrade specific habitat areas for years following active construction. For example, highly sensitive groundwater discharge areas within streams could be disturbed, resulting in loss or degradation to critical spawning and nursery habitat. In addition, physical barriers will temporarily prevent the movement of aquatic species during active construction and changes to the stream channel will persist beyond the active construction period, creating physical and behavioral barriers to aquatic organism passage.

Changes to thermal conditions will also likely occur due to clearing of riparian vegetation. Because of the need to maintain an accessible ROW, subsequent revegetation will take considerable time to replace what was lost, notably long-lived, slow growing forest trees. Loss of riparian vegetation that shades streams from the warming effects of the sun will likely increase water temperatures, further limiting habitat suitability for cold-water aquatic species such as brook trout. The loss of shade provided by mature riparian vegetation may be exacerbated in the long term by climate change and thus be more significant since small changes in the thermal loading of cold water trout streams could result in the long term loss of trout populations.

Trenching of streams can also destabilize the stream bed and such conditions can temporarily cause an exceedance of water quality standards, notably turbidity. Turbidity and sediment transport caused as a result of construction can negatively impact immediate and downstream habitat, can smother or kill sensitive aquatic life stages and reduce feeding potential of all aquatic organisms. More specifically, visual predators such as brook trout find food using visual cues. Thus, reductions in clear water conditions may reduce feeding success that can ultimately result in impacts on aquatic species' propagation and survival and corresponding reductions in the attainment of the waters' best usages.

As a result of chronic erosion from disturbed stream banks and hill slopes, consistent degradation of water quality may occur. Changes in rain runoff along ROW may change flooding intensity and alter stream channel morphology. Disturbed stream channels are at much greater risk of future instability, even if the actual work is conducted under dry conditions; long ranging stream erosion may occur up and downstream of disturbed stream crossings well beyond the time of active construction. This longer term instability and erosion can result in the degradation of spawning beds and a decrease in egg development. The loss of spawning potential in some cold

headwater streams may significantly reduce the long-term viability of these streams to support trout.[55]

Construction of the Atlantic Bridge Project is likely to also degrade the wetlands and streams it crosses 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, especially critical in areas like the New York City drinking water supply watershed. Wetlands serve as water storage resource, absorbing and retaining flood and storm waters, ground water, and aquifers that may feed local drinking water supplies. Wetlands also perform crucial filtration functions, trapping pollutants and nutrients such as nitrogen and phosphorous 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.[56]

The Applicant seeks to cross numerous wetlands—far more than the initial AIM portion of the pipeline in far less space—by using construction methods that involve direct wetland disturbance: trenching through the sensitive wetlands to dig up the old pipe, enlarging the trench, and installing the new larger pipe. Such construction will result in loss of wetland vegetation and biota and can hinder critical wetland functions including filtration, storage, and recharge. Any blasting in wetlands is likely to exacerbate these already serious impacts.

Construction and vegetation clearing within the 100-foot wetland buffers can also impede wetland functions since these areas are important transitional areas that intercept stormwater from upland habitat before it reaches wetlands or other aquatic habitat. Other water quality benefits of wetland buffer zones that will be lost by disturbances associated with the Atlantic Bridge Project include reducing thermal impacts (shade), nutrient uptake, providing infiltration, reducing erosion, and restoring and maintaining the chemical, physical, and biological integrity of water resources.[57]

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55 Constitution Pipeline WQC Denial, at 4-5.

56 *See* USEPA, Functions and Values of Wetlands, *available at* http://water.epa.gov/type/wetlands/outreach/upload/functions-values.pdf.

57 *See* USEPA, Aquatic Buffer Model Ordinance, *available at* http://water.epa.gov/polwaste/nps/mol1.cfm.

ii. Larger Setbacks for Temporary Workspace at Stream Crossings and in Wetlands

Despite the 100 foot minimum recommended by experts,[58] the Applicant has indicated that it intends to have reduced temporary workspace setbacks in the wetlands, as little as 50 feet in some locations, and 10 feet in others.[59] Additionally, the Applicant intends to locate additional temporary workspace at distances as little as zero feet from the waterbody at some of the crossing locations in New York State,[60] all of which are within the New York City drinking water supply watershed, and ultimately drain to the New Croton Reservoir.

