

# COMMENTS OF THE CITY OF JERSEY CITY



**FERC Issued: *Draft Environmental Impact Statement***

Re: Spectra Energy NJ/NY Expansion Project

Docket Nos. CP11-56-000 and PF 10-17-000

FERC/EIS-0241D

E-filed on October 28, 2011

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## **References**

1. Confidential Letter from Jersey City Chief of Police to Mayor Healy: E-Filed under Privileged Material
2. Video: FERC Scoping Meeting to reference with transcript to show the number of people who wanted to speak in a very limited period of time.

## I. SUMMARY

Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC (collectively, “Spectra”) have filed herein an Application under Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for a NGA certificate for a proposed new interstate transmission gas pipeline (New Jersey - New York Expansion Project) into Manhattan traversing Jersey City, NJ. The City of Jersey City, which has previously filed a timely motion to intervene and initial comments on January 26, 2011, hereby submits comments on the Federal Energy Regulatory Commission (FERC) issued draft Environment Impact Statement (DEIS). The City of Jersey City has examined the NJ/NY Expansion Project DEIS specifically, but not limited to, the areas of Safety, Land Use Impacts, Environmental Justice and Economic Impacts. Jersey City finds the DEIS to be deficient of information regarding several areas of the application according to the National Environmental Policy Act (NEPA). This deficient information must be addressed and evaluated prior to granting a certificate to the applicant.

The City of Jersey City’s comments and questions are as follows:

## II. INTRODUCTION: LEGAL DEFICIENCIES

### *Overview – The DEIS is deficient under the National Environmental Policy Act (NEPA)*

The Federal Energy Regulatory Commission (FERC) must evaluate the impacts of the proposed pipeline under NEPA through preparation of an environmental impact statement. As the United States Supreme Court recognizes, NEPA serves two purposes. First, NEPA ensures that a federal agency, in granting an authorization for a project will “*take a hard look*” at a project’s environmental impacts by carefully considering *detailed information* about those impacts. Second, NEPA “guarantees that the relevant [environmental] information will be made available to the larger audience” of stakeholders that participate in the decision-making process. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989) at 349 (emphasis added).

As discussed in this section on legal deficiencies and throughout these comments, the Commission’s draft environmental impact (DEIS) falls short on both counts. The DEIS does not consider the full range of project impacts<sup>1</sup> and alternatives, nor does it take the required “hard look” at impacts, preferring in many cases to simply rubber-stamp studies submitted by the Applicants. Further, the DEIS does not make available to the public information about project impacts; the DEIS includes scant analysis of safety issues, and, by its own terms, allows the Applicants to submit the results of geotechnical feasibility studies (See DEIS at 4-39] after the deadline for comment on the DEIS has passed, thus depriving the public to offer any input on this information.

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<sup>1</sup> Project impacts that were not given due consideration by FERC are described in detail in the body of these comments.

### ***The DEIS deprives the City of the opportunity to comment on the proposal***

In several parts of the DEIS, FERC directs Spectra to submit additional information by the close of the comment period. For example, on page 14, FERC says that Spectra must file the results of borings identified in the geotechnical feasibility study completed in April 2011, and on page 4-39, FERC directs Spectra to file additional information regarding HDD complications and different workspace configurations. All in all, there are at least a dozen instances where Spectra may submit materials up until the close of the DEIS period.

The City – and other parties, for that matter - may wish to comment on the information submitted, to review its accuracy and understand its impacts. Moreover, some of the information submitted may uncover new issues, and may thus require the City or other parties to revise their comments in light of the new information.

Although the City will have an opportunity to comment on the new information when the FERC order and final EIS is issued, this opportunity comes too late. Moreover, the United States Court of Appeals for the D.C. Circuit – a Court empowered with substantial oversight of FERC decisions - recognizes that substantial omissions from a DEIS may cause prejudice:

*We leave open, however, the possibility that in cases of actual prejudice resulting from a deficiency in the DEIS, where, for example, omissions leave the agency without public comment on a material environmental aspect of a project and leave the relevant public without information about a proposed project, such deficiency may not be curable by the FEIS.*

National Committee for the New River v. FERC, 373 F.3d 1323 (D.C. Cir. 2004). FERC must reopen the proceeding and allow additional opportunities for comment after Spectra submits new information.

### ***FERC relied on an insufficient record to make determinations.***

The DEIS does not contain sufficient evidence to allow FERC to undertake a meaningful review of the pipeline's impacts. In particular, this is true of the impacts of HDD at the 18<sup>th</sup> Street/Long Slip and Merseles Street crossings. FERC acknowledges that the Hudson River and Merseles Street HDDs would be located in the overburden above bedrock which could require multiple attempts – and if these efforts fail, other techniques would substantially increase impacts.” (Section 4.1.5). Further, the 18<sup>th</sup> Street/Long Slip HDD would cross-challenging geological conditions which would be difficult to drill. Spectra has not proposed any alternatives in the event that HDD cannot be accomplished.

FERC seems more concerned about Spectra's ability to meet project deadlines than potential project impacts. Even so, given that FERC does not appear fully confident that HDD can be completed, FERC *is not permitted to conclude* that the project will not have significant

impacts without knowing more about Spectra’s “Plan B.” In addition, FERC should have analyzed the risk that HDD will not work – which it has done on other occasions where there was uncertainty about the feasibility of HDD. National Committee for the New River v. FERC, 373 F.3d 1323 (affirming FERC EIS on pipeline, noting that analysis evaluated alternatives in the event of HDD failure).

***FERC completely omitted any analysis of non-jurisdictional facilities that drive the selected pipeline alternative***

As explained in detail in the body of these comments, FERC ultimately chose the pipeline route that cuts through Jersey City, in part because of the need to deliver gas to a specific point in Manhattan, as requested by Con-Ed. Con-Ed in turn will construct a 1500-foot distribution system to receive delivery of gas from the Spectra expansion project and deliver it to customers in its service territory. FERC also suggests that there is a need for power in New Jersey, though the only evidence it offers to substantiate this assertion is the possible future existence of another non-jurisdictional facility – a planned M&R station for Bayonne, for which no details are available.

FERC did not evaluate the potential impacts of either of these facilities in the DEIS. FERC argues that it is not required to include the projects because they are non-jurisdictional under its four-part test:<sup>2</sup>

- (i) Whether or not the regulated activity comprises merely a link in a corridor type project (*e.g.*, a transportation or utility project);
- (ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity;
- (iii) The extent to which the entire project will be within FERC jurisdiction; and
- (iv) The extent of the cumulative federal control and responsibility.

As discussed in detail in the body of these comments, the Con-Ed extension does not qualify for non-jurisdictional treatment under this test. Most significantly, the location of the Con-Ed facilities dictated the entire location of the project, and the bulk of the project is already under federal responsibility.

But further, the City is not aware of any other cases where FERC has omitted such a significant and integral component of a pipeline from environmental review. Typically, the non-jurisdictional exception applies, where, for example, parties argue that a FERC should include in the EIS review of a power plant that will receive gas from a pipeline. See *e.g.*, National Committee for the New River v. FERC, 373 F.3d 1323 (D.C. Cir. 2004) (finding power plant is

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<sup>2</sup> FERC developed the test in Algonquin Gas Transmission Company, 59 FERC P61,255 (1992)

non-jurisdictional and not included in EIS for pipeline); *accord, Tuscarora Gas*, 99 FERC 61044 (2002). But a power plant is completely independent from a pipeline; a distribution line that carries the gas to its ultimate destination is not. For these reasons, as well as those further detailed in the body of these comments, the DEIS must be expanded to include review of the Con-Ed distribution line.

***FERC improperly relied on studies and reports that are either completely unrelated to the Spectra project or biased***

There are several examples where FERC also relied on unrelated reports in the DEIS. Most significantly, FERC persists in relying on outdated reports from *different and substantively dissimilar parts of the country* to conclude that the Spectra pipeline will not impact property values in the densely-populated urban area that is Jersey City. However, property values are highly location specific, and it is thus unreasonable for FERC to rely on reports from Oregon or Massachusetts (which are more than six years old) as a basis for its findings. A more detailed discussion of this issue may be found in the body of these comments.

