



State of West Virginia
Office of the Attorney General
John B. McCuskey
Attorney General

October 14, 2026

Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Comments of the Attorneys General of the States of West Virginia, Alaska, Arkansas, Florida, Georgia, Iowa, Louisiana, Mississippi, Montana, Nebraska, Ohio, and South Carolina on the Environmental Assessment for the Green Chile Project, Transwestern Pipeline Company, LLC (Docket Nos. CP26-80-000 and CP82-534-000)

Dear Secretary Reese:

The Attorneys General of the States of West Virginia, Alaska, Arkansas, Florida, Georgia, Iowa, Louisiana, Mississippi, Montana, Nebraska, Ohio, and South Carolina submit these comments in support of Transwestern Pipeline Company's Green Chile Project and the Environmental Assessment that Commission staff issued last month. Staff took a careful look at the 17.77-mile lateral and found that its environmental effects would not be significant. The Commission should adopt that finding, issue a finding of no significant impact, and grant the certificate.

While a short gas lateral in New Mexico would not ordinarily draw comment from other States, the perspectives pushed by some commenters opposing that project compel a response. The New Mexico Department of Justice, for instance, would have the Commission enlarge this proceeding to take in Project Jupiter, a private data center campus, along with the on-site generation that will power it. And Hold the Line Campaign makes related arguments under other labels.

The Commission does not approve those data-center facilities, and it has no authority to regulate them. And the Supreme Court held just last year that environmental review must address "the project at hand" and "need not address the effects of separate projects." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 192 (2025). NMDOJ reads *Seven County* to contain an exception roomy enough for a data center. It is mistaken, and the States write to explain why.*

* The undersigned States have a direct stake in these questions. Several are leading natural gas producers, and several are working to attract data centers and the generation that serves them. West Virginia's Legislature, for example, has

BACKGROUND

Transwestern proposes to build 17.77 miles of 24-inch pipeline, two meter-and-regulator stations, and related facilities in Doña Ana County, New Mexico. EA at 1, 6. The line would carry up to 400,000 dekatherms per day from El Paso Natural Gas Company's system to Green Chile Ventures, LLC, which has contracted for all the capacity. EA at 2. From the delivery point, a separate 5.18-mile pipeline owned by Green Chile Ventures and regulated by state and local authorities would carry the gas to the Project Jupiter campus. EA at 6.

Staff found no significant effect on any resource it carried forward. It estimated the project's greenhouse gas emissions at about 7,569 metric tons of CO₂e for all of construction and about 576 metric tons per year in operation. EA at 33. HTLC observes that the operating figure does not match the EA's own table and omits fugitive emissions at one meter station. HTLC Comments at 13. But even on HTLC's numbers, operating emissions would stay below 1,000 tons per year, about two-thousandths of one percent of New Mexico's energy-related emissions. See EA at 30, 34. Staff recommended twelve conditions, including a bar on construction until section 106 consultation is complete. EA at 25, 41-45.

Staff did not analyze the data center or its power supply. Project Jupiter, "including the electrical generation component, is not subject to the Commission's jurisdiction," EA at 38, and the end use of the gas falls outside the scope of the Commission's review, EA at 2, 25, 33. Staff still identified Project Jupiter, the Green Chile Ventures pipeline, and the campus microgrid among six reasonably foreseeable activities near the project. EA at 13.

NMDOJ says this analysis was unlawful. In its view, the Commission "encapsulat[ed] the end use" by relying on the data center's demand to show need; the pipeline and Project Jupiter are "interrelated projects" lacking "independent utility" that must be "evaluated together"; invoking a ski-resort example from *Seven County*, NMDOJ says NEPA requires study of the data center because the two are close "in time and place." NMDOJ Comments at 2. HTLC likewise preserves an objection to the EA's exclusion of end-use emissions. HTLC Comments at 12.

DISCUSSION

Commenters are wrong in suggesting FERC must review Project Jupiter; *Seven County* actually forecloses that kind of distant review. Indeed, even before *Seven County*, courts were skeptical about imposing a broad obligation on FERC "under NEPA to consider the environmental impact

created certified microgrid districts so that data centers can generate their own power. See W. VA. CODE §§ 5B-2-21, -21a. Some of those facilities will run on gas delivered through a short interstate lateral, as Project Jupiter will. Under NMDOJ's theory, each such lateral would pull the data center at its end into the Commission's NEPA review, even though the facility is sited, permitted, and regulated under state law.