The location of additional temporary workspace—which will require vegetation clearing—so close to waterbodies, with no buffer between construction activities and the waterbody itself, is likely to result in discharge of sediment and increases in downstream turbidity. As discussed above, increases in turbidity may hinder best usages for all classes of waterbodies affected by the Atlantic Bridge Project and violate the narrative water quality standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." Increases in turbidity also affect dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved oxygen in trout and trout spawning waters, as well as all impacted waters. Degradation of water quality that impairs existing uses will also violate the Department's Antidegradation Policy.

In order to protect water quality and promote compliance with water quality standards, additional temporary workspace must be located *at least* 100 feet from all waterbodies and wetlands.

c. Degradation of Downstream New York City Drinking Water Supply Reservoirs

Increases in stormwater runoff, erosion, and sedimentation from project construction risks further impairing downstream drinking water supply reservoirs in the New York City drinking water watershed. Increases in suspended sediment, as well as the toxic materials and pathogens that can bind to sediment particles, may impair the best usages of the New Croton, Amawalk, and Muscoot Reservoirs as sources of

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58 One hundred (100) feet is considered the *minimum* buffer width recommended for water quality protection. *See* Schueler, T. Site Planning for Urban Stream Protection, Metropolitan Washington Council of Governments (1995), at 111.

59 *See* WQC Application, at 4-6, Appendix E, 4-2.

60 *See* WQC Appliaciton, at 5-3.

drinking water supplies in contravention of the New York State water quality regulations. Suspended sediment also degrades aquatic wildlife and fish habitat, which could impair the additional best usages of these reservoirs for fishing, fish and wildlife propagation and survival, including trout spawning, and recreation.

Stormwater runoff is also likely to 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 the construction of the Atlantic Bridge Project and for right-of-way maintenance can cause nutrients, including phosphorous, to be transported downstream during precipitation events rather than being assimilated by plants *in situ*. Increases in algae growth due to phosphorous pollution can clog drinking water supply intakes and filters and impair the best usages of the reservoirs as drinking water supplies. Growth of algae, weeds, and slimes is directly prohibited by the water quality regulations for these reservoirs and degrades the additional best usages of aquatic wildlife and fish habitat, which, in turn, could impair the designated uses of the reservoirs for fishing, fish and wildlife propagation and survival, including trout spawning, and recreation.

d. Hydrostatic Test Water Discharges

The Applicant plans to use more than 1.6 million gallons of water for hydrostatic testing, or testing of pipeline integrity before entry into service.[61] Although the WQC Application fails to explain where the hydrostatic test water will be sourced from, after use, the Applicant will discharge the remaining hydrostatic test water into upland areas as specified in the WQC Application, avoiding wetlands and riparian areas "where practicable," at rates of 1,000 to 1,200 gallons per minute.[62]

Hydrostatic test water that is discharged after use will contain any contaminants present in the original water, as well as any chemical additives used during testing. And although the WQC Application merely notes that the Applicant "does not anticipate using chemicals for testing or for drying the pipeline following hydrostatic testing,"[63] it is not guaranteed or required by any permit. In addition to the potential for discharge of any contaminants in the test water, the discharge itself, at rates of 1,000 to 1,200 gallons per minute, may result in erosion and channelization at the point of discharge, potentially increasing sediment runoff and turbidity in receiving waters.

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61 WQC Application, 5-10.

62 *Id*.

63 *Id*.

The Applicant also plans to discharge water that accumulates in open trenches during pipeline construction.[64] According to the WQC Application, the Applicant will discharge this water – which will be heavily laden with sediment – into generally described filtration devices "away from the water's edge."[65] Any discharged trench water that is not infiltrated and is carried back into receiving waters will increase turbidity.

Increases in turbidity may impair best usages for all classes of waterbodies impacted by the Atlantic Bridge Project and violate the narrative water quality standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." Increases in turbidity also affect dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved in trout spawning waters, as well as all waters impacted for the Project. Discharge of contaminants and/or chemical additives in the hydrostatic test water may also violate narrative standards governing the presence of toxic or other deleterious substances, which are prohibited "in amounts that will adversely affect the taste, color or odor thereof, or impair the waters for their best usages." Degradation of water quality that impairs existing uses will also violate NYSDEC's Antidegradation Policy.

Discharge of hydrostatic test water and trench dewatering must occur well outside of wetland and riparian areas, and must not be allowed within construction workspace or 100 feet of wetlands or waterbodies. The use of chemical additives during and following hydrostatic testing must also be explicitly prohibited, and must apply to the entire project area, not only within the New York City drinking water supply watershed.[66]

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64 *See id.*, at 5-3.