In other instances, FERC relied on information directly from the applicant or pipelines. FERC admitted that all of the valuation studies are prepared by pipelines – but used them anyway. In another instance, FERC rejected one alternative that would avoid the City simply because Spectra said, without further evidence, that the alternative was “prohibitively expensive.” 3-99 NEPA requires an agency to take a hard look at impacts, not simply accept without question a developer’s studies and conclusions. Further, it is patently arbitrary and capricious – and, hence, an abuse of the agency’s discretion – for FERC to, without any evidence as support, assert critical conclusions and make key decisions.

***Need for Power***

As Jersey City argued in its initial comments, FERC’s analysis of need for power remains deficient. The City incorporates those arguments by reference, recognizing that FERC will evaluate the need for power more extensively when it makes a final decision on the pipeline as part of the required findings under the Natural Gas Act. While, arguably, the record suggests that New York may need additional gas, FERC cannot point to any evidence showing that there is a need for gas in New Jersey.

***FERC did not consider all viable alternatives***

Alternatives analysis forms the heart of the environmental impact statement, according to NEPA’s CEQ regulations, 40 C.F.R. § 1502.14. Here, as discussed in the body of this document, FERC overlooked or rejected numerous alternatives which would have avoided routing the pipeline through Jersey City.

FERC gave several reasons it rejected numerous alternatives, but the reasons are not

rational. For example, FERC rejected the Brooklyn alternative which would bypass Jersey City (3-48) for many of the same reasons that the City objects to the project: The pipeline would go through densely populated areas, close to dwellings, cause traffic delays, close roads and impact buried utility lines (See 3-48, discussing Brooklyn impacts). FERC does not explain why these impacts are significant and preclusive when they occur in Brooklyn, but are acceptable in Jersey City.

FERC also overlooked new information that may make other previously rejected options viable – such as the recent certificate filings by several pipelines that may now be able to carry the capacity that will be transported by Spectra.

***No analysis of exceptionally high risks due to terrorism and presence of pipeline in densely populated area***

The Ninth Circuit holds that NEPA requires federal agencies to consider risk of terrorism in evaluating a project. San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 101 (2006)<sup>3</sup> FERC scarcely mentions the terrorism issue, suggesting that because terrorism is so unpredictable, it need not be considered at all. FERC’s holding runs counter to the rule of law in the Ninth Circuit – one of the nation’s most influential appellate Courts. Moreover, while FERC’s assertion that terrorism is unpredictable might be true in certain parts of the country, this conclusion is not applicable in a Tier 1 area. Indeed, the reason that Jersey City has been designated as Tier 1 is because of Department of Homeland Security’s belief that terrorism is a high risk here.

In addition, FERC does not discuss the implications of a pipeline breach, whether accidental or intentional, in a high density area like Jersey City. In fact, the City submitted a computer simulation showing the effects of an explosion which FERC did not mention at all. These too are fairly serious deficiencies which, if uncorrected, could result in a court vacating FERC’s ruling.

### **III. SAFETY**

#### ***A. Safety Standards***

The draft EIS attempts to address the safety and reliability of the proposed high pressure transmission line in section 4.12 on pages 4-212 through 4-227. As stated on page 4-212 of the DEIS: “The transportation of natural gas by pipeline involves some incremental risk to the public due to the potential for accidental release of natural gas. The greatest hazard is a fire or explosion following a major pipeline rupture.” It continues to reference safety standards in section 4.12.1, DOT mandates pipeline safety.

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<sup>3</sup> The circuits are split here to some degree as the 3<sup>rd</sup> Circuit has said that NEPA does not require consideration of terrorism. NJ Dept of Environmental Protection v. US, 561 F.3d 132 (3<sup>rd</sup> Cir. 2009) and the DC Circuit where most pipeline decisions are reviewed has not taken a position.

Though the DEIS overtly references safety standards, it neglects to address the fact that those standards have recently come both under fire and under review. As recently as August 2011, the National Transportation Safety Board found San Bruno, CA to be a victim of the bad management of a pipeline company and its regulating counterparts.<sup>4</sup> This in turn prompted an Advance Notice of Proposed Rulemaking (ANPRM) for the DOT regulations under Title 49 Part 192 [Docket No. PHMSA-2011-0023] issued on August 18, 2011 which specifically addresses natural gas pipeline safety issues.<sup>5</sup>

On page 4-214 the DEIS states:

If the Project is approved, the regulations require that the pipelines be designed, at a minimum, to the appropriate Class location standards and that the spacing between the mainline valves meets DOT requirements. Texas Eastern has proposed a more robust design. Specifically, Texas Eastern has committed to design the entire 42-inch-diameter pipeline in accordance with the Class 3 standards, and the entire 30-inch-diameter pipeline with the Class 4 standards. Thus, the design for more than half of the proposed pipeline will exceed DOT's requirements. To address concerns raised by Jersey City and enhance the safety of the proposed design, Texas Eastern also proposes to install thousands of feet of pipe using the HDD method. In these areas, Texas Eastern would use a thicker-walled pipe than required for Class 4 locations and would bury the pipe deeper than required by DOT. Although not required, Texas Eastern is also proposing to install an additional mainline valve in Jersey City.

During operation of the pipeline, the operating company is required to periodically reassess the class locations along its pipelines. If a subsequent increase in population density adjacent to the right-of-way indicates a change in class location for the pipeline, Texas Eastern would be required to reduce the MAOP or replace the segment with pipe of sufficient grade and wall thickness, if required, to comply with the DOT code of regulations for the new class location.

As evinced on page 4-214 of the DEIS, though the DEIS does contemplate Texas Eastern's obligations, if the areas it traverses change in class location, it does not set forth an overt directive the company must follow if DOT alters its class location scheme.

Moreover, FERC's certification of pipeline projects based on a blind reliance on DOT safety regulations is inherently arbitrary and capricious. Those regulations have not only failed repeatedly to protect against disasters caused by aging transmission pipelines, they have also failed to prevent incidents in new construction that would be catastrophic should those incidents happen in an urban area. In two recent ruptures, new construction high pressure transmission lines failed within the first 6 months of their in-service date. FERC issued a certificate under Docket No. CP09-161 on April 9, 2010 for the Bison Pipeline which failed 6 months into operation on July 20, 2011. FERC also issued a certificate under Docket No. CP07-208 for the Rockies Express East Pipeline which failed on its second day in operation on November 14,

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<sup>4</sup> Appendix 1: NY Times Aug 30, 2011 Bad Management on San Bruno

<sup>5</sup> 6 FR 5308 August 25, 2011. Pipeline Safety: Safety of Gas Transmission Pipelines – Advanced Notice for Proposed Rulemaking (ANPRM). PHMSA Docket No. PHMSA-2011-0023

2009. Given these recent incidents, FERC cannot rely on DOT regulations as currently promulgated in a much more highly populated area with close proximity to existing critical infrastructure, which would have a much broader reach of potential damage and effects (*e.g.*, major highways, residential neighborhoods, commercial buildings, etc). However, FERC has neither pressed the DOT to tighten its regulatory scheme, nor has it required Spectra Energy to give detailed assurances of why its company’s pipeline will not pose similar peril. Further, FERC has not investigated the impact of such a disaster on Jersey City.

This is not the first time pipeline safety regulations have been a subject to review. In 2004, the Transportation Research Board issued Special Report 281 on page 9 in which it specifically recommends:<sup>6</sup>

Recommendation 1. OPS should develop risk-informed land use guidance for application by stakeholders. The guidance should address:

- ***Land use policies affecting the siting, width, and other characteristics of new pipeline corridors;***
- The range of appropriate land uses, structures, and human activities compatible with pipeline rights-of-way;
- Setbacks and other measures that could be adopted to protect structures that are built and maintained near pipelines; and
- Model local zoning ordinances, subdivision regulations, and planning policies and model state legislation that could be adopted for land uses near pipelines.

Such a risk-informed guidance system should include three interrelated components:

1. A decision framework informed by risk analysis,
2. Guidelines based on the analysis, and
3. Alternative actions that could be taken on the basis of the guidelines.<sup>7</sup>

To date, there has been one report that was an outcome of the Special Report 281. The Pipelines and Informed Planning Alliance (PIPA) issued a report, simply “PIPA Report” in November 2010. The PIPA Report states in the Scope on page 2:

Some of the PIPA recommended practices may not be appropriate for consideration in the siting of new pipelines. There is an extensive network of federal and state regulatory and judicial processes involved with the evaluation and approval of new transmission pipeline siting and construction. These are beyond the scope of the PIPA recommended practices.