That said, the States don't attempt to answer all of NMDOJ's ill-founded concerns here. For example, NMDOJ raises a categorical-exclusion argument, but 42 U.S.C. § 4336(b)(2) makes a categorical exclusion the way out of an EA, not a precondition to one.

of the end-use burning of gas in ... an area within the jurisdiction of [a state] ... and which FERC is without power to regulate.” *S. Coast Air Quality Mgmt. Dist. v. FERC*, 621 F.3d 1085, 1092 (9th Cir. 2010). So the commenters “ultimately ask [the Commission] to engage in a more searching review than precedent allows.” *For a Better Bayou v. FERC*, 188 F.4th 516, 533 (D.C. Cir. 2026).

The statute provides the answer—FERC must stay focused on the Green Chile project, not the broader data-center enterprise. NEPA says an agency must describe the “reasonably foreseeable environmental effects of the proposed agency action.” 42 U.S.C. § 4332(2)(C)(i). *Seven County* read that text for what it says. “[T]he textually mandated focus of NEPA is the ‘proposed action’—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration.” 605 U.S. at 186-87. When the project at issue “might lead to the construction or increased use of a separate project,” the agency “need not consider the environmental effects of that separate project,” because “the separate project breaks the chain of proximate causation.” *Id.* at 187.

It doesn’t matter if the separate project is a foreseeable consequence of the reviewed project. “The effects from a separate project may be factually foreseeable, but that does not mean that those effects are relevant to the agency’s decisionmaking process or that it is reasonable to hold the agency responsible for those effects.” *Seven Cnty.*, 605 U.S. at 187. What’s more, the Surface Transportation Board (the relevant agency in *Seven County*) “possesse[d] no regulatory authority over those separate projects,” and “[o]ther agencies possess authority to regulate those separate projects and their environmental effects.” *Id.* at 188. Relying on what it called “one of the more important sentences in the NEPA canon,” the Court repeated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” *Id.* (quoting *DOT v. Pub. Citizen*, 541 U.S. 752, 770 (2004)). So “agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority.” *Id.*; accord *Ala. Mun. Distributors Grp. v. FERC*, 100 F.4th 207, 213 (D.C. Cir. 2024).

All of *Seven County*’s logic applies here. Project Jupiter is a separate project, built by separate companies on its own schedule; staff reports that it is already under construction. EA at 5. And the Commission has no authority over any of it. The Federal Power Act denies the Commission jurisdiction “over facilities used for the generation of electric energy.” 16 U.S.C. § 824(b)(1). The Natural Gas Act reaches interstate transportation and sales for resale, and it “shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution.” 15 U.S.C. § 717(b); see also, e.g., *Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 238 (D.C. Cir. 2025). NEPA’s own definitions point the same way: “major Federal action” excludes a “non-Federal action . . . with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project.” 42 U.S.C. § 4336e(10)(B)(i)(II). And nothing in this record suggests that the Commission can control the outcome of Project Jupiter.

The D.C. Circuit has already applied *Seven County* to a nearly identical arrangement. In *Sierra Club v. FERC (Cumberland)*, 153 F.4th 1295 (D.C. Cir. 2025), the Commission had certificated a 32-mile pipeline built to supply a new gas turbine at the Tennessee Valley Authority’s Cumberland plant. The Sierra Club argued that the pipeline and the plant were “connected actions” requiring joint analysis. The court rejected the argument because “it ask[ed] [the court] to demand exactly what *Seven County* says [the court] cannot demand.” *Id.* at 1308. The Commission “lacks ‘jurisdiction . . . over facilities used for the generation of electric energy’—like the TVA’s power plant,” so the two “[we]re not ‘connected actions’ that must be analyzed in the same environmental impact statement.” *Id.* The court also recognized that *Seven County* “abrogated” *Sierra Club v. FERC (Sabal Trail)*, 867 F.3d 1357 (D.C. Cir. 2017), the decision that had required the Commission to study downstream combustion. *Id.* at 1311. And really, NMDOJ’s position here is weaker than the challengers’ position in *Cumberland*. The Cumberland plant belonged to a federal agency, while Project Jupiter is private. See *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 50 (D.C. Cir. 2015) (explaining how NEPA, even under past regulations, “does not add a multitude of private pieces to the puzzle and so require review of a much larger picture”).

NMDOJ relies on a single sentence from *Seven County*: “in certain circumstances, other projects may be interrelated and close in time and place to the project at hand—a residential development next door to and built at the same time as a ski resort, for example.” *Seven Cnty.*, 605 U.S. at 190. NMDOJ takes that sentence to mean such projects “require analysis.” But NMDOJ stops a sentence too short. The Court’s next words supply the test: “The question then is whether that is a single project *within the authority of the agency in question.*” *Id.* (emphasis added).

