



March 30, 2015

Via Electronic Filing

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

**Re: Algonquin Gas Transmission, LLC, Docket No. CP14-96-000 –
Final Environmental Impact Statement and Order Issuing Certificate
and Approving Abandonment for the Algonquin Incremental Market
Project**

Dear Secretary Bose:

Riverkeeper, Inc. (“Riverkeeper”) writes in regard to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) January 23, 2015 Final Environmental Impact Statement (“FEIS”) for the Proposed Algonquin Incremental Market Project (“AIM Project”) and the Commission’s March 3, 2015 *Order Issuing Certificate and Approving Abandonment* in the Matter of Algonquin Gas Transmission, LLC, Docket No. CP14-96-000 (the “Final Order”), which, for the first time in these matters, inserts a condition requiring the inclusion of an alternative plan for the crossing of the Hudson River in New York should horizontal directional drilling (“HDD”) be unsuccessful. Should HDD be unsuccessful in the crossing of the Hudson River for the AIM Project, a full environmental analysis, including a Supplemental Environmental Impact Statement (“SEIS”) with public comment, in accordance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, must be done at that time for the to-be-developed alternative crossing plan *prior to* the implementation of the alternative crossing method.

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 litigation, advocacy, and public education surrounding the issue of shale gas extraction and related infrastructure, particularly because of their potential impacts on New York State’s drinking water supplies.

On or about August 6, 2014, the Commission released its Draft Environmental Impact Statement (“DEIS”) for the AIM Project. Riverkeeper’s September 29, 2014

public comments on the DEIS¹ called for a revised DEIS due to the numerous and significant deficiencies of the DEIS, which failed to comply with the requirements of NEPA.

Notably, however, when the FEIS was issued on January 23, 2015 for the AIM Project after consideration of public comments on the DEIS, the following recommendation was included *for the first time*:

Therefore, we recommend that:

- **In the event of an unsuccessful HDD at the Hudson or Still Rivers, Algonquin should file with the Secretary a plan for the crossing of the waterbody. This should be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Algonquin should file this plan concurrent with the submission of its application to the USACE and other applicable agencies for a permit to construct using this alternative crossing plan. The Director of OEP must review and approve this plan in writing before construction of the alternative crossing.**

FERC, Office of Energy Projects, *Algonquin Incremental Market Project Final Environmental Impact Statement*, Algonquin Gas Transmission, LLC, Docket No. CP14-96-000, FERC/EIS-0254F, Vol. I (Jan. 23, 2015), at 4-46 (emphasis in original).

The Commission's Final Order for the AIM Project accepted this recommendation in the FEIS and included the same language as one of the "Environmental Conditions for the Algonquin AIM Project." *See* Matter of Algonquin Gas Transmission, LLC, Docket No. CP14-96-000, *Order Issuing Certificate and Approving Abandonment* (March 3, 2015), Appendix B, Condition No. 16 (p. 62). The applicant, Algonquin Gas Transmission, LLC, has responded by stating that: "In the event of an unsuccessful HDD at the Hudson or Still Rivers, Algonquin will file with the Secretary a plan for the crossing of the waterbody. The plan will be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Algonquin will file this plan concurrent with the submission of its application to the U.S. Army Corps of Engineers and other applicable agencies for a permit to construct using this alternative crossing plan." *See* Spectra Energy Partners, Initial Implementation Plan, Algonquin Incremental Market ("AIM") Project (March 27, 2015), at 27.

Because the DEIS only considered and evaluated under NEPA the proposal of using the presently-proposed HDD method to cross the Hudson River, should HDD be unsuccessful for the Hudson River, a full environmental review under NEPA, including an SEIS, must be performed, at the time HDD is proven to be unsuccessful, for any site-

¹ Riverkeeper also submitted comments regarding the scope of the DEIS. *See* Riverkeeper Comments Regarding Scope of the Environmental Impact Statement for the Algonquin Incremental Market Project, Docket No. PF 13-16-000 (filed Oct. 15, 2013).

specific alternative crossing plan *prior* to implementation of that plan. Thus, while the applicant has stated that it will apply for the necessary permits should it be forced to use a non-HDD method for crossing the Hudson River, it must not fail to undertake the requisite NEPA review of that method at that time.

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). NEPA requires federal agencies to “take a ‘hard look’ at environmental consequences,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal citations omitted), and comprehensively evaluate environmental impacts, including adverse environmental effects and the means of preventing them, in a “detailed statement” *prior* to approving any “major federal action significantly affecting the quality of the human environment,” 42 U.S.C. § 4332(2)(C).

Moreover, “NEPA does require that agencies take a ‘hard look’ at the environmental effects of their planned action” and “[i]f there remains ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (U.S. 1989). Thus, when there are “substantial changes in the proposed action that are relevant to environmental concerns” or “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” a supplemental EIS must be prepared by the agency. 40 C.F.R. § 1502.9(c)(1).