While the Special Report 281 may not have prompted the proper agency that has jurisdiction over new pipeline corridors, it is nonetheless stated first in its recommendations of new regulations that need to be considered. On page 5 of the PIPA Report, FERC is listed as an organization that participated in the creation of the document. In Appendix A of the PIPA Report, there are listed six names of individual FERC participants. It is fair to assume that FERC is the “extensive network of federal and state regulatory” agency responsible for evaluating and

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<sup>6</sup> Appendix 2: Transportation Safety Board Special Report 281

<sup>7</sup> ***Bold Italics*** added for emphasis.

approving transmission pipeline siting. While FERC is the agency that evaluates and approves the siting of new pipelines, there are questions to exactly what the regulations are regarding siting and safety prior to construction. The DEIS fails to evaluate all the safety risks implicated by the proposed siting of the Spectra high pressure transmission line.

Currently there are no federal regulations stating a finite maximum operating pipe pressure in high consequence areas for new construction. This is likely due to the fact that most of the existing high-pressure natural gas transmission pipelines were installed in areas that were not areas of high consequence at the time of construction and over time said surrounding land was developed. The amount of pressure transporting the natural gas was also lower due to the lesser technologies of compression stations and M&R stations. There are mathematical studies available for reference to calculate the safety setback from a high pressure natural gas pipelines.<sup>8</sup> In Jersey City's comments filed on June 16, 2011, Appendix 3 exhibits the computer modeling gives examples of the effects in an instance of a rupture, accidental or not.

On page 4-226 of the DEIS states:

The available data show that natural gas transmission pipelines continue to be a safe, reliable means of energy transportation. From 1991 to 2010, there were an average of 57 significant incidents and 2 fatalities per year. The number of significant incidents over the more than 300,000 miles of natural gas transmission lines indicates the risk is low for an incident at any given location. The operation of the NJNY Project would represent a slight increase in risk to the nearby public.

Jersey City has asked repeatedly the applicant for an example of a similar high-pressure natural gas main that was recently constructed in an area comparable to Jersey City's urban landscape. To date, Spectra Energy has not been able to supply a reasonable example. The DEIS fails to qualitatively evaluate the "slight increase in risk to the nearby public," and the realities of consequences and costs in the event of an incident in a more populous point along the route.

## ***B. Safety and Construction***

The DEIS wholly neglects to consider the potential safety impacts of Spectra's updated construction schedule. The DEIS fails to evaluate an appropriate timeline for construction of a large infrastructure project that transports hazardous materials at a high pressure through high consequence areas. Though the DEIS notes Spectra's new construction schedule proposes significant overlap of HDD drilling and construction not apparent in earlier iterations, the DEIS does not evaluate the safety and other impacts of said overlap and the resultant truncated construction schedule. At worst, the DEIS appears to rely on self-serving and conclusory assurances from Spectra Energy that its new schedule will pose no hazards. It should be noted the Applicant's statements are made without any evaluation on work done simultaneously regarding increases to environmental stresses such as noise impacts, work hours, release of air

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<sup>8</sup> Appendix 3: Xylene Power LTD. "Natural Gas Pipeline Safety Setbacks

emissions and dust, integrity of construction oversight/management, etc.<sup>9</sup> The DEIS further fails to evaluate the changes in environmental impacts due to the dramatic changes in the construction schedule.

### ***C. Safety and Terrorism***

In section 4.12.4 Terrorism on page 4-227, the DEIS states:

The likelihood of future acts of terrorism or sabotage occurring at the proposed Project facilities, or at any of the myriad natural gas pipeline or energy facilities throughout the United States, is unpredictable given the disparate motives and abilities of terrorist groups. The continuing need to construct facilities to support the future natural gas pipeline infrastructure is not diminished from the threat of any such future acts.

While the Jersey City recognizes the sensitivity of making certain information public and that acts of terrorism are unpredictable, the City also maintains that the pipeline infrastructure, in addition to higher standards of construction, could be sited differently and operate at a lower pressure in dense urban areas where acts of terrorism are more likely to occur. The DEIS fails to acknowledge and evaluate those factors in regards to safety.

## **IV. NON-JURISDICTIONAL FACILITIES**

Under Section 7 of the NGA, FERC is required to consider, as part of its decision to authorize interstate natural gas facilities, all factors bearing on public convenience and necessity. The Con Edison and proposed PSE&G facilities are the two main non-jurisdictional facilities FERC evaluates using “a four-factor procedure to determine whether there is sufficient federal control and responsibility over a project as a whole to warrant environmental analysis of portions of the project outside the Commission’s direct sphere of responsibility.” (DEIS pg 1-12).

The DEIS states on page 1-12, as one of four factors determining whether non-jurisdictional facilities should be evaluated:

**i) Whether or not the regulated activity comprises “merely a link” in a corridor type project (such as transportation or utility transmission project);**

The NJ-NY Project is a FERC-regulated interstate natural gas pipeline project that would add new pipeline, modify existing facilities on Texas Eastern’s and Algonquin’s pipeline systems, and create new receipt and delivery points in New Jersey and New York. As such, this regulated activity is not merely a link in a larger project.

Despite the DEIS’s conclusory statement, the Applicant’s proposed pipeline (the regulated activity) is clearly a link in a larger project. While the regulated activity is heavily reliant on the requirements of Con Edison’s non-jurisdictional facility, the DEIS also several times makes reference to the PSE&G’s distribution system. (*See, e.g.*, Section 1.4, page 1-12). Specifically,

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<sup>9</sup> FERC Docket CP11-056: Accession No. 20110812-5194  
[http://elibrary.ferc.gov/IDMWS/File\\_list.asp?document\\_id=13946926](http://elibrary.ferc.gov/IDMWS/File_list.asp?document_id=13946926)

on page 1-12 the DEIS states, “the PSE&G facilities are currently early in the design stage, but would involve an approximately 200-foot-long, 20-inch-diameter pipeline connection between the proposed Project pipeline at the proposed Bayonne M&R Station, and an existing 12-inch-diameter PSE&G distribution line that runs along Centre Street, adjacent to the M&R station.” Actually, the DEIS is mistaken: PSE&G is on record as expressing it has not even begun to plan said facility; in fact, PSE&G has publicly stated it has no current plan to purchase capacity from this specific project.<sup>10</sup> The bulk of the capacity of the pipeline does not even have a clear delivery/storage point or purpose other than the shippers’ simple want for a pipeline. The bulk of the capacity is comprised of three-quarters of the entire capacity of the pipeline (630,000 Dth/day out of 800,000 Dth/day).

Even with the assumption that New York City is the Applicant’s target, Con Edison, the only distributor of natural gas out of the three contracted shippers, is only contracting 21% of this proposed pipeline. In other words, the Applicant has not even scratched the surface of the pipeline capacity. As such, the Applicant has a full 79% of the pipeline’s capacity without a quantified destination – defacto evidence the pipeline is merely a link in a larger project.

Specifically on page 1-12, the DEIS states as the second factor:

**ii) Whether there are aspects of the non-jurisdictional facilities in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity;**

While the endpoint of Texas Eastern’s 19.8-mile-long pipeline was determined by the location of the Con Edison connector non-jurisdictional pipeline, the overall routing and configuration of the Project was not affected by the non-jurisdictional facilities. Several alternative routes and facility options were considered in determining the proposed route and configuration of the Project (see Section 3.0).

On the contrary, the endpoint of Spectra’s 19.8 mile long pipeline absolutely drives the overall routing and configuration of the Project. The DEIS looks at an alternate route for the endpoint in section 3.3, Con Edison Interconnect Alternatives, on page 3-17. The DEIS explicitly eliminates the alternative site for Con Edison interconnection in the south end of Manhattan, thereby forcing the pipeline route to locate and configure based upon the endpoint of the non-jurisdictional facility. This non-jurisdictional facility clearly affects the location and configuration of the regulated activity.

Specifically on page 1-12, the DEIS states as the third factor:

**iii) The extent to which the entire project will be within the FERC’s jurisdiction;  
and**

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<sup>10</sup> Appendix 4: Email from PSEG

The NJ-NY Project is an interstate natural gas pipeline project, completely within the FERC's jurisdiction. Con Edison's non-jurisdictional facility is regulated by the NYSPSC and is not regulated by the FERC. PSE&G's future connection would be regulated by the New Jersey Board of Public Utilities.