Again: Project Jupiter is not within the Commission’s authority, so it cannot form a “single project” with the pipeline. And remember that, even in a “gray area,” “a court’s review still must remain deferential,” and “a court should defer to an agency so long as the agency drew a reasonable and ‘manageable line.’” *Seven Cnty.*, 605 U.S. at 190 (cleaned up). No commenter explains why a line drawn at the edge of the Commission’s jurisdiction is anything but reasonable. Indeed, HTLC acknowledges that *Seven County* “affords agencies substantial deference in defining the scope of NEPA review.” HTLC Comments at 10. HTLC instead recasts its objections as concerning “the project at hand,” *id.*, but its objection to excluding end-use emissions is, by definition, an objection about a different project.

Proximity in time and place also doesn’t do the work NMDOJ needs. The Uinta Basin Railway existed to give “oil producers a more efficient option for transporting oil out of the Basin to refineries.” *Seven Cnty.*, 605 U.S. at 175. The wells it would serve were, to borrow NMDOJ’s phrase, the railway’s “client and catalyst,” and they lay in the same basin as the railway. Even so, “the NEPA question [was] not close,” because “the environmental consequences of future oil drilling in the Basin are distinct from construction and operation of the railroad line.” *Id.* at 191. If wells at one end of a railroad built to haul their oil were a separate project, then so is a data center at the end of a 17.77-mile lateral. Put differently, NMDOJ insists that Project Jupiter “cannot function without this pipeline, and this pipeline has no reason to exist other than to provide fuel for Project Jupiter.” NMDOJ Comments at 3. Yet the same was true in *Seven County*: the

railway had no purpose but to haul the Basin's oil, and the new wells needed the railway to reach market. Mutual dependence did not make them a single project there, and it does not here.

Separately, NMDOJ argues that the Commission cannot rely on Project Jupiter's demand to find need and then decline to study Project Jupiter's effects. *Seven County* answers that, too. Like FERC, the Surface Transportation Board in *Seven County* had to decide whether the railway was consistent with "the public convenience and necessity." 49 U.S.C. § 10901(c). Recognizing that "rail construction projects are in the public interest," the Board found that the railway would "have substantial transportation and economic benefits"—benefits inseparable from the oil it was built to carry—and that those benefits outweighed the impacts identified in its EIS. 605 U.S. at 176. The Court still held that the Board need not study the drilling and refining that made the railway worth building.

The Natural Gas Act points the same way. Its public-interest standard "is not a broad license to promote the general public welfare." *NAACP v. FPC*, 425 U.S. 662, 669 (1976). The Commission's role "is limited to reviewing whether this pipeline is in the public interest," and it "does not have veto power over" a customer's choice of generating equipment. *Cumberland*, 153 F.4th at 1310. Section 7 may let the Commission "look into matters excluded from [its] direct regulatory jurisdiction," but "it may not 'purport[] to regulate' matters outside that jurisdiction." *Id.*

HTLC presses a variation on the same theme. Because Transwestern listed Project Jupiter's construction jobs and county payments among the project's benefits, HTLC argues that "a consistent approach would also weigh the end use's adverse effects." HTLC Comments at 3 (citing *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 62-63 (D.C. Cir. 2024)). But the Commission need not rely on those benefits at all. Need here rests on a binding precedent agreement for 100 percent of the project's capacity over a 17.5-year primary term, HTLC Comments at 2, and the Commission "will not look beyond [precedent agreements] to assess need by other means unless there is credible, contrary evidence discounting their probative value," *Transcon. Gas Pipe Line Co.*, 190 FERC ¶ 61,048, at P 29 (2025). The Commission should rest its finding on the contract and leave the data center's local benefits, and its harms, to New Mexico. Regardless, *New Jersey Conservation Foundation* predates *Seven County*; the downstream-emissions analysis it employed traced to *Sabal Trail*, which *Cumberland* recognizes *Seven County* abrogated. See *Cumberland*, 153 F.4th at 1311.

NMDOJ also insists that *Seven County* "does not excuse agencies from NEPA's command to consider 'reasonably foreseeable' impacts, including indirect and cumulative impacts." NMDOJ Comments at 3. That argument conflates two things: a statutory requirement that's narrower than NMDOJ's description and a now-obsolete regulatory provision that wouldn't give NMDOJ what it wants anyway. The statute requires analysis of the reasonably foreseeable effects "of the proposed agency action." 42 U.S.C. § 4332(2)(C)(i). The categories of "indirect" and "cumulative" effects, and the "connected actions" doctrine behind NMDOJ's independent-utility argument, came from the Council on Environmental Quality's regulations, which CEQ rescinded in 2025. *Removal of National Environmental Policy Act Implementing Regulations*, 90 Fed. Reg.

10,610 (Feb. 25, 2025). *Seven County* acknowledged that indirect effects might “sometimes fall within NEPA,” but it left to agencies “how far to go in considering indirect environmental effects *from the project at hand*.” 605 U.S. at 182 (emphasis added). Emissions from Project Jupiter’s generation are effects of a separate project, at least one step removed from the pipeline; they are not indirect effects of the project at hand.