For the AIM Project, should HDD be unsuccessful, any such proposed use of a site-specific alternative crossing plan at that time would then constitute the kind of significant change that warrants an SEIS pursuant to 40 C.F.R. § 1502.9(c). There are very different potentially significant environmental impacts associated with crossing the Hudson River by non-HDD crossing then has been subject to review in the current NEPA process for the AIM Project.² Indeed, even the FEIS and Final Order recognize that any

² See, e.g., FEIS, at ES-4 (“Algonquin’s implementation of the HDD method at the Hudson and Still Rivers would avoid in-stream disturbance of these waterbodies.”); *id.* at ES-5 (“Algonquin would also use the HDD crossing method at the Hudson River crossing to avoid direct effects to the Hudson River Important Bird Area, aquatic habitats, and adjacent riparian habitats.”); *id.* (“Through consultation with National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries), we have determined that the only waterbody crossing where essential fish habitat species could potentially occur is the Hudson River. Given the proposed use of the HDD construction method and the fact that no water would be withdrawn from the Hudson River to support Project construction, we conclude that the Project would have minimal, if any, adverse effects on essential fish habitat or managed species. NOAA Fisheries has concurred with this assessment.”); *id.* (“Based on these consultations [with NOAA Fisheries and FWS], we determined that the AIM Project would have *no effect* on the shortnose sturgeon [and] Atlantic sturgeon...NOAA Fisheries concurred with this determination for the Atlantic and shortnose sturgeon and

change in the proposed crossing plan is likely to result in environmental impacts. *See e.g.*, FEIS, at 4-46 (noting that the alternative crossing plan, when developed, should “identify[] all areas that would be disturbed by construction”). In addition to different types of adverse environmental impacts, as the FEIS acknowledges,³ non-HDD crossing of the Hudson River would also lead to different permits being required and would be likely to result in a different location of the crossing point(s) for the Hudson River.

For example, and by no means as a limitation, for the Champlain Hudson Power Express Project which proposes to cross the Hudson River using non-HDD methods across the main stem of the river (specifically, water jetting, plowing, and dredging⁴), the potential environmental impacts include adverse impacts to: aquatic and benthic habitat and vegetation⁵; turbidity and resuspension of sediments/contaminated sediments⁶; water quality and water chemistry (including pH and dissolved oxygen)⁷; bank stability and erosion⁸; aquatic organisms (including endangered species), communities, and fisheries⁹; and essential fish habitats.¹⁰ Such adverse environmental impacts have to be fully identified, analyzed, and mitigated through the NEPA process.

Because the alternative crossing plan has not yet been developed and thus has not yet been subject to environmental review as part of this current NEPA process, if HDD is determined to be infeasible for the AIM project, then an SEIS at that time would be needed to ensure that the requisite “hard look” and mitigation measures are undertaken for any proposed non-HDD crossing of the Hudson River, “*before* decisions are made and *before* actions are taken.”¹¹ 40 C.F.R. § 1500.1(b) (emphases added); *see also* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(c).

consultation is complete for these species.” (emphasis in original)); *id.* at ES-8 (“Algonquin would implement mitigation at all proposed HDD entrance locations to reduce the predicted noise generated by the HDD operations below the FERC noise requirement of 55 decibels on an A-weighted scale – day/night average at the closest noise sensitive areas.”).

³ *See* FEIS, at 2-36 (“To date, Algonquin has not provided a contingency plan that incorporates another location or another construction methodology for each HDD crossing. Therefore, if an HDD in its proposed location proves unsuccessful, Algonquin would be required to identify a new location for the crossing or new methodology, and request approval for the new location or methodology with all applicable agencies...”).

⁴ *See* Champlain Hudson Power Express, Inc. and CHPE Properties Inc., Environmental Impacts Associated with Routing Proposed in Joint Proposal (April 2011) (“CHPE Environmental Report”), at 1-2.

⁵ *See* CHPE Environmental Report, at 4-13 to -15.

⁶ *See id.*, at 5-9; *id.* at 6-9.

⁷ *See id.* 5-9 to 5-10.

⁸ *See id.*

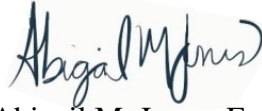
⁹ *See id.* at 7-8 to 7-15; *id.* at 7-24 to 7-26.

¹⁰ *See id.* at 7-38 to 7-40.

¹¹ Note that even “if an agency is unsure whether a proposed project requires [a] ... supplemental EIS, federal regulations direct the agency to prepare an environmental assessment on which it may then base its decision.” *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373 (1989)

Thank you for your consideration of these important issues.

Sincerely,

A handwritten signature in black ink that reads "Abigail M. Jones". The signature is written in a cursive style with a large initial "A".

Abigail M. Jones, Esq.
Hudson River Program Staff Attorney

cc (via email only):

Michael T. Higgins, Project Manager
New York State Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, 4th Floor
Albany, NY 12233
michael.higgins@dec.ny.gov
AIMProject@dec.ny.gov

Cori M. Rose, Senior PM/PWS
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090
ATTN: Regulatory Branch
cori.m.rose@usace.army.mil

Larry S. Eckhaus, Senior Attorney, DEC
larry.eckhaus@dec.ny.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at White Plains, New York this 30th day of March, 2015.



Misti Duvall
Staff Attorney
Riverkeeper, Inc.