The DEIS thus clearly states that this project is within FERC's jurisdiction. The remaining statements in the subpart are thus surplusage and inapposite.

Specifically on page 1-12, the DEIS states as the fourth factor:

**iv) The extent of cumulative federal control and responsibility.**

The Con Edison connector would be owned and operated by Con Edison, and the future PSE&G connection would be owned and operated by PSE&G. Neither non-jurisdictional facility would be federally funded, controlled, or regulated. Typical federal agency involvement on facilities of this type consists of stream and wetland crossing permits by the COE. These actions are independent of the FERC's decision and do not warrant "federalizing" the non-jurisdictional facilities.

Even granting that Con Edison and PSE&G facilities are self operated and owned, clearly, cumulative control and responsibility still rests with FERC. PSE&G and Con Ed operate their discrete facilities in two separate states. This alone activates federal interstate commerce power and brings cumulative control of the project under FERC's ambit.

Though the DEIS claims a comprehensive review of the non-jurisdictional facilities is not warranted, the four denoted factors and the entire weight of the evidence unquestionably require an environmental review of the non-jurisdictional facilities. The DEIS fails to acknowledge, and therefore evaluate, the sufficient federal "responsibility over a project as a whole to warrant environmental analysis of portions of the project outside the Commission's direct sphere of responsibility."

## **V. ENVIRONMENTAL IMPACTS:**

### ***A. Public Utilities***

On page 3-17 of the DEIS states:

During the pre-filing process, Con Edison met with the FERC staff and described the density of subsurface utilities, conduits, and other obstructions that they would expect to encounter in lower Manhattan. In Con Edison's opinion, these obstacles make installation of a large-diameter, 2.65-milelong pipeline infeasible.

While FERC staff has met with Con Edison and based their decisions solely on Con Edison's assertions the feasibility of the subsurface conditions in Manhattan, neither FERC nor the applicant has: 1) met with Jersey City's local utilities agencies regarding the subject matter prior to choosing the proposed pipeline route, or 2) evaluated Jersey City engineers' opinions regarding the infeasibility of constructing a 6 mile-long, large-diameter pipeline in Jersey City.

Further, neither Spectra's application nor the DEIS offers a profile or cross section demonstrating both horizontal and vertical offsets or construction methods to maneuver around the existing utilities to install the pipeline. On page 4-159, section 4.9.4, the DEIS gives an entirely superficial – hence, insufficient – treatment to the evaluation to public utilities. It wholly takes on faith Spectra's assertion that:

Based on current data, Texas Eastern has indicated that the proposed pipeline would be located at a significant depth below the existing sewer pipelines in sections where the HDD construction method is used. In areas where the open cut construction method would be used, Texas Eastern has indicated that the proposed pipeline would be located a sufficient distance away from the longitudinal sewer pipes.

The DEIS fails to evaluate the Applicant's statement, instead fully trusting the Applicant to determine without oversight the sufficiency of key distances, appropriate horizontal and vertical offsets from existing utilities, the scope of potentially affected population, and whether critical services/residential/commercial or industry would be affected.

## ***B. Jersey City Municipal Utilities Authority Review***

### **i. Existing Utilities**

The Jersey City Municipal Utilities Authority (JCMUA) has reviewed the FERC Environmental Impact Statement (EIS) for the Spectra Energy 30" transmission gas line. The following comments are made by licensed Professional Engineers.

On page 2-17, while the DEIS discusses trenching in the first paragraph, it gives no new details. The trenching discussion does not evaluate the JCMUA comments from August 17, 2010 and reiterated in a letter from the JCMUA filed on June 15, 2011.<sup>11,12</sup>

The DEIS fails to evaluate and analyze the overwhelming impact the proposed Spectra Energy natural gas transmission line will have on existing conditions of Jersey City.

Crossing of existing sewers and water mains has not been discussed in the DEIS. The following questions and concerns remain unanswered and unevaluated:

- The majority of Jersey City's water services consists of hydrant laterals that are buried 3 to 4 feet deep. Sewer mains along the route vary in depths of 3 feet to 25 feet. Both conflict with the proposed Spectra pipeline in the roughly four miles of pipe that is proposed to be 4 to 8 feet below the surface.

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<sup>11</sup> FERC Docket CP11-56: Accession No. 20110126-5453; Attachment 5: JCMUA letter dated August 17 2010

<sup>12</sup> FERC Docket CP11-56: Accession No. 20110616-5012; Appendix 1: JCMUA letter dated June 10, 2011

- The JCMUA operates the Brown Place 60” combined sewer outfall between the railroad tracks near Mile Post 13. This is a shallow outfall which operates, depending on the volume of rainfall, either under open channel flow conditions or as a pressure flow. The combined sewer is constructed of brick is approximately 90 years old.
- Spectra’s proposed route parallels Linden Avenue and Caven Point Road, where exists a 16” water main. This is a major transmission main for the southeastern side of Jersey City, as well as an emergency interconnection to Bayonne.
- The JCMUA operates the Richard Street combined sewer outfall between milepost 14 and 15. This pipe operates similarly to the Brown Place outfall described above. This outfall has been plagued with problems due to corrosive soil. It has required near-constant maintenance over the years.
- The JCMUA operates a combined sewer system and a 16” water transmission main south of the intersection of Caven Point Road and Bayview Avenue. These mains supply this section of the city, including existing industrial uses.
- At the intersection of Thomas McGovern Drive, Burma Road and Phillips Street, the JCMUA operates a steel 96” and a brick 84” combined sewer outfall. Both pipes are shallow and operate as previously described combined sewer outfalls. These mains are 90 to 100 years old.
- From the intersection of Thomas McGovern Drive, Burma Road and Phillips Street, the proposed gas main is sited along the same route as the JCMUA Southeast interceptor sewer, which runs along the eastern side of the New Jersey Turnpike Northeast Extension, through the Jersey City Car Impound Lot, and onto the East Side Pump Station property. The City of Jersey City has signed a contract with MetroVest Equities to redevelop the property at the location of the car impound lot and around the East Side Pump Station. The proposed gas main route runs through areas where the proposed redevelopment will take place. The soils in this area have proven to be extremely corrosive, requiring that the water mains in the area be replaced.
- The proposed gas main again crosses the Northeast Interceptor along the east side of the New Jersey Turnpike Northeast Extension near the Mill Creek regulator. The soils in this area are both extremely unstable and highly contaminated, and, as such, are of great concern to the JCMUA when any work is done here. The Mill Creek trunk sewer (93” x 216”) is a corrugated arched steel pipe that is pile supported in this area.
- The proposed gas main continues along the western side of New Jersey Turnpike Northeast Extension, along Merseles Street, and passes through an area with both innate flooding problems and a City-owned combined sewer pump station. In the future, the

pump station will be replaced with a much larger one, and the gas main will interfere with the station expansion.

- After the gas main crosses the NJ Transit Waldo Yard entrance tracks, it crosses a number of dead-end sewer mains that are extremely shallow, being that they are at the upper most end of the collection system. In some cases the sewer mains (which are constructed of brick) have only 24” of cover. The gas main would be required to go under the sewer mains, with between 48 and 60” of clearance below the outside of the sewer. The brick sewers are typically three layers of brick - or 12” - thick.
- The proposed gas transmission pipe crosses under NJ Route 1&9 and the New Jersey Turnpike Northeast Extension ramps to the Holland Tunnel. In that location exist three large diameter pipes: 60”, 48” and 42” riveted steel construction combined sewer mains. These mains are over 100 years old and are very shallow. The gas transmission pipe would be required to be routed under the pipes with at least 10 feet of clearance. The sewer mains extend a considerable distance into the Jersey City Heights neighborhood, and near Journal Square. There is real concern that gas could leak into the sewer mains and travel upstream into buildings in the upper reaches of the City’s system.
- The proposed pipeline continues north along abandoned railroad tracks to 17th Street, where it must parallel another shallow 60” steel sewer main. The gas main will cross Coles Street, where the 60” sewer main turns south. When the gas main reaches Jersey Avenue, it will parallel a 96” x 48” combined sewer main. This sewer main will require reconstruction in the future.
- The gas main then runs east along 18th Street, crossing over the Northeast Interceptor, which is 10 ft deep at the point of intersection. The 30” water main in 18th Street has been the victim of severe deterioration at various points due to corrosion caused by stray electrical current. Also in 18th Street is the 18th Street combined sewer outfall. While the HDD sections may avoid some of these water lines, the entrance and exits of the HDD, and the vibrations it will cause are all points of concern.
- The gas main will exit Jersey City through the Long Slip Canal, which is where the 18th Street Combined Sewer outfall discharges.
- The soils around the City at various locations have been found through testing to be aggressively contaminated. In some places, they are contaminated well beyond the NJDEP/EPA minimum residential exposure limits. In some places, they are contaminated well above the Hazardous waste threshold limits.
- Groundwater cannot be discharged into the combined sewer system without (1) extensive testing and (2) groundwater discharge permits approved by JCMUA, Passaic Valley Sewerage Commission, and, if the discharge exceeds 8 thousand gallons per day, the

