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December 16, 2013

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

Re: Deficiencies in Constitution Pipeline Company's Responses to Agency Requests, Docket Nos. PF12-9, CP13-499

Dear Secretary Bose:

The Pace Environmental Litigation Clinic ("PELC") represents Stop the Pipeline ("STP"), an association of citizens affected by the proposed Constitution pipeline. STP's goals are to preserve and enhance the rural heritage and pristine environment of central New York State, and north central Pennsylvania, by ensuring the purity of its air, water, and soil, the health of its inhabitants, the resilience of its ecosystems, and the capacity of the area to be self-sustaining. STP is associated with over 1000 citizens who would be affected by the proposed pipeline. STP members, together with other members of the public, submitted over 1000 comments to FERC's docket between May 2012 and July 2013. Hundreds of STP's members also intervened during July 2013. Since then thousands of pages have been filed, and we write now to comment on the Constitution Pipeline Company's responses to FERC's recent requests for information.

I. INTRODUCTION

The Constitution Pipeline Company, LLC (the "Company" or the "Applicant") is proposing to construct and operate a 30-inch diameter, 124-mile long natural gas transmission line that would run from Susquehanna County, Pennsylvania, through Broome, Chenango, Delaware and Schoharie Counties, New York. The Company submitted two draft resource reports on May 21, 2012, and a complete set on February 22, 2013, in docket number PF12-9. It filed its application for a certificate of public convenience and necessity on June 13, 2013, along with a new set of draft resource reports, in docket number CP13-499.

The Federal Energy Regulatory Commission (“FERC”) is designated as lead agency for the environmental review of new interstate gas transmission lines, but relies on the applicant to obtain enough information to develop an Environmental Impact Statement (“EIS”) for the project, and to take a “hard look” at its environmental impacts. FERC has requested additional information from the Company on three separate occasions, which it needs in order to complete its draft EIS. Once FERC finalizes the EIS, other agencies may rely on the document to decide whether to grant and/or how to condition other permits required for the project. Some of these agencies have also commented and requested information from the Company in order to obtain adequate information to make determinations with respect to their respective permits.

In this comment, PELC will analyze the Company’s response to Request No. 1 of FERC’s 40-page request for more information (“EIR”).¹ In Request No. 1, FERC asked the Company to respond to *all* of the agencies’ comments. PELC is limiting its analysis to the comments made by only two agencies: the United States Army Corps of Engineers (“USACE”) and the New York State Department of Environmental Conservation (“NYSDEC”). PELC found a wide range of problems with the Company’s responses—or lack thereof—to the comments submitted by USACE and NYSDEC. These problems include, but are not limited to: 1) a complete failure to even acknowledge many agency comments; and 2) inadequate responses to many of the other agency requests. While the scope of this comment is limited to problems with the Company’s responses to USACE and NYSDEC, it is almost certain that similar issues permeate the Company’s so-called “responses” to other agencies’ comments, and to FERC’s own requests for information found in the remaining 40 pages of the August 29, 2013 EIR.

In conducting this analysis, PELC scrutinized the Company’s Agency Data Request Response Tracking Table, which is contained in Appendix A of the Company’s November 11, 2013 submission (the “Current Tracking Table”).² The Company had submitted an earlier Agency Data Request Response Tracking Table as part of its July 24, 2013 submission (the “Superseded Tracking Table”).³ For all intents and purposes, the Company has represented that the Current Tracking Table, submitted on November 11, 2013, supersedes all of the tracking tables filed prior to that date as the Current Tracking Table includes a column indicating the specific dates the responses were made to FERC. In other words, the Current Tracking Table is the final version available to the public.

¹ Kevin Bowman, Environmental Information Request for the Constitution Pipeline and Wright Interconnect Projects (Aug. 29, 2013), *available at* <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13340013> [hereinafter FERC Request No. 1].

² Constitution Pipeline Co., LLC, Supplement to June 13, 2013 and July 24, 2013 Submittals, App. A (Nov. 11, 2012), *available at* <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13391254> [hereinafter Current Tracking Table].

³ Constitution Pipeline Co., LLC, Supplement Environmental Information, App. A (July 24, 2013), *available at* <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13313479> [hereinafter Superseded Tracking Table].

Shockingly, the Current Tracking Table completely omits most agency comments. In some instances the Company had responded to agency comments in the Superseded Tracking Tables, but has now deleted them without any explanation whatsoever. Thus, the Company has surreptitiously concealed a substantial number of agency comments and Company responses in an apparent attempt to avoid public scrutiny. Therefore, PELC has performed a comprehensive review of all comments (of USACE and NYSDEC) and responses (of the Company) contained in both the Superseded and Current Tracking Tables.

Finally, PELC requests that FERC expand Request No. 1 to include responses to comments submitted by members of the public. FERC has asked the Company to respond to comments made by other agencies, but has ignored the substantial and substantive comments made by the public. FERC should demand that the Company respond to the concerns of individual citizens and citizen groups raised during the pre-filing and scoping process.

II. THE COMPANY HAS FAILED TO ADEQUATELY RESPOND TO FERC'S REQUESTS.

FERC's Request No. 1 states as follows:

As previously requested in the Federal Energy Regulatory Commission's (FERC or Commission) Environmental Information Request (EIR) dated April 9, 2013 (April EIR) (Overall No. 1), Constitution should address all of the comments filed in the public record by other agencies regarding the draft Resource Reports (RR), such as the May 3 and 28, 2013 comments from the New York State Department of Agriculture and Markets and the New York State Department of Environmental Conservation (NYSDEC), respectively.⁴

On September 18, 2013, the Company responded by stating,

Constitution has obtained the requested information distributed by the New York State Department of Agriculture and Markets and the New York State Department of Environmental Conservation (NYSDEC) as well and is working with these agencies to ensure their concerns are discussed and incorporated if viable. Constitution outlined these requests and provided discussion in Appendix A, Agency Data Request Response Tracking Table, of the ER submitted in June 2013 and the supplemental filing in July 2013.⁵

By requesting that the Company "address *all* of the comments filed in the public record by other agencies," FERC did not limit the scope of the Company's responses to ones that the

⁴ FERC Request No. 1.