65 *Id*.

66 The Department must also clarify whether or not it plans to require the Applicant to obtain a State Pollutant Discharge Elimination System ("SPDES") permit for discharge of hydrostatic test water and trench dewatering. If the Applicant has submitted an application for SPDES coverage for hydrostatic test water discharges and trench dewatering, the Department must clarify the status of this application and make it, along with any draft permit or conditions, available for public review and comment. If not, the Department must require the Applicant to submit such application or provide justification as to why it is not requiring SPDES coverage for discharge of hydrostatic test water and trench dewatering.

3. The Cumulative Impacts of the Atlantic Bridge Project and Its Related Pipeline Projects in the Watersheds Also Warrant Denial of the CWA § 401 Water Quality Certification

Regarding cumulative impacts, the Department recently explained how the combined effects of multiple stream crossings on a single waterbody and its tributaries can have significantly different impacts than a single crossing.[67] In that matter, the Department denied the Section 401 WQC for the Constitution Pipeline because, *inter alia*, the applicant failed to provide the Department with sufficient information on cumulative impacts of the proposed project and route alternatives that might avoid some of the impacts. Because the Atlantic Bridge Project, when considered together with the AIM and Access Northeast Projects, has a cumulative impact on the sensitive Hudson River and New York City drinking water supply watersheds, the Applicant has failed to demonstrate compliance with water quality standards, including designated and existing uses. Thus, the WQC for the Atlantic Bridge Project must be denied.

The Atlantic Bridge Project is the second of three upgrades to the Algonquin pipeline system. The first is the AIM Project, the majority of which is located within the Hudson River watershed, while approximately 2 miles of pipeline replacement and the expansion of a compressor station are located within the same portion of the New York City drinking water supply watershed as the Atlantic Bridge Project. The third upgrade project is the Access Northeast Project, which will result in nearly 14 miles of pipeline construction and replacement in both the Hudson River and New York City drinking water supply watershed. And similar to the Atlantic Bridge Project, the Access Northeast Project almost the entire Access Northeast Project (approximately 13 miles) will occur in the sensitive Croton watershed, part of the New York City drinking water supply system. The cumulative impacts of these projects—or more correctly, different segments of the same pipeline route—exacerbate the water quality impacts of each segment, although the impacts of each leg individually are enough to impair water quality for the impacted resources. Riverkeeper previously commented at length that these projects constitute illegal segmentation for purposes of NEPA, and that their adverse environmental impacts must be considered together. The same is true for the Department's consideration under Section 401 of the Clean Water Act—the Applicant must demonstrate the the Atlantic Bridge Project, both on its own *and together with the AIM and Access Northeast Pipeline Projects*, complies with all applicable New York State water quality standards. The Applicant has failed to do so and the Department must deny its CWA § 401 WQC.

Indeed, the Department recognized the importance of considering cumulative impacts as part of the CWA § 401 WQC process, when it denied the WQC for the Constitution Pipeline Project:

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67 *See* Constitution Pipeline WQC Denial, at 3-5.

> Cumulatively, within such areas, as well as the [right-of-way] generally, impacts to both small and large streams from the construction and operation of the Project can be profound and could include loss of available water body habitat, changes in thermal conditions, increased erosion, and creation of stream instability and turbidity.
>
> * * *
>
> Impacts to these streams are exacerbated as the cumulative negative effects of multiple crossings are added . . . Many of these streams are part of tributary networks that are dependent upon the contributing quality of connected streams to supply and support the physical and biological needs of a system. This is especially true in supporting the viability of wild trout populations.
>
> * * *
>
> Finally, at the landscape level, impacts to streams from the [right-of-way] construction are analogous to the cumulative impacts from roads. There is an established negative correlation between road miles per watershed area and stream quality. Thus, increases in the crossings of streams by linear features such as roads and the pipeline [right-of-way] can have cumulative impacts beyond the individual crossings. [High ratios of crossings per square mile] may cause a permanent degradation in stream habitat quality and likewise affect associated natural resources, including aquatic species' propagation and survival.[68]

Thus, as the Department did with respect to the Constitution Pipeline Project, it must also deny the CWA § 401 WQC for the Atlantic Bridge Project because the cumulative impacts of the project itself, as well as when coupled together with the impacts from the AIM and Access Northeast segments of the pipeline are too great, and the Applicant cannot demonstrate compliance with the water quality standards.

