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Protecting the environment for wildlife in support of the natural world that sustains us all.

May 4, 2026

**Comments of Berkshire Environmental Action Team
on FERC Dockets CP13-499-006 and CP18-5-004
Petitions for reinsurance of Constitution Pipeline Certificate
of Public Convenience and Necessity and Petition for
Declaratory Order waived 401WQC for Constitution**

Dear Secretary Reese,

Please accept these comments on CP13-499-006 and CP18-5-004, Petitions for Reissuance of Constitution Pipeline Certificate of Public Convenience and Necessity and for a Declaratory Order that NYSDEC waived its authority under Section 401 of the Clean Water Act. We submit these comments in opposition to the proposed Constitution Pipeline Project.

1. Threshold Legal and Procedural Deficiencies

As a threshold matter, there is no legal sufficient application before the Commission, and these deficiencies must be resolved prior to any scoping or environmental review.

First, the application relies on the revival of a previously vacated docket. The underlying orders were vacated by the U.S. Court of Appeals for the Second Circuit, and the attempt to proceed without a new, legally valid application raises serious questions about the Commission's authority to act on this filing, as vacated agency actions have no legal force. See *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Commission*.¹ The New York Attorney General has stated that the current process is unlawful. The Commission must determine whether any further action is permissible under governing administrative law and the court's mandate before proceeding. Because the prior certificate was vacated and no new application has been filed, there is no valid federal action before the Commission, and the proceeding to scoping or environmental review would be inconsistent with NEPA and the Natural Gas Act.

Second, the applicant has failed to demonstrate current market need. There are no disclosed or binding precedent agreements supporting the proposed Constitution Pipeline. Without identified customers or contractual agreements, the application does not meet the evidentiary requirements necessary to demonstrate public convenience and necessity under the Natural Gas Act,² which

¹ *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146 (D.C. Cir. 1993), available at: <https://law.justia.com/cases/federal/appellate-courts/F2/988/146/142030/>

² Energy Bar Association, *Comments of Christin Korman & Pincus*, Docket Nos. 20-115 & 20-132 (2023), available at: <https://www.eba-net.org/wp-content/uploads/2023/02/20-115-132-Christin-Korman-Pincus-FINAL.pdf>

requires a reasoned determination based on record evidence. Absent such a showing, the Commission cannot lawfully find that the project serves the present or future public convenience and necessity.

Given these deficiencies, the Commission should reject the application as incomplete. At a minimum, it must require a new filing supported by current market data, updated environmental information, and full compliance with statutory requirements before proceeding further.

2. The Project Requires a Full Environmental Impact Statement

If the Commission proceeds notwithstanding these threshold deficiencies, the scope and potential impacts of this project require preparation of a full Environmental Impact Statement rather than a limited Environmental Assessment.

The proposed project involves:

- Extensive land disturbance across multiple jurisdictions
- Potential impacts to water resources, ecosystems, and communities
- Long-term operational risks, including emissions and infrastructure failure

Under the National Environmental Policy Act, these factors constitute significant impacts requiring a full “hard look” at environmental consequences. See *Baltimore Gas & Electric Co. v. NRDC*.³ A truncated Environmental Assessment would be insufficient to evaluate the full range of direct, indirect, and cumulative impacts.

3. FERC Must Require Applicant to Identify and Analyze all Environmentally Sensitive Areas

FERC must require the applicant to identify and analyze all environmentally sensitive areas within and adjacent to a clearly defined buffer zone along the entire pipeline corridor. At a minimum, this analysis must include:

Water resources and ecological systems:

- Wetlands, waterways, riparian corridors
- Aquifers, groundwater exchange zones
- Vernal pools
- Habitats supporting threatened or endangered species

Human water infrastructure:

- Public and private wells
- Drinking water systems
- Septic systems

Recreational and community resources:

³ *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983), available at: <https://supreme.justia.com/cases/federal/us/462/87/>

- Surface waters used for public recreation
- Protected scenic areas

Construction and operational impacts:

- Intended blasting zones and associated risks
- Sources of water to be used for hydrostatic testing, how these sources will be replenished and restored
- Locations and impacts of hydrostatic testing discharge and runoff
- Potential roadway degradation and disruptions to transportation
- Temporary workspaces and staging areas, including baseline conditions and plans for restoration and mitigation of damages

Facility-specific impacts:

- Air, soil, and water contamination risks from potential blow-down points
- Proximity of potential blow down points to human, animal, and plant populations
- Noise and light pollution near compressor stations, impacts on area species

Public safety:

- Increased burden on local emergency services, particularly fire departments

4. FERC Must Conduct a Rigorous, Structured Analysis of All Project Impacts

This analysis should proceed using the following hierarchy:

Avoid, minimize, mitigate, monitor, and plan:

- Avoid: Identify how impacts will be prevented entirely
- Minimize: Reduce impacts that cannot be avoided
- Mitigate: Provide enforceable plans for remediation or compensation for unavoidable impacts
- Monitor: Establish long-term monitoring to ensure compliance and detect harm
- Plan: Define response protocols for system failures, leaks, accidents, etc.

This framework must be applied consistently across all environmental resource categories and project phases.

5. Cumulative and Local Impacts

Climate considerations and cumulative impacts:

FERC must evaluate the full lifecycle greenhouse gas emissions associated with this project, including upstream production, midstream transport, and downstream combustion, as required where such impacts are reasonably foreseeable. See *Sierra Club v. FERC (Sabal Trail)*.⁴ By expanding takeaway capacity, the pipeline would induce additional upstream gas production and

⁴ *Sierra Club v. Federal Energy Regulatory Commission*, 867 F.3d 1357 (D.C. Cir. 2017), available at: <https://law.justia.com/cases/federal/appellate-courts/cadc/16-1329/16-1329-2017-08-22.html>

facilitate long-term downstream consumption, locking in fossil fuel dependence over the multi-decade life of the asset. These effects are inconsistent with state and regional climate mandates and must be evaluated as indirect and cumulative impacts under NEPA. See *Food & Water Watch v. FERC*.⁵

The Commission must also evaluate the cumulative environmental and public health impacts, including localized effects on affected communities and those associated with long-term exposure to pollution. See *Minisink Residents for Environmental Preservation v. FERC*.⁶ While individual emissions sources, such as compressor stations or intermittent blow-down events, may appear limited in isolation, their combined effect over decades results in sustained exposure to harmful air pollutants. Over time, this cumulative exposure is associated with increased risks of respiratory illness, cardiovascular disease, adverse birth outcomes, and certain cancers.

Local economic impacts:

The proposed Constitution Pipeline presents several potential adverse localized economic impacts that warrant detailed analysis. Construction and operation of the pipeline would likely reduce property values for landowners along and adjacent to the route due to perceived safety risks, loss of aesthetic value, and land-use restrictions imposed by permanent easements. These effects can be particularly acute in rural areas where property value is closely tied to environmental quality. In addition, sectors dependent on natural landscapes — such as tourism, outdoor recreation, and hospitality — may experience reduced revenue as a result of the forest clearing, visual intrusion, and environmental degradation that accompany pipeline projects. Furthermore, agricultural operations, especially certified organic farms, face potential economic harm from soil disturbance, contamination risks, and certification complications associated with nearby industrial activity.

The pipeline may also impose indirect costs on local governments and communities. Increased demands on emergency response services—particularly volunteer fire departments—could require additional training, equipment, and funding to address pipeline-related incidents. Furthermore, if the project contributes to continued reliance on natural gas rather than accelerating transition to more stable, locally generated energy sources, communities may remain exposed to volatile energy prices, undermining long-term economic resilience.

6. Deficiencies in Applicant’s Claimed Benefits

The applicant asserts that the project will deliver economic savings, improve reliability, and reduce emissions intensity. These claims are unsupported by the current record and should be examined critically.