⁵ Timothy Powell, *Response to Environmental Information Request for the Constitution Pipeline* (Sept. 18, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13351439>.

Company deems “viable.” Nor did FERC limit the scope to only requests from the New York State Department of Agriculture and Markets and the NYSDEC. The Company must provide complete responses to *all* requests from *all* agencies.

III. THE COMPANY’S TRACKING TABLE LACKS TRANSPARENCY

FERC requires applicants to create a table to track what information has been requested by agencies, and how those comments have been answered. The point of the tracking table is to have a comprehensive document that makes it easy to follow the back and forth between the agencies and the applicant. This table is intended to provide more transparency to the public by organizing and summarizing the exchange of vast amounts of information between the agencies and the applicant in one location in an easy to follow format.

However, rather than following this protocol, the Company has made every effort to obscure exchanges between the agencies and the applicant. For example, until the November 12, 2013 documents were filed, the Company’s Superseded Tracking Table was in 6-point font, which made it almost impossible for the public to read. Another problem is that many of the comments and responses use a pale gray font, which is nearly illegible when printed.

In addition to poor presentation, the Company’s list of agency’s comments does not include citations or links to the original documents, or direct quotations from them, so it is impossible to track what the agency actually stated or requested. If the public cannot track what the agency asked, then citizens cannot determine whether the Company adequately responded to those statements or requests. In addition, the Company’s responses frequently refer to scores of pages in other documents, rather than giving specific answers within the tracking table.⁶ This approach makes it impossible to determine whether the Company has actually responded to the agencies’ comments, and requires the public to dig through mountains of data. By failing to include proper reference to agency requests and forcing the public to sort through mounds of information, the Applicant has left the public to follow an endless “breadcrumb trail” to determine to which agency comment the Company is responding, and whether the Company has actually responded to that comment.

The scope of the problem becomes more apparent when one considers the volume of material that has been filed by the Company. The June 13, 2013 application and draft Resource Reports comprise over 3,700 discrete pages (over 1 GB of data). Almost all of the documents have been resubmitted twice since then, and each submission is substantially larger than the last. For example, the November 11, 2013 set of draft Resource Reports includes over 160 files, containing over 1.4 GB of data. This represents a 40% increase in data since June. Because of the volume and complexity of the filed documents, it is imperative that the tracking tables provide an easy method for following the back and forth between the agencies and the Applicant.

⁶ For instance, both NYSDEC-7 and NYSDEC-8 in Appendix A from July 25, 2013 fail to provide information within the tracking table. *See* Appendix A, Agency Data Request Response Tracking Table (July 25, 2013).

An Environmental Impact Statement, and all supporting documents, must be accessible to public.⁷ Moreover, “[t]he regulations promulgated by the Council on Environmental Quality are mandatory, not hortatory. They require that an agency give environmental information to the public and then provide an opportunity for informed comments to the agency.⁸ This process of disclosing information to the public must occur before the agency has reached its final decision on whether to go forward with the project.”⁹ Thus, to comply, the Company (as the applicant) and FERC (as the lead agency), must make the volume of material easy to read and track. All requests for more information, and responses to them, must include legible fonts, citations, hyperlinks, searchable text, etc. Otherwise, the EIS is just an avalanche of paper meant to stifle all meaningful discussion and analysis.

IV. THE COMPANY HAS FAILED TO ACKNOWLEDGE AND RESPOND TO MOST OF THE AGENCY COMMENTS.

FERC Request No. 1 states that the Company must provide responses to *all* comments from *all* agencies. To date, the Company has failed to include many requests for information made by the USACE and NYSDEC in the agency response tracking tables.¹⁰ The USACE and NYSDEC have both submitted scoping comments, and several other comment letters.¹¹ These included requests for very specific information as well as broad demands. For example, both

⁷ See 40 C.F.R. § 1506.6 (2013) (providing that federal agencies must make diligent efforts to involve the public in preparing environmental documents, give public notice of the availability of environmental documents so as to inform those persons who may be interested or affected, and solicit appropriate information from the public).

⁸ 40 C.F.R. §§ 1501.4, 1506.6 (2013).

⁹ *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F. Supp. 2d 984 (E.D. Cal 2005) (citing 40 C.F.R. § 1500.1(b)).

¹⁰ Superseded Tracking Table; Current Tracking Table.

¹¹ USACE, scoping comments, (Oct. 9, 2012), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14057852; USACE, comments on draft resource reports, (March 29, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324; USACE, EIR, (July 24, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14132569; NYSDEC, scoping comments, (Nov. 7, 2012), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20121106-5145; NYSDEC, preliminary comments on draft resource reports, (Mar. 29, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102528; NYSDEC, preliminary comments on environmental construction plan (May 28, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130528-5079; NYSDEC, preliminary comments on application, (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052; NYSDEC, comments on environmental report, alternatives analysis (Sept. 25, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14148677.

agencies have stated that they will require a complete cumulative impact analysis and detailed studies on alternative routes before they can issue their respective permits. As discussed below, these studies have not yet been submitted. Company responses were mandated by FERC in its August 29, 2013 EIR as a prerequisite to the filing of a draft EIS.¹²

1. Engineering Drawings Depicting Temporary and Permanent Impacts

On March 29, 2013, USACE requested specific engineering drawings depicting temporary and permanent impacts:

In addition to the information contained in the draft DRP's, the USACE will require site specific 8.5 x 11" black and white engineer-type drawings that depict temporary and permanent impacts associated with the project. These impacts include but are not limited to contractor staging areas and pipe yards, alternative work spaces, access roads, and cathodic protection ground beds.¹³

To date, the Company has offered no response in the agency tracking tables it has submitted.¹⁴

2. Delineation of Access Roads

The Company has similarly failed to acknowledge USACE's request for delineation of access roads:

All proposed access road corridors associated with the project, or any existing roads proposed to be modified, inside or outside of the project ROW, should be delineated to accurately quantify temporary and permanent impacts to WOUS. Drawings should distinguish access roads as existing or proposed.