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[68] Constitution Pipeline WQC Denial, at 3-5.

III. THE APPLICANT'S PAST VIOLATIONS OF PERMIT CONDITIONS AND ORDERS WARRANTS APPLICATION OF THE DEPARTMENT'S RECORD OF COMPLIANCE ENFORCEMENT POLICY

A. The Applicant Is Guilty of Past and Recent Violations Along the Pipeline Route

The Applicant has a history of violations of its permits which led to violations of New York State water quality standards. In 2008, the Applicant was engaged in a similar pipeline expansion and construction project, the Mahwah River relocation for the Ramapo Pipeline Expansion Project, which resulted in numerous violations of New York State water quality standards.[69] Although a Department Consent Order was issued to address these violations in that case,[70] the failure of the Department (i) to require full compliance with the SPDES Stormwater General Permit and (ii) to require that the applicant secure a Department-approved SWPPP, *before it commenced construction*, resulted in on-site techniques that could not meet New York State water quality requirements. Adding insult to injury in that case, because the Department failed to include the requirements of the General Permit in the CWA § 401 WQC, the Applicant was able to resist application of those requirements to its project, thereby compounding the damage done to the waters and the environment of New York State.

The Department summarily dismissed these concerns when raised on the interconnected AIM Project stating:

> Since there is no indication that the isolated violations in August 2008 were part of a pattern of non-compliance under NYSDEC Policy DEE-16, a Record of Compliance form is not required. The SWPPP prepared for the AIM Project contains measures to ensure such an incident will not be repeated, including a more robust environmental inspection/monitoring program and a focused training session directed at dewatering procedures and effective use of filter bags.[71]

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69 *See In the Matter of the Violation of Article 17 of the New York State Environmental Conservation Law ("ECL") by Algonquin Gas Transmission, LLC, Respondent*, Order on Consent, NYSDEC Case No. R3-20081010-66 (Feb. 10, 2009).

70 *Id.*

71 *See* NYSDEC, Response to Public Comments, Algonquin Incremental Market Project (May 2015), at 22, *available at* http://www.spectraenergy.com/content/documents/SE/Operations/US_NatGas_Ops/Projects-US/AIM/NYSDEC/NYSDEC_Response_Public_Comments_AIM_Project__May_2015_DEC_website_7625736_1-c.pdf.

However, these exact concerns, shamefully, became reality for the AIM Project in not one, but two situations.

First Recent Major Violation

On August 28, 2016, the Applicant's construction practices caused a break in the drill stem while attempting the pullback of a 5,000-foot-long HDD under the Hudson River, resulting in a negative environmental impact and disturbance of wetlands outside the construction area,[72] in "Serious Violations" of certain environmental conditions under the FERC-issued Order.[73]

Second Recent Major Violation

The Applicant released polluting drilling fluid occurred during the final stages of drilling on the west side of the Hudson River in a cave-in of the same beleaguered wetland that suffered from the problematic HDD.[74] This required spill containment of pumps, hay bales, silt fencing, and vacuum trucks, none of which ever fully remediated the damage already done. Once a wetland is destroyed, mitigation measures to restore it rarely succeed. And although FERC did not immediately issue a stop-work order on

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[72] According to a letter to FERC from SAPE and others: "Instead of waiting for the requisite approvals, the contractor excavated a large area and continued through the night. Reported initially by TRC, approximately 1400 square feet (later mysteriously revised downward to 381sf) of Wetland A14-SPLR-W100 were disturbed outside the limits of their approved workspace including the removal of five trees while looking for the broken drill stem." Letter from Coalition to Kimberly Bose, FERC, re: Algonquin Gas Transmission, LLC, Docket No. CP14-96-000 (Sept. 22, 2016) ("SAPE Letter"), at [2] (available through http://elibrary.ferc.gov/IDMWS/search/fercgensearch.asp, Docket No. CP-14-96).

[73] Letter from Ann F. Mills, FERC to Chris Harvey, Algonquin Gas Transmission, LLC, re: Hudson River Serious Violation (Sept. 9, 2016), at 1, *available at* https://sape2016.files.wordpress.com/2013/10/090916-ferc-letter-to-algonquin-re-violation-hdd.pdf.