New Jersey Department of Environmental Protection. All ground water discharges would be required to shut down during wet weather events. Additionally, groundwater cannot be discharged to the separated stormwater systems, which flow to Hudson River on non-rain events, because such discharges would violate the Jersey City Stormwater permit.

- In constructing the gas main under the middle of the Long Slip Canal Spectra Energy will face the same problems JCMUA has experienced in canal projects past. When NJ Transit fills the canal as part of the rail yard expansion and redevelopment, the JCMUA 18<sup>th</sup> Street Outfall must be extended out the river. The extension will require pilings. While the HDD installed gas main will be in rock near the west end of the canal, the east end will be in shallow soft soils that will necessitate long piles to reach rock.
- The route that Spectra prefers will be excavated or drilled directly through the Northeast Interceptor, which currently handles flow from half of the Heights section of the City. Spectra's proposed receiving pit is on top of the interceptor.
- The DEIS states that there are no anticipated scour where the bottom of the river which will be distributed by the drilling operation.

Clearly the proposed Spectra Energy natural gas transmission pipeline would have an overwhelmingly significant impact on the existing conditions of Jersey City. In so far as it neither evaluates this impact nor explains how Spectra Energy would mitigate any deleterious effect, the DEIS is derelict.

## **ii. Construction Impacts on Existing Utilities**

On page 2-34, the DEIS reports plans to use horizontally driven casing, and to use a reciprocating hammer to drive said casing. This is a rather unusual method for casing installation: the potential for vibration from a reciprocating hammer hitting a steel casing will generate much the same type of vibration as would driving steel piles; vibration for this method has the potential to cause brick pipes to shift, or lead joints in older cast iron water mains to move. In either case this would lead to leaks and damage to the Jersey City infrastructure. To offer a frame of reference, there are several large roadway improvement projects under present construction in Jersey City, where the restriction on vibration is limited to less than 1 inch per second. Despite the stringent restriction, even these roadway projects damaged utilities.

On page 2-18 of the DEIS the section titled "Lowering and Backfilling" indicates Spectra Energy plans to use existing contaminated material for backfill. This is explicitly prohibited in Jersey City.<sup>13</sup> Further, shallow gas line installation discussed in section 2.3.1 of the DEIS will be 3 to 7 feet deep. The top 10 feet of soil in Jersey City is significantly contaminated. While the DEIS acknowledges this fact, it does not evaluate the threshold levels at which these contaminants

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<sup>13</sup> Appendix 5: Jersey City Division of Engineering Rules for Excavated

become carcinogenic, and it does not consider that these contaminants cause cancer by becoming air borne or through contact. These are among the hazards Jersey City's prohibition on contaminated backfilling is designed to prevent. The DEIS references Spectra's Excavation Management Plan (EMP), but it does not consider Jersey City's well informed, absolute prohibition.

As it relates to trenching, the DEIS does not fully evaluate the impact on groundwater via the trenching process. Although the DEIS extensively references the Applicant's Groundwater Management Plan (GMP), the Applicant has provided insufficient information for FERC staff to generate or make a full analysis of environmental impacts pertaining to groundwater. Additionally, it is anticipated that the change in the proposed construction schedule will greatly impact the volume at which ground water will be excavated and, hence require proper disposal. The DEIS does not evaluate the impacts of increased volumes of water that would need to be stored and hauled off-site to ensure proper treatment and discharge.

The DEIS fails to evaluate and affirm whether Spectra has allotted adequate temporary workspace to excavated groundwater retention. Operating on the safe assumption that the revised work schedule will require a greater number of work crews to operate concurrently, it is also likely that the volume of displaced water will be greater at any given point in time than it would have been under the original schedule. On an aside topic, Jersey City is concerned with Spectra's likely violation of the Clean Water Act and other environmental protection regulations. For example, JCMUA has strict limits on the volume of groundwater that can be received during dry weather, and shall not allow any discharge to sewers in wet weather up to 24 hours after the wet weather event. Similarly, NJDEP (N.J.A.C. 22A), require that storms sewers (MS4 Systems) not discharge during dry weather. This all means Spectra will need to provide holding tanks on site. Moreover, the JCMUA requires that all groundwater discharges into the combined sewer system be tested to identify contaminants and concentration, to help determine if the city sewer system can handle said groundwater. The Passaic Valley Sewage Commission (PVSC) has very stringent limits on contaminants which the treatment facility can receive and handle without causing a system upset.

On page 4-25, section 4.3.1.7, General Impact and Mitigation, of the DEIS roughly states shallow groundwater and trenched areas "may intersect the water table in low-lying areas." However, the DEIS concludes there will be no significant affects to the groundwater resources. The DEIS intimates FERC cannot accurately identify the project area as it relates to mitigating environmental impacts until it has received the results of the soil and groundwater sampling program. As of the Applicant's most recent response, received October 19, 2011<sup>14</sup>, it had yet to even complete testing let alone to submit any results to FERC.

On page 4-28 of the DEIS states:

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<sup>14</sup> FERC Accession Number: 20111014-5039 <  
[http://elibrary.ferc.gov/idmws/File\\_list.asp?document\\_id=13963218](http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13963218)>

**Prior to the end of the draft EIS comment period**, the Applicants file with the Secretary a detailed description of the sources of the municipal water (i.e., which municipality), required permitting details, and specific discharge locations and anticipated volumes where the test water would be discharged into the local sewer systems for all of the hydrostatic test water used for the pipeline test segments, as well as water used during HDD operations.

Spectra Energy has requested JCMUA provide 4.5 Million gallons of water. JCMUA cannot provide for the 4,500,000 gallons of water without crippling Jersey City's ability to engage in any significant development for the next half decade. As a result, in previous responses, the JCMUA stated that it would not be able to provide water for testing or drilling operations. Since Jersey City cannot provide this amount of water, Spectra must show FERC how it plans to make up the resultant deficiency in the necessary volume of water before FERC can approve this project.

## **VI. LAND USE:**

Land use is discussed in several different sections of the DEIS. However, the DEIS repeatedly fails to acknowledge and evaluate the Applicant's proposed pipeline's impacts on Jersey City's rapid growth. Jersey City has submitted comments on multiple occasions outlining the significant success it has had in redevelopment of dilapidated areas, preservation of historic districts, and attraction of new investment and sustainable smart growth. In one fell swoop, the pipeline would not only threaten what Jersey City has built, but it would impair the city's ability to grow as it has planned. This says nothing of the inherent safety risk the pipeline poses to all land use.

### ***A. Land Use Types***

Table 4.8.1-1, Land Use Types and Acres Impacted by Construction and Operation of the NJ-NY Project (DEIS page 4-119), shows 0.0 acres of residential land impacted by the pipeline and its easement of 50 feet. This is patently false. In fact, the property surrounding much of the proposed pipeline is currently zoned for high intensity residential and commercial uses. Jersey City has repeatedly stated to Spectra Energy and FERC that the lands surrounding much of the proposed pipeline's southern portion – from the intersections of Chapel Avenue and Caven Point Road north, to the intersection of Merseles and Grand Streets – are in redevelopment plans, some dating to the 1980's or before. Further, the area between Merseles and Grand Streets north to the interchange overpass of Route 139 is already mostly built-out; in-fill development occurs in this area on a regular basis. Lastly, the area around 18<sup>th</sup> Street is viewed as one of Jersey City's next prime development sites: A 20-story, 200+ unit residential building is currently under construction at 18<sup>th</sup> Street and Jersey Avenue. More broadly speaking, accounting for the recommended 600 ft setback standard, roughly 320 building structures, including residential, commercial, emergency unit, cultural spaces, schools, and hospitals would be impacted at the present time. Furthermore, several frequently used urban recreational spaces will also be impacted during construction. In sum, then, the DEIS thoroughly misidentifies the land above

which the pipeline will travel. Given this flawed foundation, FERC cannot possibly evaluate the impacts or risks the pipeline will impose on Jersey City.