There is no demonstrated need for this pipeline:

⁵ *Food & Water Watch v. Federal Energy Regulatory Commission*, No. 22-1214, 2024 WL — (D.C. Cir. June 14, 2024), available at: <https://law.justia.com/cases/federal/appellate-courts/cadc/22-1214/22-1214-2024-06-14.html>

⁶ *Minisink Residents for Environmental Preservation and Safety v. Federal Energy Regulatory Commission*, 762 F.3d 97 (D.C. Cir. 2014), available at: www.ferc.gov/enforcement-legal/legal/court-cases/re-minisink-residents-environmental-preservation-and-safety-0

The project terminates in Schoharie County, New York, connecting to already constrained infrastructure. As noted by regional energy experts, existing downstream pipelines — not upstream supply — are the primary bottleneck. Therefore, this project will not actually deliver additional gas to New England markets.⁷

Price and capacity misconceptions:

Pipeline capacity into the region has increased significantly (over 50% since 2014), yet energy prices have remained volatile. Additional pipeline capacity will do nothing to stabilize or reduce actual consumer costs. In fact, this pipeline may increase consumer costs. To the extent that pipeline capacity costs are recovered through utility rates, the financial burden of this project would ultimately be borne by end-use consumers. Because this pipeline has no binding precedent agreements, there is a heightened risk that ratepayers could be exposed to unjustified costs without any corresponding benefits.

Over-reliance on natural gas:

One reason for these ever-volatile prices is the Northeast's heavy reliance on natural gas. Expanding natural gas infrastructure exacerbates, rather than resolves, this structural issue.

Conflict with climate policy:

Increased reliance on fossil fuel infrastructure directly conflicts with state-level climate mandates and decarbonization goals across the Northeast.

Prior regulatory findings:

In 2016, the New York State Department of Environmental Conservation previously denied a required 401 Water Quality Certification for this project after the applicant was unable to prove it could protect streams, wetlands and drinking water supplies along the proposed route. That determination was upheld in court.⁸ FERC must not allow this project to bypass this legally required review under Section 401 of the Clean Water Act. See *New York State Department of Environmental Conservation v. FERC*.⁹ NYSDEC has already determined that the project failed to demonstrate compliance with water quality standards and posed unacceptable risks to streams, wetlands, and drinking water resources along the proposed route.

7. Conclusion

The applicant claims that the public benefits of this project outweigh adverse impacts. However:

- There are no current customers or binding contracts to demonstrate need
- Environmental and public health risks remain substantial

⁷ Sarah Shemkus, *The Constitution Gas Pipeline Won't Solve New England's Energy Problems*, New Hampshire Bulletin (Aug. 26, 2025), available at: <https://newhampshirebulletin.com/2025/08/26/the-constitution-gas-pipeline-wont-solve-new-englands-energy-problems-experts-say/>; <https://stoptheconstitutionpipeline.org/>

⁸ Vanessa Fajans-Turner, *The Constitution Pipeline Proposal Is Coming Back from the Dead*, Times Union (Feb. 18, 2026), available at: <https://www.timesunion.com/opinion/article/constitution-pipeline-fossil-fuels-21358318.php>

⁹ *New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission*, No. 19-1610 (2d Cir. Mar. 23, 2021), available at: www.ferc.gov/media/new-york-state-department-environmental-conservation-and-sierra-club-v-ferc

- Economic and reliability benefits are speculative, at best
- Viable alternatives, including energy efficiency and renewable generation, are not considered

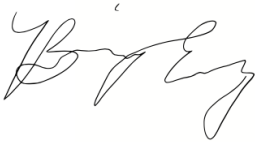
For the reasons outlined above, the Commission must:

- Reject the application as procedurally and substantively deficient.
- Require a new filing for any further consideration.
- Require the applicant to prepare a full Environmental Impact Statement.
- Conduct a comprehensive analysis of the environmental, climate, and cumulative impacts.
- Critically evaluate unsupported claims of public benefit and necessity.

Absent these actions, proceeding with this project would be inconsistent with NEPA, the Natural Gas Act, and the Commission's obligation to act in the public interest.

We urge the Commission to deny the proposed project. Thank you for considering these comments.

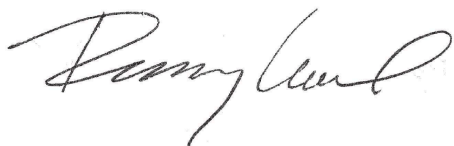
Sincerely,



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