[74] *See* Letter from Coalition to Kimberly Bose, FERC, re: Algonquin Gas Transmission, LLC, Docket No. CP14-96-000 (Sept. 22, 2016) ("SAPE Letter"), at [2] (available through http://elibrary.ferc.gov/IDMWS/search/fercgensearch.asp, Docket No. CP-14-96).

the AIM Pipeline Project, it did caution Algonquin that "we cannot continue to see this type of noncompliance."[75]

Previous Major Violations

As stated above, in 2008, the Applicant was engaged in a similar pipeline expansion and construction project, the Mahwah River relocation for the Ramapo Pipeline Expansion Project, which resulted in numerous violations of New York State water quality standards, including the narrative standard for turbidity.[76] In that matter, the Department assessed a significant penalty against Algonquin for these three violations - $75,000 out of the maximum $112,500 authorized by law. These Clean Water Act violations cited in the 2009 Consent Order fall squarely within the currently pending WQC Application for the Atlantic Bridge Project.

Finally, in its denial of the Constitution Pipeline Project CWA § 401 WQC, the Department unambiguously expressed its preference for use of HDD for all stream crossings. And despite the fact that the Atlantic Bridge Project only uses HDD for one of the 21 stream crossings (thereby failing to meet the Department's stated environmentally-protective preference), history has shown that the Applicant has not proven that it can effectively utilize the Department's preferred method in a way that demonstrates compliance with water quality standards and other CWA provisions and State regulations. At the very least, the Department must send the WQC Application back to the Applicant for additional information (*see also* above) and alternatives analysis before it can make any decision on whether to issue the Atlantic Bridge Project a CWA § 401 WQC.

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[75] Letter from Ann F. Mills, FERC to Chris Harvey, Algonquin Gas Transmission, LLC, re: Hudson River Serious Violation (Sept. 9, 2016), at 2, *available at* https://sape2016.files.wordpress.com/2013/10/090916-ferc-letter-to-algonquin-re-violation-hdd.pdf.

[76] *See See In the Matter of the Violation of Article 17 of the New York State Environmental Conservation Law ("ECL") by Algonquin Gas Transmission, LLC, Respondent*, Order on Consent, NYSDEC Case No. R3-20081010-66 (Feb. 10, 2009); *see also* NYSDEC, Response to Public Comments, Algonquin Incremental Market Project (May 2015), at 22, *available at* http://www.spectraenergy.com/content/documents/SE/Operations/US_NatGas_Ops/Projects-US/AIM/NYSDEC/NYSDEC_Response_Public_Comments_AIM_Project__May_2015_DEC_website_7625736_1-c.pdf.

B. The Department's Record of Compliance Enforcement Policy (DEE-16) Should be Applied to the Atlantic Bridge Project's WQC Application

The Department's permit issuance process and procedures are guided, in part, by Commissioner's Policy DEE-16, the Record of Compliance Enforcement Policy.[77] The Record of Compliance Enforcement Policy addresses applicants with a track record of previous violations of law. Its purpose is

> to ensure that persons who are unsuitable to carry out responsibilities under Department permits, certificates, licenses or grants, are not authorized to do so. Compliance with the Environmental Conservation Law (ECL) and enforcement against those who violate the ECL can be advanced by ensuring that the permit review procedures incorporate such consideration at the earliest possible stage in the review process.[78]

As a result, the applicant's[79] behavior over the past 10 years—including violations of the Environmental Conservation Law, the Department's regulations or permit conditions, and federal permit condition or order[80]—"*should* be considered as a basis for exercising the Department's discretion in denying, suspending, or revoking a permit in order to protect the environment and preserve the natural resources of the state. . ."[81]

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77 NYSDEC, Commissioner's Policy, DEE-16: Record of Compliance Enforcement Policy (rev. Mar. 5, 1993), *available at* http://www.dec.ny.gov/regulations/25244.html.

78 *Id.*, at Section I.

79 "For purposes of considering the suitability of a permittee or applicant, the above guidelines should be applicable not only to the immediate entity but to any other corporation, partnership, association or organization in which the permittee or applicant holds or has held a substantial interest or in which it has acted as a high managerial agent or director or any other individual, corporation, partnership or organization which holds a substantial interest or the position of high managerial agent or director in the permittee or applicant." *Id.*, at Section IV.

80 *Id.* ("Whether a permittee or applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL, any related order or determination of the Commissioner, any regulation of the Department, any condition or term of any permit issued by the Department, or any similar statute, regulation, order or permit condition of the federal or other state government, or agency, on one or more occasions and in the opinion of the Department, the violation that was the basis for the action posed a significant potential threat to the environment or human health, or is part of a pattern of noncompliance.").