### **B. M&R Station**

Entirely contrary to the DEIS conclusions, the proposed Jersey City M&R Station *is not located on industrial/commercial land*. It is located on residential/mixed use land.<sup>15</sup> Jersey City has repeatedly expressed this fact to FERC on the record. The zoning documents were provided on December 21, 2010 and again on June 16, 2011.<sup>16,17</sup> The history of Jersey City and its redevelopment boom over the past three decades is very publicly available through a simple Google search. The entire Jersey City waterfront was industrial/commercial land; now, most of the northern third of the waterfront is residential and commercial. It is entirely incorrect to think of this land as industrial, as an approved residential project is slated to commence construction in the next year. *To reiterate, the entire area is zoned residential/mixed-use.*

The location of the M&R Station also endangers Jersey City's ability to use the Bergen Arches – an invaluable transportation asset – for future transportation needs. The Bergen Arches is one of the last key east/west Right-of-Ways that is able to be used as a future transportation connection.

### **C. Land Use & Route Variation**

The DEIS states on page 4-132:

Texas Eastern has incorporated several route variations into its proposed pipeline route to minimize or avoid impacts on planned developments (see Sections 3.4 and 3.5). Conflicts with several other planned developments would be avoided in Jersey City by use of the HDD construction method. To minimize traffic-related impacts, Texas Eastern has prepared draft Traffic Management Plans where the pipeline would be installed within existing roadways (see Section 4.9.5). Implementation of Texas Eastern's general construction methods for working in proximity to the planned developments and specific measures described below would minimize disruption to these areas to the extent practicable.

This project simply does not fit. Regardless of route variations, this project will displace underground real estate for infrastructure Jersey City needs in order to grow. Furthermore, no slight route variation can account for the intangible yet *massive* safety risk this pipeline poses to all of Jersey City. The DEIS fails to evaluate the current land uses and in-ground infrastructure as it relates to the proposed siting of this unprecedented high-pressure transmission pipe traversing an urban city.

### **D. Land Valuation**

The DEIS states on page 4-136:

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<sup>15</sup> Appendix 6: Jersey Avenue Park RDP land use map.

<sup>16</sup> FERC Docket PF10-17: Accession Number: 20101221-0036

<sup>17</sup> FERC Docket CP11-56: Accession Number: 20110616-5014

We received comments from the City of Jersey City expressing concern that the Project may not be consistent with various land use redevelopment plans, policies, and guidelines and that the proposed pipeline would deter economic growth and opportunities in these areas. The implementation of these plans involves acquisition of existing properties, relocation of existing land uses, remediation of contaminated sites, and development of various mixed uses. These plans are in various stages of implementation and the proposed pipeline would not be consistent with many of the plans ultimate objectives because the objectives have been amended to prohibit natural gas pipelines. The inconsistency of the proposed Project facilities with these redevelopment plans, however, would not prevent the continued implementation of the plans. We also do not believe that development of the proposed Project would make it difficult to attract investment money for specific projects within the redevelopment areas. This conclusion is supported by a market analysis of an urban redevelopment property near the existing Distrigas LNG facility in Everett, Massachusetts. This property was formerly part of the Charlestown Navy Yard and was conveyed to the local redevelopment authority 3 years after the LNG facility began operations. The market analysis concluded that the redevelopment had attracted hundreds of millions of dollars for revitalization projects and had added nearly 1,100 housing units to the neighborhood (KTR Newmark, 2005), including some with selling prices above \$2 million. The study also noted that recreational space, marinas, and commercial, retail, and light industrial uses had been incorporated into the redevelopment plan. The results of this study suggest that the proposed pipeline would not deter redevelopment in Jersey City.

Though the DEIS relies on a study of Everett, MA to debunk the idea Jersey City will be devastated by this pipeline project, the Everett, MA study is entirely inapplicable in the instant context. As a first cut, the Distrigas LNG facility is over a mile away from the Charlestown Navy Yards project. The Spectra pipeline will *cut through the heart* of Jersey City and its most desirable redevelopment areas. Moreover, the Charlestown Navy Yard site is blessed with unique inherent features Jersey City cannot replicate: The fact housing units sell for \$2 Million is hardly surprising considering the Charlestown Navy Yard contains 30 acres of National Park Service facilities and the USS Constitution. Nothing comparable exists in Jersey City; hence, the study presents as invalid assessment of Jersey City's post pipeline development potential.

The DEIS is flatly misinformed about the New Jersey Turnpike Authority's (NJTA) plans for Exit 14a and 14B (DEIS page 4-164). Due to Jersey City's and Liberty National's efforts, the NJTA rethought its inefficient plans, and devised a plan for keeping all the traffic at 14A. This will result in complications for placement of the pipeline at Exit 14A, as there will soon exist significantly more structure there.

## VII. SOCIOECONOMIC IMPACTS

The DEIS refers to socioeconomics in section 4.9. Many of the subsections are very loosely evaluated and have not taken into consideration the comments submitted and filed by the City of Jersey City on June 16, 2011.<sup>18</sup> For instance, this section fails to address the loss of jobs, taxes, and general business activity the pipeline will cause as it precludes the development of the Long

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<sup>18</sup> FERC Docket CP11-056: Accession No. 20110616-5012

Slip Canal for New Jersey Transit's Hudson Crossings project. LCOR, NJ Transit's designated developer for the Hoboken Terminal redevelopment project, has projected the development of 1.1 million square feet (SF) of office, 5,014 residential units (DU), 358,900 SF of retail, and 48,600 SF of institutional use on the Jersey City side of the project. All of that development would fall within the protected easement for the HDD pipe. None of it could be built. More than 6.5 million SF of development would be lost forever if the pipe goes under the Long Slip Canal. Using the Rutgers ECON model, Jersey City projects \$26 million in lost local taxes annually. The estimated taxes on the pipeline – \$2.6 million – pale in comparison.

Ironically, in both an aggressive public advertising campaign and in publicly proffered economic reports, Spectra Energy has claimed its project will be a job creator. In making these erroneous assertions, Spectra Energy has not evaluated the potential for lost jobs due to the pipeline. In Jersey City, creation in construction, commercial, industrial and residential lines of works is of great importance. In many of the public statements and economic reports that Spectra Energy uses in the media for the general public has represented this project as a job creator. Spectra Energy does not evaluate the potential jobs lost compared to the jobs created. Further, Spectra's grandiose assertions of job creation, which the DEIS takes at face value, are dramatically overblown: Spectra says it will generate 5200 temporary, indirect jobs in NJ; however, it admits only 2 or 3 will be permanent. Conversely, the pipeline will devastate Jersey City's development and the untold direct and indirect, permanent/temporary jobs it will create.

To wit, Jersey City's waterfront has been developed over the past 40 years from rail beds to a residential/commercial high-rise district; a high-profile, hazardous material pipeline will no doubt have effects on new construction leases and sales for several years. The pipeline will further risk the prospect of attracting developers to invest in property in the Jersey Avenue Redevelopment Plans district. Moreover, Jersey City is in direct competition for developable property with New York City, and this proposed project will jeopardize Jersey City's quality of life and land value. Of extreme significance on its own merits and as an example of Jersey City's growth, Jersey City's waterfront commercial area generates 1% of the entire state of New Jersey's budget.

### ***A. Property Comparisons***

The DEIS section 4.9.6 Property Values on page 4-166, states that:

We received a comment questioning the applicability of this study to the NJ/NY Project ... since no areas comparable to Jersey City were evaluated. While we acknowledge that no urban areas were evaluated, we do not think this invalidates the study's conclusions. One of the conclusions of the study was that the results of the study are very likely transferable to other market situations involving natural gas pipelines in other regions of the country (Allen et. al., 2001).