Again, the Company's agency response tracking tables do not contain a response.¹⁵

3. Evaluation of Wetlands Impacts

Similarly, the Company failed to acknowledge NYSDEC's request for it to evaluate wetlands impacts:

Wetland impacts that would result from construction of the proposed and alternate routes, including avoidance and minimization measures that would be employed, must be evaluated. If proposed construction in wetlands could result in a

¹² FERC Request No. 1.

¹³ USACE, Comments Regarding Draft Resource Reports, (Mar. 29, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

¹⁴ Superseded Tracking Table; Current Tracking Table.

¹⁵ *Id.*

significant change in the type of wetland community (such as conversion of forested to non-forested wetland) or in a significant loss to the functions and benefits of the wetland, mitigation in the form of created wetlands or other acceptable measures would be required and should also be evaluated.¹⁶

The Company has not addressed wetlands impacts for the proposed route or any alternate routes within any of its tracking tables.¹⁷

4. Stream Classification and Proposed Methods for Crossing

The company has also ignored NYSDEC's request to discuss stream classifications and proposed methods for crossing each segment:

The classification of all stream segments proposed to be crossed, including alternative segments, and the proposed method for crossing for each segment must be discussed and evaluated by the Applicant. All waters of the State are provided a class and standard designation based on existing or expected best usage; these classifications include AA, A, B, C(t) and (Ct) which are classified as "protected." NYSDEC is currently reviewing stream classifications in NYSDEC Regions 4 and 7 and an initial review of the preferred Project route shows that seventy-three (73) known 'protected' class streams would be crossed by the proposed pipeline; at least an additional seven (7) which contain trout are also subject to protected class jurisdiction.¹⁸

The Company has not included this NYSDEC request within its tracking tables.¹⁹

5. Preliminary Stormwater Pollution Prevention Plan

The Company has not complied with NYSDEC's request for a preliminary Stormwater Pollution Prevention Plan. NYSDEC stated:

A preliminary Stormwater Pollution Prevention Plan (SWPPP) must be included as an appendix to the draft EIS, describing the proposed erosion and sediment control practices and, where required, post-construction stormwater management practices, that will be used and constructed to reduce the pollutants in stormwater discharges. Of particular concern in certain areas along the proposed Project route is the existence of karst topography, which warrants additional considerations in preparation of the SWPPP to ensure that by-products of the construction process

¹⁶ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

¹⁷ Superseded Tracking Table; Current Tracking Table.

¹⁸ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

¹⁹ Superseded Tracking Table; Current Tracking Table.

do not enter karst inlets, including exposed soil, fuel, oil, hydrologic fluids and other construction-related chemicals. Work in and around streams, wetlands and karst inlets (including discharge of water withdrawn from surface water or groundwater for hydrostatic testing) must employ Best Management Practices (BMPs) to ensure that water quality standards are maintained. Strict attention to proper installation and maintenance of sediment and erosion controls in these areas is critical. Methods for maintaining water quality should include isolating work areas (e.g. piping, coffer dam, pumping around) from the flowing waters to ensure that work is accomplished in the dry such that no visible contrast to waters outside and downstream of the work site is apparent.

The Applicant should evaluate how the various erosion control techniques described in the SWPPP will be coordinated within the construction schedule to avoid the potential for catastrophic erosion events witnessed by NYSDEC staff in previous pipeline installations. For example, extensive time delays between vegetation clearing/grubbing, initial grading of the right-of-way (ROW) and actual installation of the pipe must be avoided and temporary mulching or the use of wood chips for ROWs should be evaluated. It is recommended that only a limited length of the Project development area be opened up at any one time. Where forest cover will be removed, it is also recommended that stump removal and grubbing not be conducted until installation crews are ready to work in that area.²⁰

The SWPPP was not included as an appendix to the Company's draft resource reports and has not been included in the Current Tracking Table. By failing to provide clear and adequate notice of its intended SWPPP, the Company is stifling public discourse and agency review of the proposed pipeline's environmental implications.

6. Cumulative Environmental Impacts

Finally, the Applicant has failed to evaluate the cumulative environmental impacts associated with the construction and operation of the Constitution Pipeline, as requested by NYSDEC:

[T]he Applicant must evaluate whether the Project would be reasonably available for supply and distribution for communities along the Project route and whether the Project could reasonably serve as a collector line for additional supply from New York Marcellus and Utica Shale formations. Since the location of the proposed Project route has a high potential for development of natural gas extraction from Marcellus and Utica Shale formations, as indicated in the revised NYSDEC draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program, September 7, 2011, the draft

²⁰ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

EIS must evaluate the cumulative environmental impacts associated with these potential activities.²¹

By failing to address the cumulative impacts associated with constructing and operating the Constitution Pipeline,²² the Company is attempting to conceal one of its gravest environmental consequences. As a principal public concern with foreseeable and significant environmental consequences, the cumulative impacts associated with constructing and operating this pipeline must be fully evaluated. The Company should include this evaluation in its resource reports and note it in its Current Tracking Table so that the public and agencies have adequate time to review and respond to the information.

V. THE COMPANY HAS NO LEGAL AUTHORITY TO DISREGARD AGENCY REQUESTS.

Because agencies can rely on FERC's EIS in order to decide whether to grant and/or how to condition their own permits, the Company must supply the agencies with the information they have requested. In many of the instances where the Company does respond to agency requests, it avoids providing a substantive response by raising meritless claims.²³ In many instances the Company says that this information has been, or will be, provided in a different legal forum, such a permit application, or it will be sent directly to the agency. This is not acceptable. Both agencies have explicitly stated that all information must be included in the EIS. The Company's evasive answers completely undermine the agencies' ability to carry out a comprehensive environmental review for permitting purposes under FERC's EIS.

1. Non-Surveyed Areas

For example, in a comment dated March 29, 2013, USACE stated that,

[t]he DRP indicates that a desktop analysis was used to identify wetlands and waterbodies on non-surveyed parcels. Prior to making a permit decision, the USACE will need field delineations of all parcels proposed to be impacted by the project. The USACE respectfully requests that FERC also defer a decision on the project until all parcels are delineated.²⁴

²¹ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

²² Superseded Tracking Table; Current Tracking Table.