81 *Id.* (emphasis added).

Consequently, "if a permit is issued to a prior violator, it may be appropriate to impose strict reporting or monitoring conditions within such permits to to require an environmental monitor,"[82] and "[a]mend appropriate permit application and renewal forms to include a record of compliance section."[83]

Here, as detailed above, the Applicant has committed numerous violations of the Environmental Conservation Law and the Department's water quality and stormwater regulations over the past 10 years. The Department has before it the record of the violations of the Applicant, and, as a consequence, the Department's should deny the requested CWA § 401 WQC for the Atlantic Bridge Project. In the alternative, if, despite all the reasons set forth herein, the Department considers issuing the requested CWA § 401 WQC, it must consider the WQC Application with the necessary level of scrutiny given these past on-point violations of the Applicant. The Department must meet the Record of Compliance Policy obligations and require a permit provision for an environmental monitor to be present at all times for all Clean Water Act-related action the Applicant undertakes. At the very minimum, the Department must rescind its notice of complete application and require Algonquin to amend its WQC Application to include the necessary record of compliance section and notice the amended application for full public comment.

The law is clear and requires that the applicant fully comply with the Clean Water Act and all of New York State's stormwater requirements. In the Atlantic Bridge WQC Application, however, given the Applicant's past and recent relevant violations along the interconnected pipeline route, which must be addressed by the Department's Record of Compliance Policy and the proper procedure must be followed to ensure compliance and enforceability of the State water quality and stormwater provisions.

IV. REQUEST FOR ADJUDICATORY HEARING

Riverkeeper's comments herein raise "substantive and significant" issues that warrant an adjudicatory hearing, because they relate to findings or determinations the Department is required to make pursuant to the Environmental Conservation Law, including the reasonable likelihood that the Clean Water Act § 401 WQC and permits applied for will be denied or can be granted only with major modifications to the project because the project, as proposed, *do not* meet statutory or regulatory criteria or standards, including the failure to demonstrate compliance with New York State water quality standards.[84] Our comments clearly identify specific grounds which could lead

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82 *Id.*, at Section II.

83 *Id.*, at Section IV.

84 *See* 6 NYCRR § 621.8(b).

the Department to deny the CWA § 401 WQC for the Atlantic Bridge Project,[85] including but not limited to: likely water quality standard violations associated with increased erosion and pollutants from stormwater runoff, trench construction impacts, failure to establish sufficient setbacks, hydrostatic test and trench dewatering, and cumulative impacts of this and construction of two other pipeline segments within the same area; degradation of downstream New York City drinking water supply reservoirs; and the failure of the Applicant to "demonstrate compliance" with the New York State water quality standards by presenting insufficient information in the WQC Application. As such, the Department is *required* to hold an adjudicatory hearing on the WQC Application.[86]

V. CONCLUSION

In conclusion, the Applicant has failed to demonstrate compliance with New York State water quality standards and therefore the Department must deny the WQC for the Atlantic Bridge Project. Additionally, the lack of sufficient detail in the WQC Application also warrants denial of the WQC for the Atlantic Bridge Project in accordance with the Department's precedent (e.g., denial of the WQC) regarding the Constitution Pipeline Project. Accordingly, Riverkeeper's comments herein raise substantive and significant issues which may result in the Department's denial of the CWA § 401 WQC for the Atlantic Bridge Project and therefore the Department must hold an adjudicatory hearing on the WQC Application.

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. We are actively involved in public education, advocacy, and litigation surrounding the issue of shale gas extraction and related infrastructure, particularly because of the potential devastating impacts on New York State's drinking water supplies. As a signatory to the 1997 New York City Watershed Memorandum of Agreement, Riverkeeper has a commitment to ensuring that activities in the watershed do not adversely impact the surface water resources that provide drinking water. On behalf of our thousands of members, thank you for considering our comments on the Clean Water Act Section 401 Water Quality Certification and permit applications for the proposed Atlantic Bridge pipeline project.

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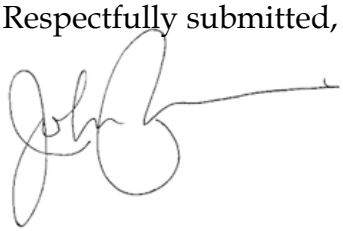
85 *See* 6 NYCRR § 621.8(d).