Per basic tenets of Federal Administrative law, FERC is prohibited from making baseless conclusions like the one it presents above. Acknowledging it has no evidence to support its

claim, FERC nevertheless sets forth a key proclamation: This stands a stark abuse of discretion on the part of the Commission. It is, as a matter of law, arbitrary and capricious, and it invalidates this entire section of the DEIS, if not the DEIS itself.

Furthermore, the conclusions of the DEIS analysis derive almost solely from a self-serving study commissioned by the Applicant. Out of the three other cited sources on page 4-167, two were similarly commissioned by pipeline affiliated companies and the last source by Hansen et. al., is many years outdated and was published just before the height of the residential market bubble. Even were FERC's conclusions not facially invalid, the fact the Commission entirely bases its assertions on self-serving and outdated documents brings the veracity of the agency's conclusions into serious doubt.

By definition, rural and suburban real estate is low rise (2 or 3 stories) and low density (1 house per 5,000 SF up to 1 house on tens of acres). The whole concept motivating the establishment of rural and suburban housing is distance it from everything else. In urban areas, conversely, the creation of housing is entirely focused on proximity: In successful urban housing developments, "everything" is nearby. In Jersey City, areas near the pipeline route are zoned for buildings of 30, 40, 50 or more stories, with densities of hundreds of units per acre. The magnitude of the difference between "rural" or "suburban" and "urban" densities makes the calculus behind the comparison of such disparate areas beyond suspect. The DEIS can only make a faulty assumption that the results are "very likely transferable." Ironically, the reason the DEIS must extrapolate from studies hugely asymmetrical to the instant circumstances *proves* the unprecedented nature of this project: A pipeline has *never* been located in a high density, uber-urban area. FERC has *vastly* underestimated and underevaluated – in fact, the "studies" FERC uses as support for its conclusions stand as evidence the agency has not considered *at all* - this incredibly tangible and relevant aspect of Spectra's proposed project.

Moreover, FERC's citation of Portland, Oregon (4-167) as an example of a project's impacts on property values is also suspect. Portland has the strictest urban growth limits in the country. Property at the city's growth boundary is most valuable, because on said boundary's other side sit the farms and vineyards that produce Oregon's famous wines. Colloquially, then, *of course* the property holds value: It's next to the Garden of Eden.

In sum, the DEIS does not – and cannot -- adequately use the results of past pipeline projects as evidence of the feasibility of Spectra's current proposal. Jersey City is a dynamic, growing city. The unprecedented chilling effect the pipeline will have on investment has not been properly evaluated. Even worse, the unprecedented threat this project poses to safety in such a high-density area has not even been considered.

## ***B. Environmental Justice***

The DEIS section purportedly devoted to an analysis of Environmental Justice is entirely superficial and deficient, as it does not evaluate Spectra's proposed project in re its impact on all

the various communities of Jersey City.. Since the Applicant's first preliminary filing and initial proposals, the project has undergone substantial change that has taken into consideration only *certain sections* of the city. The DEIS fails to evaluate Spectra's glaring lack of outreach to those in minority or low-income neighborhoods. The proposed pipeline passes by or through several Jersey City Housing Authority (JCHA) developments. The JCHA asserted on-the-record during the FERC public scoping meeting on October 19, 2011 that the Applicant has not reached out to anyone in JCHA or attempted to independently hold any public meetings in Jersey City's low income areas. From the onset, the Applicant has been unwilling to openly provide information on its specific project or on technical utility transmission projects generally. To wit, any information the City has collected on these topics was culled over time through the City's meticulous research of regulations, and outreach by City staff to utility providers and other experts in the field. The DEIS egregiously fails to evaluate the Applicant's lack of involvement in promoting public participation and fully evaluating Environmental Justice areas.

## **VIII. AIR & NOISE IMPACT**

In section 4.11.1.3, entitled Air Emission Impacts and Mitigation, the DEIS discusses the likely impacts of construction on Jersey City's air quality. The proposed Jersey City M&R station - which is the only such station sited in a residential zone as part of this project - will be located directly under a hospital, yet it is slated to have the highest amount of utility. The DEIS plainly states operation of said M & R station will generate emissions, including those from storage vessels, piping component leaks, truck loading and gas releases. Jersey City staff has requested from the Applicant more information pertaining to the M&R station and these emissions, but Applicant has not seen fit to give the City a response. As noted *supra*, the placement of the M&R station is directly below Christ Hospital *and* sited directly where Jersey City has made plans for Right-of-Way preservation for future transit rail connections. The proposed siting for the M&R facility is thus of extreme concern to Jersey City. For virtually the same reasons the DEIS concluded the M&R facility could not be located in Manhattan near the 14<sup>th</sup> Street Con Edison Connector, the M&R station should not be permitted to be sited in Jersey City at its proposed location.

On page 4-198, Table 4.11.2-1 fails to evaluate a site-planned approved residential project just north of the proposed pipeline. As has been extensively noted in this document, the DEIS further fails to evaluate all the environmental affects the proposed pipeline will have. As another example of said failure, the DEIS makes no mention that the proposed pipeline's construction and placement will raise ambient noise levels in Jersey City, and create difficulties for other new construction projects competing in the market. Beyond the pipeline's various deleterious emissions, unsightliness of both the pipeline's construction and the pipeline's permanent facilities will negatively impact key "views" in the city, which will further negatively impact adjacent properties.

Though the DEIS Section 4.11.2.3, termed Noise Level Impacts and Mitigation, considers noise created during construction, it nonetheless fails to adequately address the issue. This poses a dramatic concern for the City, especially due to Spectra’s proposal of 24-hour, 7-day-a-week construction, which is not permissible under the Jersey City Code Noise Ordinance. The construction proposed would cause unnecessary exposure to noise, which is scientifically proven to cause a variety of adverse medical conditions and maladies. The Applicant proposes to use noise “tents.” However this in no way addresses the noise impact the project will have on the multitude of Jersey City’s large buildings near the pipeline construction sites: Noise is often tougher to mitigate as it relates to upper floors or buildings that are above a construction area. Christ Hospital, residents of the Heights neighborhood, and the residents of the Newport neighborhood will be affected by the project; yet, the DEIS does not evaluate the effects on all of these – or, frankly, any other Jersey City - neighborhoods being affected by the new construction schedule. Moreover, the HDD is not the only aspect of this project’s construction that will create excess noise. The construction schedule submitted by the Applicant dated August 12, 2011, does not break down the sections of the construction that will be done in one area. A single neighborhood may be exposed to HDD, pipeline and M&R construction all at one time.

## **IX. ALTERNATIVES**

In section 3.2 System Alternatives, the DEIS states on page 3-10:

Another important consideration is whether a system alternative is economically practical. Three shippers (Chesapeake, Statoil, and Con Edison) have signed precedent agreements with the Applicants for the proposed natural gas volumes. Con Edison is a local distribution company in Manhattan. The other two are producer companies seeking to deliver their gas into the New Jersey/New York market.

In order to be capable of meeting the three specific shippers’ requirements of a combined 800,000 Dth/day, the alternatives are considerably restricted. The DEIS admittedly states plainly that the “two producer companies are seeking to deliver their gas into the New Jersey/New York market.” Con Edison, a local distribution company in New York City and Westchester County, NY, proposed to contract 21% (170,000 Dth/day) of the total capacity of the proposed Spectra pipeline. The DEIS fails to evaluate alternatives for providing for the need-based projection of Con Edison’s distribution. The local distribution company in New Jersey (PSE&G) has stated it does not currently plan to purchase capacity from this transmission line. Jersey City submitted this fact in its June 16<sup>th</sup> comments, and the City will attach it again to this document in re the DEIS.<sup>19</sup> Therefore, the DEIS lacks evaluation and acknowledgment of the true impacts or true needs for the proposed capacity of gas in the New Jersey/New York market.

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<sup>19</sup> Appendix 4: Email from PSEG

## **A. Existing System Modifications**

In section 3.2.2, Modifications of the Existing Pipeline Systems, the DEIS lists the five existing interstate pipeline companies operating in the New Jersey and New York market area.

- Transcontinental Gas Pipe Line Company (Transco);
- Tennessee Gas Pipeline (Tennessee);
- Iroquois Gas Transmission System (Iroquois);
- Millennium Pipeline Company, LLC (Millennium); and
- Columbia Gas Transmission, LLC (Columbia).