²³ New York State Department of Environmental Conservation, Comments on the Scope of Environmental Impact Statement for the Constitution Pipeline Project (Nov. 7, 2012) *available at* <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13104317>.

²⁴ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

The Company offered the following response in the Superseded Tracking Table, but completely deleted it in the Current Tracking Table:

For linear utility projects in New York the Nationwide Permit rules and guidelines and in Pennsylvania the State Programmatic General Permit-4 rules and guidelines, state that by definition each wetland and waterbody crossing is a single and complete project. Constitution's preliminary analysis indicates that all wetland and waterbody impacts is such that these permit authorization mechanisms are applicable. Once the FERC issues a Certificate of Public Need and Necessity all parcels will be surveyed and verified by the USACE and the appropriate permits will be applied for and impact mitigation.²⁵

The Company's response completely sidesteps USACE's request, and instead offers a legal argument against its validity. It is not the Company's role to determine whether an agency comment requires a valid response. USACE has explicitly requested that the Company carry out field delineations on all parcels proposed to be impacted by the Project so that it may analyze the information as part of its comprehensive environmental review process. The Company has admitted that it has not conducted field surveys on 173 of "the 707 total [parcels] crossed by construction and operation of the Project."²⁶ The Company is required to respond to the agency's comment; not assert legal arguments against its validity.

2. Cumulative Impact Analysis

Another example of the Company's failure to provide adequate substantive information is its response to USACE's comment regarding cumulative impact analysis:

[i]n addition to being a requirement of the National Environmental Policy [Act] (NEPA), a cumulative impact analysis is required pursuant to the Environmental Protection Agency's (EPA) 404(b)(1) Guidelines under Section 404 of the Clean Water Act (40 CFR Part 230). In addition, cumulative impacts are considered under USACE Public Interest Review. This determination involves evaluation of twenty public interest factors listed in 33 CFR 320.4(a)(2). We request the cumulative Impact Analysis include both the 404(b)(1) Guidelines and the Public Interest Review Factors.²⁷

The Company offered the following response in the Superseded Tracking Table, but completely deleted the request and response in the Current Tracking Table:

²⁵ Superseded Tracking Table, at 3.

²⁶ Supplement to June 13, 2013 and July 24, 2013 Environmental Reports, Resource Report No. 1, General Project Description (Nov. 12, 2013), at 1-16.

²⁷ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

The FERC Environmental Reports (ERs), required as part of the filing process, are setup to provide the necessary environmental documentation mandated in the Commission's Regulation, which implement the National Environmental Policy Act of 1969. Those regulations supplement the regulations of the Council on Environmental Quality (CEQ), 40 Code of Federal Regulations (CFR) Parts 1500 through 1508. The 13 ERs and their supporting information have been organized to meet the current Commission and NEPA requirements. The 20 public interest factors considered under USACE Public Interest Review (conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property and ownership, in general, the needs and welfare of the people) are all topics that are covered under the FERC ERs (Project Description, Water Use and Quality of Fish, Wildlife, and Vegetation, Cultural, Socioeconomics, Geological Resources, Soils, Land Use, Recreation and Aesthetics, Air and Noise Quality, Alternatives, Reliability and Safety, PCB Contamination, Engineering and Design Material), where relevant and applicable to the proposed Project.²⁸

FERC may be the lead agency in this NEPA review, as authorized by the Natural Gas Act, but it has no authority to issue a § 404 permit under the Clean Water Act. In order to build the proposed pipeline, the Company must obtain a § 404 permit from USACE, and therefore must comply with its requests for information. USACE's Public Interest Review is applicable to all § 404 permit applications, and involves, *inter alia*, a rigorous analysis of twenty specific factors, including:

conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.²⁹

In addition, the regulations governing USACE Public Interest Review require an applicant to comply with the Environmental Protection Agency's 404(b)(1) guidelines, where a discharge permit is required.³⁰

Notwithstanding the Company's complete failure to even address EPA's § 404(b)(1) guidelines, the Company made no effort to comply with USACE's request. The Company asserts that it is not required to complete USACE's Public Interest Review because some of the

²⁸ Superseded Tracking Table, at 3.

²⁹ 33 C.F.R. § 320.4(a)(1) (2013).

³⁰ *Id.*

factors overlap with topics covered under the FERC Environmental Reports. This assertion is simply erroneous. USACE specifically requested this information to be included in the EIS so that the full range of potential impacts can be considered as part of the § 404 permit decision-making process. Moreover, the thirteen subject areas covered in FERC's Environmental Reports do not correspond with the twenty factors contained under USACE's Public Interest Review. Thus, the Company's response is merely a hollow attempt to avoid performing a proper Public Interest Review as required by USACE.

3. Mitigation of Impacts

The Company pulled a similar maneuver in its response to USACE's comments regarding a mitigation plan:

We request that a mitigation plan that follows the requirements of Title 33 of the C.F.R. Part 332 be incorporated into the environmental documentation to mitigate for proposed impacts of waters of the United States.³¹

The Company offered the following response in the Superseded Tracking Table, but has deleted it from the Current Tracking Table:

Constitution is developing a mitigation plan for impacts to wetlands and waterbodies that follows the regulation of 33 CFR Part 332. Constitution will work with the applicable state agencies and USACE district offices prior to finalization of the mitigation plan to ensure suitability and acceptance of the proposed mitigation plan and adequately compensate for impacts to wetland and water resources associated with the Project.³²

From the very beginning, USACE has requested that all information, including the mitigation plan, must be consolidated into a single, comprehensive environmental review prior to the issuance of a final EIS.³³ USACE needs this information to be included in the EIS in order to determine whether or not to issue a § 404 permit. Thus, the Company's reassurance that it is developing a mitigation plan, while offering no indication of when it may be completed, is not responsive to USACE's requests. Moreover, the development of a mitigation plan is necessarily dependent on the delineation of all affected parcels. In other words, the first step of developing a mitigation plan requires the Company to complete field delineations for all affected parcels in order to identify all of the waters of the United States that will be affected by the project. The Company has admitted it has not completed field delineations for all affected parcels. Thus, the Company's response to USACE's request for a mitigation plan is insufficient at best, and misleading at worst.