86 *See* 6 NYCRR § 621.8(b) ("In addition, where any comments received from members of the public or other interested parties raise substantive and significant issues relating to the application, and resolution of any such issue may result in denial of the permit application, or the imposition of significant conditions thereon, the department *shall* hold an adjudicatory public hearing on the application." (emphasis added)).

Please do not hesitate to contact me if you have any questions. I can be reached via phone at (914) 422-4342, or email at jparker@riverkeeper.org.

Respectfully submitted,



John L. Parker, Esq.
Director of Legal Programs

Attachment A

RIVERKEEPER.
NY's clean water advocate

June 10, 2015

VIA ELECTRONIC FILING

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

Re: Comments Regarding Scope of Environmental Review for the Atlantic Bridge Project, Docket No. PF 15-12-000

Dear Secretary Bose:

Riverkeeper, Inc. submits the following comments regarding the scope of environmental review for the proposed Atlantic Bridge Project, Docket No. PF 15-12-000. The public scoping period was opened via notice of the Federal Energy Regulatory Commission dated April 27, 2015.[1] The Atlantic Bridge Project is projected to come on-line on November 1, 2017.[2] The potentially significant impacts of the proposed Atlantic Bridge Project are related to other matters before the Commission, in particular the recently approved Algonquin Incremental Market ("AIM") Project and the Access Northeast Project.[3] These comments fully incorporate and supplement Riverkeeper's

[1] Federal Energy Regulatory Commission, Notice of Intent to Prepare an Environmental Assessment for the Planned Atlantic Bridge Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings (Apr. 27, 2015) ("Scoping Notice").

[2] Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC, Atlantic Bridge Project Environmental Report, Draft Resource Report 1 – General Project Description, Pre-Filing Draft, FERC Docket No. PF 15-12-000 (Mar. 2015) ("Atlantic Bridge Draft Resource Report 1") at 1-1 – 1-2.

[3] 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

testimony at the Commission's May 11, 2015 scoping session in Yorktown Heights, New York.

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 environmental impact statement ("EIS"). The EIS must comprehensively evaluate 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.[4] 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.[5] Once in operation, the Atlantic Bridge Project is expected to provide up to 153,000 decatherms ("Dth")[6] per day of

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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 (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.

[4] Scoping Notice at 4-5.

[5] Atlantic Bridge Draft Resource Report 1 at 1-1 – 1-2.

[6] One Dth is the energy equivalent of burning 1,000 cubic feet of natural gas.

transportation service to delivery points along the Algonquin system and to the Maritimes & Northeast pipeline for delivery to points in New England and Canada.[7]

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 inch pipe, and the upgrade of one metering and regulating station.[8] 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.[9]

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.[10] 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.[11] 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.[12] The projected in service date for the AIM Project is November 2016.[13]

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,

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[7] Scoping Notice at 4.

[8] *Id*. at 4-5.

[9] 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).

[10] 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 Oder").

[11] *Id*. ¶ 4-6.

[12] *Id*. ¶ 1.

[13] 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.

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 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.[14] 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.[15] 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.[16] 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.[17]

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.[18] 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.[19]

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[14] 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.

[15] 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.

[16] AIM Project Resource Report 1, Appendix 1A.

[17] Atlantic Bridge Draft Resource Report 1, Appendix 1A.

[18] Federal Energy Regulatory Commission, Approval of Pre-Filing Request: Atlantic Bridge Project, FERC Docket No. PF 15-12-000 (issued Feb. 20, 2015).

[19] *Id*.

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 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.[20] 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.[21] 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 Atlantic Bridge, AIM, and Access Northeast Projects are connected, cumulative, and similar actions that must be evaluated together.[22] 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 should be under consideration." *Delaware Riverkeeper Network, et al. v. Federal Energy Regulatory Commission*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

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[20] 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").

[21] *Id*.; *see also* FAQs: About Access Northeast, available at: http://accessnortheastenergy.com/faqs/faq-about-access-northeast ("Access Northeast Project Website").

[22] 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.

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."[23] Despite Spectra's claim that the thee projects are independent, its description of the Access Northeast Project notes that the "AIM expansion project will begin to de-

[23] Spectra Website.

bottleneck the pipeline system by winter of 2016, helping to enhance reliability and reduce natural gas price volatility in New England."[24] 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.[25]

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."[26] 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.

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

[24] Access Northeast Project Website.

[25] Spectra Website.

[26] AIM Project Order ¶ 118.