The DEIS states on page 3-12:

All of these systems are currently at or near full capacity. Moreover, none of the existing systems currently provides direct service to lower Manhattan. Consequently, the use of any of these systems as an alternative would require system modifications. An evaluation of the potential for each of these interstate pipelines to provide the same service as the proposed Project either alone or in combination is presented below.

The DEIS fails to acknowledge that at least three of the five listed existing systems have begun – if not already filed an application with FERC – to upgrade their systems to be able to deliver additional capacity to the New Jersey/New York market:

- Transco/Williams Northeast Supply Link is the early stages of preparing to apply for a FERC certificate for an additional 250,000 Dth/day.<sup>20</sup>
- Tennessee filed for a FERC certificate under Docket no. CP11-161 to increase their capacity by 636,000 Dth/day by installing five pipeline loops and modifying existing compression stations.<sup>21</sup>
- Millennium filed for a FERC certificate under Docket no. CP11-515 to increase their current capacity by 150,000 Dth/day by making upgrades to their existing compression station.

It is thus clear that the DEIS insufficiently evaluates the alternatives to the Applicant's pipeline. To effectively dispatch the proposed alternatives, FERC must take into consideration the upgraded capacity aforementioned, and then explain why those upgraded pipelines are nonetheless inadequate. The two applications currently submitted to FERC alone would transmit an additional 786,000 Dth/day to the New Jersey/New York market, clearly proving that viable alternatives can and do exist.

Section 3.3, on page 3-17 the DEIS states:

[I]t is far from certain that Con Edison could build a 2.65-mile-long, 30-inch-diameter pipeline in Lower Manhattan. In Con Edison's experience, subsurface workspace where

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<sup>20</sup> <http://www.energy.williams.com/NortheastSupplyLink>

<sup>21</sup> FERC Docket CP11-161: Accession No. 20110331-5161

the additional 14,000 feet of new pipeline would need to be constructed is much more limited in Lower Manhattan than the middle portion of the island. During the pre-filing process, Con Edison met with the FERC staff and described the density of subsurface utilities, conduits, and other obstructions that they would expect to encounter in lower Manhattan. In Con Edison's opinion, these obstacles make installation of a large-diameter, 2.65-milelong pipeline infeasible.

With regard to subsurface conditions, Jersey City has filed comments with FERC on January 26, 2011, the JCMUA letter dated August 17, 2010: Attachment 5 and on June 16, 2011, the Jersey City Municipal Utilities Authority report: Appendix 1.<sup>22</sup> The report clearly states Jersey City's subsurface conditions pose similar or identical obstacles to those found in New York that would make the installation of a 6+ mile-long, large diameter pipeline through Jersey City just as infeasible as it would be in New York City. Despite the JCMUA's informed opinion the DEIS failed to evaluate Jersey City's subsurface conditions. It thus fails to address, as it *must*, why installation of the large diameter pipeline in Jersey City would be appropriate as opposed to New York City.

## ***B. Alternatives***

FERC evaluates only three possibilities as major alternatives to Spectra's proposed route. The several other evaluations are considered minor route variations. These three major alternatives are similar in nature; they are all marine route alternatives with the same endpoint. Again, the endpoint clearly drives the overall routing of the pipeline. All three routes follow the same corridor, and only vary on which lane they decide to take. The DEIS also fails to evaluate the usage of HDD in the marine routes. The current proposal obviously does not preclude HDD pipes from being constructed one after another. Additionally, the DEIS states on page 3-92, "It should be noted ... that Texas Eastern has proposed a number of measures to minimize the effect of the onshore pipeline in these areas including route modifications and the use of the HDD method to avoid or minimize impacts on existing and planned developments, residences, and recreation areas." The DEIS fails to evaluate any differences in impact minimization between primarily on-shore and primarily off-shore routes.

## ***C. M&R Alternatives***

The DEIS evaluates the M&R station site alternatives in section 3.6 Aboveground Facility Site Alternatives. On page 3-111 the DEIS states (with emphasis added):

The range of potential sites for the Jersey City M&R Station is constrained by the size of the parcel needed and Con Edison's delivery pressure and temperature requirements. The operational footprint of the proposed Jersey City M&R Station is 1.4 acres, but based on the size of the proposed Bayonne M&R Station, we have assumed the permanent footprint of the proposed M&R station could be a little smaller. Con Edison's minimum

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<sup>22</sup> FERC Docket CP11-56: Accession No. 20110616-5012; Appendix 1: JCMUA letter dated June 10, 2011

pressure and temperature specifications require that the M&R station be sited within 2.25 miles of the interconnect with Con Edison's system in lower Manhattan. These requirements severely restrict the number of potential sites since most of the land within this distance is already occupied and developed *or is proposed for development*.

The Peninsula is one of the few areas within the Hudson River Park that is not located on piers and is large enough to fulfill the HRPT's desire to create a ball field. The construction of an M&R Station on the Peninsula would impact the HRPT's plans to develop the Peninsula into a park and ball field. The construction of the M&R station would also be inconsistent with New York law that does not permit the construction of aboveground facilities that do not serve a park use. For these reasons, we have determined that Option 2 on the Gansevoort Peninsula would not be preferable to the proposed site.

Though the DEIS goes to the lengths of rejecting potential Manhattan sites for the proposed M&R station based on *speculative* development and the potential erection of *playgrounds* in those areas, it entirely neglects to address the destructive effect the M&R station would have on Jersey City. The proposed Jersey City M&R station is located on land zoned for residential and mixed-use development. Investors are interested in imminent development of said property, which could generate hundreds of new dwellings and millions of dollars of new revenue for Jersey City's tax rolls. Further, the history of Jersey City and its redevelopment boom over the past three decades is very publicly available through a simple Google search. The DEIS offers no evidence as to why Jersey City's development plans are qualitatively worse than New York's, and thus more appropriate to disrupt. More egregiously still, the qualitative evaluation of development falls outside of FERC's expertise, and, as such, it would be afforded no deference by reviewing courts.<sup>23</sup> In other words, FERC cannot use this as evidence to substantiate the placement of the M&R station in Jersey City. Any such determination is patently arbitrary and capricious.

#### ***D. Temporary Workspace Alternatives***

Jersey City has major concerns with both the construction schedule of a major infrastructure project which transports hazardous materials at a high pressure, and the vagueness of the construction impact on the everyday lives to the citizens, residents and employees within Jersey City. In section 3.7 Workspace Alternatives on page 3-115 states:

Texas Eastern indicated that it could fabricate the HDD pipeline segment in an alternative upland area on the western end of Long Slip that is owned by the NJ Transit Authority. If this workspace were used, Texas Eastern would fabricate four 1,400-foot-long sections of pipe. Since there is not enough room to store these 1,400-foot sections on shore, each section would be temporarily stored within Long Slip using floats. When the HDD drilling and reaming are complete, these floating sections would be pulled into the HDD hole one at a time. The pullback operation would be temporarily halted after each section is pulled into the hole to allow the next section to be welded onto the previous section.

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<sup>23</sup> See, e.g., *Ardestani v. I.N.S.*, 502 U.S. 129, 148 (1991)

Like the proposed workspace, the alternative would require a temporary closure of the Hudson River Waterfront Walkway. However, unlike the proposed workspace, the alternative would also impact the NJ Transit Light Rail. This is because the alternative pullback would cross over the NJ Transit tracks. In order for the pipeline to be installed safely, NJ Transit would have to de-energize the overhead electric lines and cease rail operations into the Hoboken terminal until the pullback is completed. This would result in a loss of rail service for several hours.

Because of the additional impact it would have on the light rail, we do not think the alternative workspace would be environmentally preferable to the proposed workspace. However, in the event that the proposed workspace is unavailable due to the development of the Newport Development property, we believe Texas Eastern's use of the alternative workspace would be practicable.

Jersey City is concerned with the lack of evaluation of the environmental impacts on the temporary workspace alternative and the temporary workspace itself. The Hudson River Waterfront Walkway is a very important, heavily trafficked pedestrian transportation link. The possible effects of the proposed project could lead to injury and other adverse effects to the public. The DEIS fails to evaluate the environmental impacts of the Hudson River HDD Pipeline Fabrication workspace and its alternative.