³¹ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

³² Superseded Tracking Table, at 8.

³³ USACE, Comments on Scope of Work (October 9, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121009-5285.

4. Alternative Route Analysis

Finally, in a letter dated July 24, 2013, USACE specifically requested, “[a]dditional details and documentation to support the reasons why the pipeline could be constructed within the New York State Dep’t of Transportation’s “control access” area. It doesn’t appear that this option was fully explored and the applicant provided no documentation or correspondence from NYSDOT to support any determination or conclusions they may have made.”³⁴ The Company offered the following response in the Current Tracking Table:

A response to the NYSDEC’s and the USACE’s concerns about fully assessing the I-88 corridor was included in a letter dated October 22, 2013 to the NYSDEC. The USACE, NYSDOT and FERC were provided a copy of this letter.³⁵

The Company offered no indication of where the letter dated October 22, 2013 could be found.³⁶

As outlined above, “[t]he regulations promulgated by the Council on Environmental Quality are mandatory, not hortatory. They require that an agency give environmental information to the public and then provide an opportunity for informed comments to the agency.³⁷ This process of disclosing information to the public must occur before the agency has reached its final decision on whether to go forward with the project.”³⁸ Simply providing the October 22, 2013 letter in an appendix containing an avalanche of agency correspondence does not meet this standard. Moreover, requiring the agency (and the public) to dig through mountains of documents to find a response to USACE’s request is impermissible. Any substantive response contained in the October 22, 2013 letter must be included in the body of the EIS. Burying the response in 630 pages of agency correspondence undermines the agencies’ ability to carry out a comprehensive environmental review.

³⁴ USACE, Comments Regarding Draft Resource Reports (July 24, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14132569.

³⁵ Current Tracking Table, at 76.

³⁶ The Company included the letter in Appendix D of its November 12, 2013 re-submission. However, the letter was buried in over 630 pages of agency correspondence, some of which was non-searchable.

³⁷ 40 C.F.R. §§ 1501.4, 1506.6 (2013).

³⁸ *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F. Supp. 2d 984 (E.D. Cal 2005) (citing 40 C.F.R. § 1500.1(b)).

VI. THE COMPANY PROVIDES INADEQUATE RESPONSES TO MANY AGENCY REQUESTS.

Many of the Company's responses are partial, selectively choosing to answer only portions of the agencies' requests. This is another deceptive technique that serves only to mislead the public and frustrate the agencies as they struggle to obtain the information they need to conduct a proper and meaningful assessment.

1. Purpose and Need

For example, in a comment dated March 29, 2013, USACE stated that,

[t]he DRP gives a brief purpose of need and description and references the Public Convenience and Necessity section of the Certificate application. We recommend the environmental documentation include a complete discussion of purpose and need.³⁹

The Company responded by offering a reference to the following information in the Superseded Tracking Table, but deleted it in the Current Tracking Table:

Detailed agreements, including the installation of pipeline taps and metering facilities, between Constitution pipeline and any local distribution companies for gas service to towns and municipalities may be negotiated at a later date. Where feasible, this new gas supply would allow local distribution companies the opportunity to develop gas service to these municipalities, which, at current pricing, could provide residential, commercial, and industrial consumers with substantial energy cost savings. While local deliveries likely would account for a small percentage of the overall transported volumes, those deliveries could provide immediate and long term economic benefits to these communities. The project is consistent with the Commission's Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities, as more fully discussed in the Public Convenience and Necessity section of the Certificate application.⁴⁰

The Company's response falls vastly short of a complete discussion of purpose and need. Indeed, it appears the Company has not even attempted to comply with this request. USACE regulations require that "if the scope of analysis covers a more extensive project, only part of which may require a DA permit, then the underlying purpose and need for the entire project should be stated."⁴¹ Moreover, while the applicant is normally "encouraged to provide a statement of his proposed activity's purpose and need from [its] perspective . . . whenever the

³⁹ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

⁴⁰ Superseded Tracking Table, at 3.

⁴¹ 33 C.F.R. § 325, App. B (2013).

NEPA document's scope of analysis renders it appropriate, the Corps also should consider and express that activity's underlying purpose and need from a *public interest perspective . . .*”⁴²

The Company's response merely indicates why the project would benefit *the Company*, rather than evaluating the need “from a public interest perspective.” The response addresses the needs of the public only in an abstract and hypothetical sense. Rather than providing a concrete analysis of the public’s actual need for the project, the Company mentions hypothetical gas supply contracts with municipalities that “may be negotiated at a later date.” In addition, the Company mentions a projected increase in demand in the northeast market, but provides no substantiation of actual demand for this gas. This speculative response falls far short of a complete discussion of purpose and need, which is what is required by the USACE in order to grant a § 404 permit.

2. Aboveground and Pipeline Appurtenant Facilities

Not only has the Company failed to adequately respond to agency requests, but some of its statements are conclusions, rather than responses. The Company’s role is not to act as if it is the lead agency that can make a final determination; rather it should focus on addressing the legitimate concerns posed by the various agencies involved in the project. For example, on March 29, 2013, USACE commented:

Paragraph one states that the Turnpike Road M&R station site will be surveyed for surface waters in 2013. The last two sentences state “None of these aboveground facilities will require disturbance of surface water bodies during construction or operation. Therefore, no adverse impacts are anticipated.” We recommend this section be clarified since it is unlikely a determination of no adverse impacts can be confirmed until all surface waters are identified.⁴³

The Company responded with the following in the Superseded Tracking Table, but entirely omitted the request and response in the Current Tracking Table:

All aboveground facility locations have been identified and surveyed for wetlands and waterbodies. Aboveground facilities will not permanently impact wetland and water bodies but may require temporary disturbances for temporary workspace during construction. If wetland and water bodies are impacted, impacts will be temporary and restored or if needed mitigated. Therefore, Constitution does not anticipate adverse impacts to wetland and water bodies.⁴⁴

The Company’s defiant response fails to address the basic concerns outlined by USACE, which clearly stated that all surface waters must be identified before it can

⁴² *Id.* (emphasis added).