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.[27] 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:

> "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.

[27] *See* Scoping Notice.

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.[28]

1. Increased Erosion and Pollutants from Stormwater Runoff

Unless strictly controlled, stormwater runoff during construction of the Atlantic 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

[28] 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.

receiving waters, increasing turbidity.[29] In fact, without sound erosion controls in place, construction sites can discharge more than 1,000 tons of sediment per acre per year.[30] 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.[31] 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.[32]

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 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.[33]

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

[30] *Id*.

[31] *Id*.

[32] New York State Department of Environmental Conservation, New York Standards and Specifications for Erosion and Sediment Controls (Aug. 2005) at 1.3.

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

The Applicant seeks to cross numerous wetlands by using construction methods of 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.[34] 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.[35]

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.[36] 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 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.

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[34] Atlantic Bridge Draft Resource Report 1 at 1-25 – 1-27.

[35] U.S. Environmental Protection Agency, Aquatic Buffer Model Ordinance, available at: http://water.epa.gov/polwaste/nps/mol1.cfm.

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

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.

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 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.[37] 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.[38]

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 <u>all</u> 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

[37] 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: <u>http://www.dec.ny.gov/docs/water_pdf/gp015001.pdf</u>.

[38] 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.

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,[39] 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 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."[40] 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.

IV. 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"

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[39] Interstate Natural Gas Association of America, Hydrostatic Testing, available at: http://www.ingaa.org/cms/82.aspx.

[40] Atlantic Bridge Draft Resource Report 1 at 1-27.

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,

Misti Duvall
Staff Attorney

Marissa Weiss
Legal Intern

Attachment B

RIVERKEEPER
NY's clean water advocate

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.[1]

[1] 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.[2] 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.[3] Once in operation, the Atlantic Bridge Project is expected to provide up to 153,000 decatherms ("Dth")[4] 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.[5]

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

(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.

[2] Scoping Notice at 4-5.

[3] Atlantic Bridge Draft Resource Report 1 at 1-1 – 1-2.

[4] One Dth is the energy equivalent of burning 1,000 cubic feet of natural gas.

[5] Scoping Notice at 4.

inch pipe, and the upgrade of one metering and regulating station.[6] 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.[7]

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.[8] 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.[9] 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.[10] The projected in service date for the AIM Project is November 2016.[11]

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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[6] *Id*. at 4-5.

[7] 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).

[8] 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 Oder").

[9] *Id*. ¶ 4-6.

[10] *Id*. ¶ 1.

[11] 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.[12] 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.[13] 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.[14] 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.[15]

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.[16] 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.[17]

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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[12] 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.

[13] 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.

[14] AIM Project Resource Report 1, Appendix 1A.

[15] Atlantic Bridge Draft Resource Report 1, Appendix 1A.

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

[17] *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.[18] 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.[19] 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 inaccutate.

The Atlantic Bridge, AIM, and Access Northeast Projects are connected, cumulative, and similar actions that must be evaluated together.[20] 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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[18] 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").

[19] *Id*.; *see also* FAQs: About Access Northeast, available at: http://accessnortheastenergy.com/faqs/faq-about-access-northeast ("Access Northeast Project Website").

[20] 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."[21]

[21] Spectra Website.

Despite Spectra's claim that the thee 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."[22] 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.[23]

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."[24] 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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[22] Access Northeast Project Website.

[23] Spectra Website.

[24] 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.[25] 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:

[25] *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.[26]

1. Increased Erosion and Pollutants from Stormwater Runoff

Unless strictly controlled, stormwater runoff during construction of the Atlantic

[26] 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.[27] In fact, without sound erosion controls in place, construction sites can discharge more than 1,000 tons of sediment per acre per year.[28] 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.[29] 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.[30]

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

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

[28] *Id*.

[29] *Id*.

[30] 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.[31]

The Applicant seeks to cross numerous wetlands by using construction methods of 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.[32] 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.[33]

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.[34] 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

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

[32] Atlantic Bridge Draft Resource Report 1 at 1-25 – 1-27.

[33] U.S. Environmental Protection Agency, Aquatic Buffer Model Ordinance, available at: http://water.epa.gov/polwaste/nps/mol1.cfm.

[34] 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.[35] 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.[36]

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[35] 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.

[36] 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 <u>all</u> 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,[37] 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

[37] 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."[38] 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.

[38] 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 flora 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 disclosedin 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 in 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,

Attorney for Riverkeeper