The Commission has applied the same principle to cumulative effects. *See, e.g., E. Gas Transmission & Storage, Inc.*, 195 FERC ¶ 61,218, at PP 25-26 (2026); *see also Chattooga Conservancy v. U.S. Dep’t of Agric.*, No. CV 24-518, 2026 WL 865760, at *9 (D.D.C. Mar. 30, 2026) (explaining how, even when an agency must consider cumulative effects, courts “give substantial deference to the agency’s decisions on which projects are relevant and how to measure and contextualize the anticipated cumulative effects”). And *Cumberland* held that even the old connected-actions regulation could not be read to require analysis of a power plant outside the Commission’s jurisdiction. 153 F.4th at 1308. Staff here went further than the law requires: it identified Project Jupiter and its microgrid as reasonably foreseeable activities and described how nearby projects could affect shared resources. EA at 13. So NMDOJ’s claim that the EA contains “no analysis” of Project Jupiter overstates the record.

Left with little else, NMDOJ again looks to metaphors, likening the pipeline to a car’s fuel line and claiming the Commission has ignored “the emissions coming out of the tailpipe.” NMDOJ Comments at 3. The image cuts the other way, as *New Mexico* regulates what comes out of the tailpipe. The campus’s on-site generation needs an air permit from the New Mexico Environment Department. State regulators, not the Commission, review a stationary source’s emissions under the Clean Air Act, and this arrangement is the kind *Seven County* had in mind when it observed that “[o]ther agencies possess authority to regulate those separate projects and their environmental effects.” 605 U.S. at 188. New Mexico has other tools as well. Its State Land Office has rejected rights-of-way across trust lands for facilities related to the project, explaining that “[i]t is not the intention of this administration to support development related to the proposed data center.” HTLC Comments at 3 (quoting Transwestern Answer at 2 (July 15, 2026)).

And NMDOJ’s own comments show why the Commission should leave review of this sort to States. NMDOJ describes a “700-megawatt power plant” that would emit “up to 2.7 million metric tons of CO₂ annually,” NMDOJ Comments at 1, but cites nothing for either figure. Meanwhile, New Mexico’s air-permit notice for the campus describes a fuel-cell system, and even the record before the Commission has described the generation technology inconsistently. *See* HTLC Comments at 3-4, 12. Asking the Commission to analyze a facility whose design another sovereign is still permitting is asking it to “speculate about the effects of a separate project that is outside its regulatory jurisdiction”—precisely what *Seven County* says NEPA does not require. 605 U.S. at 189.

In truth, NMDOJ’s real quarrel is with Project Jupiter, and New Mexico’s own permitting and political processes are the places to pursue it. “The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements.” *Seven Cnty.*, 605 U.S. at 192 (cleaned

up); *cf. Big Bend Conservation All. v. FERC*, 896 F.3d 418, 424 (D.C. Cir. 2018) (holding FERC was not required to account for state-regulated facility in NEPA review).

The Commission should find that Project Jupiter and its on-site generation are separate projects outside the Commission's regulatory authority, so NEPA does not require the Commission to analyze their effects.

CONCLUSION

In the end, the case for this certificate is straightforward. A shipper has contracted for every dekatherm of capacity for a 17.5-year primary term, as even the challengers acknowledge. *See* HTLC Comments at 2; *see also* EA at 2. The project's effects are modest, mostly temporary, and largely confined to federal land that BLM has already studied. *See* EA at 8; EA Notice at 2. Staff's conditions address any concerns that might remain. *See* EA at 41-45. And the project also serves national priorities. The Executive Branch has made it "a priority . . . to facilitate the rapid and efficient buildout" of data center infrastructure and has identified "natural gas pipelines or laterals" as part of that infrastructure. Exec. Order No. 14,318, §§ 1, 2(b)(i), *Accelerating Federal Permitting of Data Center Infrastructure*, 90 Fed. Reg. 35,385, 35,385 (July 23, 2025).

Staff took the hard look NEPA requires at the Green Chile Project. NMDOJ and HTLC ask the Commission to take on a project that it does not approve, cannot regulate, and that New Mexico is already reviewing under its own laws. *Seven County* holds that NEPA does not require that, and *Cumberland* applies the holding to a pipeline serving a power plant. The States respectfully urge the Commission to adopt the EA's conclusions, issue a finding of no significant impact, and grant the certificate without further delay.

Sincerely,



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Cori Mills
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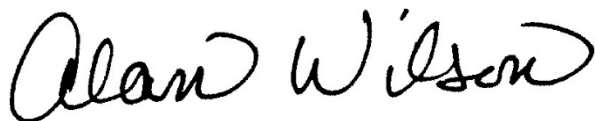
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