⁴³ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

⁴⁴ Superseded Tracking Table, at 3.

determine whether adverse impacts will result. USACE did not ask the Company whether “all the aboveground facility locations have been identified and surveyed for wetlands,” or whether those impacts would be temporary. The Applicant must give responsive answers to the questions and comments made by the agencies. Moreover, the Company isn’t entitled to offer its opinion that its activities will not result in adverse impacts. Merely offering reassurance that “if wetland and water bodies are impacted, impacts will be temporary and restored,” is not a valid answer to USACE’s request.

3. Permanent Right of Way

Another instance of the Company’s conclusory attitude is its answer to USACE’s request for clarification regarding a permanent right of way. On March 29, 2013, USACE commented that, “[a] number of pages state that the permanent ROW width in wetlands will be 50 ft, while other pages that it will be 30 ft. wide. The USACE believes that width should be 30 ft. wide. Please ensure that these numbers are consistent.”⁴⁵

In the Superseded Tracking Table submitted on July 24, 2013, the Company responded with the following:

Constitution will acquire a 50-permanent pipeline easement for the life of the pipeline. However, only 30-feet of the 50-feet will be maintained. Of the 30 feet, a 10-foot wide corridor will be permanently maintained in herbaceous vegetated cover through formerly PFO and PSS wetlands, and 30-foot wide corridor will be permanently maintained through PFO wetlands where trees taller than 15 feet will be selectively cut and removed; there is no operation impact on PEM wetlands, since there is no change in the pre-and post-construction vegetation cover type.⁴⁶

USACE submitted a subsequent comment regarding the permanent right of way on July 24, 2013:

Resource Report 1, 1-58, states “Within wetlands, Constitution will maintain only the 10 foot corridor centered over the pipeline, allowing the balance of Constitution's permanent easement to revert to its natural, preconstruction vegetated cover state. Additionally, within wetlands, Constitution reserves the right to selectively cut and remove trees larger than 15 feet in height that are located within 15 feet of the pipeline.” Resource Report 2, 2-93, states “Within wetlands, the typical construction workspace will be reduced to 75 feet, and the permanent maintained ROW will be 50 feet and will be maintained in accordance with the FERC Plan and Procedures (FERC 203a, b)”. Further references to corridor maintenance are found on pages 2-107 and in Resource Report 3, 3-51. Section D, 1 of FERC’s Plan and Procedures Wetland and Waterbody

⁴⁵ USACE, Comments Regarding Draft Resource Reports, Mar. 29, 2013, *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14102324.

⁴⁶ Superseded Tracking Table, at 3.

Construction and Mitigation Procedures" states "Do not conduct routine vegetation mowing or clearing over the full width of the permanent right of way in wetlands. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline and up to 10 feet wide may be cleared at a frequency necessary to maintain the 10 foot corridor in an herbaceous state. In addition, trees within 15 feet of the pipeline coating may be selectively cut and removed from the permanent right of way."

FERC's procedures appear to allow only a 30 foot permanent, maintained ROW, with the 10 foot and 15 foot corridors measured from the center of the pipeline and extending on either side. We request the applicant submit clarification and include a drawing that is incorporated into the final document (along with clearly describing the maintained corridor wherever it is references) to[.]⁴⁷

The Company offered a subsequent response in the Current Tracking Table submitted on November 12, 2013:

In wetlands, vegetation maintenance over the full width of the permanent ROW is prohibited pursuant to the FERC's Wetland and Waterbody Construction and Mitigation Procedures (FERC Procedures). However, to facilitate periodic pipeline corrosion/leak surveys, a corridor centered on the pipeline up to 10 feet wide will be maintained annually in an herbaceous state. In addition, trees that are located within 15 feet on either side of the pipeline with roots that could compromise the integrity of pipeline coating may be selectively cut and removed from the permanent ROW. Trees and shrubs that become reestablished beyond 15 feet on either side of the pipeline will not be disturbed.⁴⁸

Despite USACE's understanding that the permanent right of way must be no larger than 30 feet in width, the Company boldly asserts that it will take a 50-foot right of way anyway. It offers no justification in support of this position, and fails to cite to FERC's regulations allowing it to take a 50-foot permanent right of way. This arrogant response is counterproductive, and leaves USACE's request completely unanswered.

4. Natural Stream Design Techniques

NYSDEC requested that the Company discuss the use of Natural Stream Design techniques:

The Applicant should evaluate instances where the bed or bank of a stream would be disturbed and discuss the use of "Natural Stream Design" techniques and structures for restoration of the area instead of extensive use of rip-rap. Many of the structures utilized

⁴⁷ USACE, Comments Regarding Draft Resource Reports (July 24, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14132569.

⁴⁸ Current Tracking Table, at 76.

to stabilize stream banks can also serve to enhance in-stream habitat for fish. Where the pipeline crosses under a stream, there should be an extended length on each side of the bank where the pipe is buried deeper.⁴⁹

The Company responds by stating:

Constitution's New York Environmental Construction Plan provides BMPs related to natural stream design techniques. These techniques may be used in place of extensive rip-rap or hard armoring.⁵⁰

The Company's response fails to indicate where the bed or bank of a stream would be disturbed, whether or not it intends to use Natural Stream Design techniques, and whether or not it intends to construct any pipeline under a stream. Alluding to its construction plan, without providing any indication of where the public or the agency can find the plan, is utterly insufficient. In addition, it sidesteps the issue by stating that it *may* use BMPs, rather than techniques that have a greater impact. The Company has failed to adequately respond to NYSDEC's request for an evaluation of disturbances and provide a discussion of the use of Natural Stream Design techniques. Without this information the NYSDEC cannot evaluate impacts. That assessment is required before the NYSDEC can issue a § 401 Water Quality Certificate, which is required for the Company to proceed.

5. Potential Water Withdrawals

NYSDEC requested that the Company evaluate the potential for water withdrawals:

The Applicant must evaluate potential water withdrawals that would exceed 100,000 gallons per day (gpd), either from surface or groundwater, and identify procedures to ensure that water withdrawals less than 100,000 gpd do not compromise the required bypass flow (the minimum stream flow at any particular stream point necessary to protect fisheries resources). If proposed NYSDEC regulations pertaining to water withdrawals that exceed 100,000 per day become effective prior to the start of project construction, withdrawal reporting or permit application obligations or updated withdrawal reporting may be required.⁵¹

The Company responded by stating, "Constitution will submit applications to the SRBC, DRBC, and NYSDEC for water withdrawal and will comply the conditions."⁵² Once again, the Company has failed to submit information that is required for an environmental analysis. Simply stating that it intends to comply with permit conditions is not a substitute for actually supplying

⁴⁹ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

⁵⁰ Current Tracking Table.

⁵¹ *Id.*

⁵² Current Tracking Table, at 71.

the information NYSDEC needs to take a hard look at the environmental impacts of the Company's substantial water withdrawals. The DEC has stated that it wants the information integrated in an EIS, and should withhold the required permits if the Company does not comply.⁵³

6. Evaluation of Horizontal Drilling

NYSDEC asked that the Company to evaluate Horizontal Directional Drilling (HDD) for every stream crossing in the following request:

NYSDEC maintains strict adherence to in-stream work windows and all stream crossings, including temporary or permanent installation bridges and pipelines, must comply with appropriate warm and cold-water fishery windows. The allowable fishery construction window for (T) & (TS) designated waters is June 15 through September 30. Additionally, equipment access roads may also be subject to jurisdictional requirements and NYSDEC staff estimates that the proposed pipeline will include at least 11 such crossings over protected trout streams. Within stream crossings, pipelines should be buried at least 6' below a stream bottom. Minimum cover depth is not subject to variance based upon field conditions. NYSDEC also maintains jurisdiction of up to fifty feet (50') of stream bank width along protected streams, including any activity which would disturb the stream bank; stream crossings, right-of-ways or any other road or disturbance are also included within NYSDEC's jurisdiction.

For streams and wetlands, the preferred method for crossing is Horizontal Directional Drilling (HDD) because it has the advantages of minimizing land disturbance, avoiding the need for dewatering of the stream, leaving the immediate stream bed and banks intact, and reducing erosion, sedimentation and Project-induced watercourse instabilities. The Applicant should also evaluate cases where other methods are proposed, for instance the Applicant should explain why HDD will not work or is not practical for each specific crossing. Where HDD will be utilized, the Applicant should: ensure that HDD staging areas remain outside of regulated boundaries (e.g., state-wetland 100 foot adjacent area and 50 feet from protected streams); describe the typical work area required and protective measures that will be used to limit runoff of sediment and HDD fluids into streams and wetlands; and develop contingency plans for any HDD failure that results in sediment and/or drilling fluid entering a wetland or stream.⁵⁴

The Company responded as follows in the Superseded Tracking Table, but deleted the request and answer in the Current Tracking Table:

⁵³ NYSDEC Comments on Scope of Work (Nov. 7, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121106-5145.

⁵⁴ NYSDEC Preliminary Comments on Application (July 17, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

Constitution is evaluating the feasibility of incorporating measures that would provide additional protection to NYSDEC regulated wetlands with respect to activities within the defined 100-foot Adjacent Area (i.e., wetland buffer). Constitution will continue to consult with the NYSDEC on this matter and will incorporate where feasible, any modifications relative to the regulatory requirements of the Freshwater Wetlands Act into the construction and design plans.⁵⁵

The Company later explained that:

A trenchless feasibility study has been conducted for areas identified by FERC in their August 29, 2013 Environmental Information Request. A report outlining the results of the study and the wetlands and waterbodies where a trenchless construction method is proposed is provided in Appendix N of the November 2013 supplemental filing.⁵⁶

However, NYSDEC asked for an HDD evaluation at every crossing, not just the areas identified by FERC. The Company has failed to provide the detailed evaluation required by NYSDEC, or explain why the preferred method will not be used at many stream crossings. To comply with FERC Request Number 1, and the agency's requirements, the Company must either utilize the HDD method or explain why HDD will not work, or is not practical, for each specific crossing.

7. General SPDES Permit

NYSDEC requested information adequate for it to determine whether or not it can issue a General SPDES Permit. Specifically, the agency stated:

The Applicant must provide detail sufficient for NYSDEC to make a determination regarding the applicability of the SPDES Stormwater General Permit for Construction Activities (GP-0-10-001) (General Permit) to the proposed Project, or whether an individual SPDES Permit would be required. A linear utility construction project of this nature may be granted authorization under the SPDES General Permit. However, Part 1, Section D.7, of the General Permit does not authorize discharges from construction activities for linear utility projects that: a) are tributary to waters of the state classified as AA or AA-s; and b) disturb two or more acres of land with no existing impervious cover and where the Soil Slope Phase is identified as an E or F on the USDA Soil Survey for the County in which the disturbance will occur.⁵⁷

⁵⁵ Superseded Tracking Table, at 3.

⁵⁶ See Current Tracking Table.

⁵⁷ NYSDEC Preliminary Comments on Application (July 17, 2013), available at http://elibrary.ferc.gov/idmws/file_list.asp?document_id=14131052.

The Company responded by stating:

Constitution has prepared and submitted, as a supplement to the draft filing, an Environmental Construction Plan (ECP) for construction activities performed through New York. The ECPs detail the Best Management Practices (BMPs) that will be implemented during and after construction to minimize for potential impacts to the surrounding environment. The BMPs will be used to minimize erosion of disturbed soils and prevent the transportation of sediment outside of the construction ROW, into environmentally sensitive areas such as wetlands, and waterbodies. The ECPs provide specifications for the installation, implementation, and maintenance of the BMPs while allowing for flexibility in the selection of specific BMPs based on site-specific conditions. This document will be included as part of the construction contract and will provide contractors and Environmental Inspectors (EIs) a reference to specific environmental conditions and associated BMP plans and procedures. Additional detailed information relative to the BMP standard details, specifications and maintenance/monitoring procedures outlined in the ECPs can be found in Volume II, Appendices I and J.⁵⁸

Once again the Company has stated that instead of providing the information requested by the agency within the EIS, it will do so someplace else. This is not acceptable, and the environmental review should not proceed until the Company complies with all requests.

VIII. SOME OF THE COMPANY’S PURPORTED RESPONSES REFERENCE HUGE VOLUMES OF MATERIALS.

In many instances, the Company responds to agency requests by citing huge portions of the Resource Reports. Requiring the agencies and the public to dig through mountains of text to find a response to a straightforward question is simply another example of the Company’s “war of attrition” against the agencies and the public. By citing unnecessarily large portions of text, it appears that the Company is trying to wear down the agencies and the public, in hopes that they will give up trying to find responses to agency requests.

For example, USACE requested information on various subjects, and in almost every response, the Company refers to enormous amounts of material.⁵⁹

USACE Request (subject matter)	Company’s Response (location in Report)
1. Mitigation of Impacts	<i>See</i> Resource Report 1, pages 2-107

⁵⁸ Superseded Tracking Table, at 4.

⁵⁹ Superseded Tracking Table, at 8.

2. General Construction Procedures	<i>See Resource Report 1, pages 2-59</i>
3. Sensitive Surface Waters	<i>See Resource Report 1, pages 2-52</i>
4. Aboveground and Pipeline Appurtenant Facilities	<i>See Resource Report 1, pages 2-43</i>

The Company refers to enormous amounts of material in reply to NYSDEC comments as well:⁶⁰

NYSDEC Request (subject matter)	Company's Response (location in Report)
1. Permits, Licenses, Approvals, NYSDEC-11	<i>See Resource Report 1, Section 1.1.2.2, page 1-60 and Section 1.6, page 1-67</i>
2. Groundwater Resources, NYSDEC-13	<i>See Resource Report 1, Section 1.9.4.1.1, page 1-93</i>
3. Threatened and Endangered Species, NYSDEC-16	<i>See Resource Report 1, Section 1.9.4.3, page 1-101</i>
4. Socioeconomics, NYSDEC-17	<i>See Resource Report 1, Section 1.9.4.5, page 1-103</i>
5. Land Use, Recreation, Special Interest Areas, and Visual Resources, NYSDEC-19	<i>See Resource Report 1, Section 1.9.4.7, page 1-105</i>
6. Air Quality, NYSDEC-20	<i>See Resource Report 1, Section 1.9.4.8, page 1-107</i>

This sort of gamesmanship is inappropriate, and should not be countenanced by FERC.

IX. FERC SHOULD REQUIRE THE COMPANY TO RESPOND TO THE PUBLIC'S CONCERNS.

FERC's regulations for implementing NEPA explicitly require that FERC "comply with the requirements of 40 C.F.R. § 1506.6 of the regulations of the Council [on Environmental Quality] for public involvement in NEPA."⁶¹ Under 40 C.F.R. § 1506.6(a), agencies are required to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures." Moreover, "[t]he regulations promulgated by the Council on Environmental Quality are mandatory, not hortatory. They require that an agency give environmental information to the

⁶⁰ Superseded Tracking Table, at 4-6.

⁶¹ 18 C.F.R. § 380.9(a)(1) (2013).

public and then provide an opportunity for informed comments to the agency.⁶² This process of disclosing information to the public must occur before the agency has reached its final decision on whether to go forward with the project.”⁶³

The public has submitted over 95 percent of the comments in Docket No. PF12-9. Members of the public, including organizations like Stop the Pipeline, have poured time, effort, and resources into preparing comments for agency review, with the understanding that they would be considered by FERC. However, FERC has ignored these public comments, and has not directed the Company to respond to *any* of them. This is evident in FERC’s Request No. 1, wherein FERC requested the Company to respond only to the *agencies’* comments. Ignoring a thousand public comments falls short of FERC’s requirement to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.”⁶⁴ Accordingly, in the interest of fulfilling its mandate, FERC should require the Company to adequately respond to the comments submitted by the public. Doing otherwise is like treating interested members of the public like children, who may be seen but not heard.

X. CONCLUSION

This evaluation of the Applicant’s purported responses to FERC’s Request No. 1 makes obvious that the Company has failed to adequately respond to the USACE’s and NYSDEC’s requests for information. Although analyzing the remainder of FERC’s 40-page EIR is beyond the scope of this comment, STP has grave concerns that this inadequacy permeates the rest of the responses as well. This presents a huge problem for the Company, FERC, and the agencies. In light of the Company’s deficient responses, FERC must delay its draft EIS until the Company abandons its evasive approach and does what it has been asked to do. A transparent tracking table must be created and furnished to the public to ensure this has been accomplished. And FERC should show the required respect to the public by asking the Company to respond to their comments as well.

As for the agencies, in order to grant their respective permits, they must have the information they have requested, fully integrated into the EIS, in order to take a hard look at the environmental impacts of the entire project, as required by their respective enabling acts, statutes, and regulations. The USACE and NYSDEC will be left with no choice but to deny the permits they are authorized to grant—and that must be obtained by the Company in order for this

⁶² 40 C.F.R. §§ 1501.4, 1506.6 (2013).

⁶³ *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F. Supp. 2d 984 (E.D. Cal 2005) (citing 40 C.F.R. § 1500.1(b)).

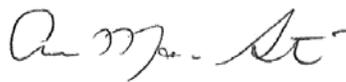
⁶⁴ 40 C.F.R. § 1506.6(a) (2013).

project to move forward—unless the Company responds to each and every request in detail, and in a direct and truthful manner.

Respectfully submitted,



Daniel E. Estrin
Supervising Attorney



Anne Marie Garti
Legal Volunteer

/s/ John Dalo
Legal Intern

/s/ Michael DiCato
Legal Intern

Copy: Service List
U.S. Army Corps of Engineers
NYS Department of Environmental Conservation
Stop the Pipeline
(all via email)