Cape Climate Action

350 MASS

27 Roberta Drive
West Yarmouth, MA 02673
November 3, 2026 (updated)

ALGONQUIN PIPELINE RELOCATION (CCC FILE NO. 25012)
CAPE COD COMMISSION
3225 MAIN ST.
BARNSTABLE, MA 02630

This comment updates and supersedes the comment filed by Cape Climate Action/350 Mass dated October 28, 2026, prior to the issuance by FERC of the Certificate of Public Convenience for this project. Cape Climate Action appreciates the close attention shown by the Subcommittee at the October 28th hearing. We believe the Commission is obligated and authorized by its governing statute to condition approval of the pipeline on capping volume of gas transmitted at the level authorized in the Certificate of Public Convenience issued by the Federal Energy Regulatory Commission in Docket No. CP25-552-000 on October 29, 2026.

Section 13(d)(2) of the Cape Cod Commission Act says the Commission may only approve or approve with conditions a DRI "if the Commission determines that the proposed development is consistent with the regional policy plan". The RPP requires that **"regional entities must all work together to reduce greenhouse gas emissions"**. *Cape Cod Regional Policy Plan 2025, at p. 95*. The Commission's regional greenhouse gas inventory determined that **methane gas produces over 11% of the region's total greenhouse gas emissions**. *Cape Cod Commission, Cape Cod Regional Greenhouse Gas Inventory, February 2021, at pp. 5 and 13*.

We appreciate that many Commissioners at the hearing acknowledged that this DRI implicates climate policy and share the frustration we sensed in the difficulty of pinning down the relative scale of the existing Canal pipeline system in comparison to the proposed replacement system. We suggest a roadmap to move forward that does not require an entirely new investigation. Algonquin represents that the new pipeline is not intended to increase capacity for gas transmission to the Cape and that the new system will not increase capacity. The Certificate of Public Convenience issued by FERC at ¶41 finds that the Project would not result in a capacity increase and Certificates

that “the project is properly sized to deliver to National Grid the same level of service as currently contracted.”

We and others have raised concerns that Algonquin’s plan through other FERC proceedings to massively increase combined total interstate pipeline gas delivered to Massachusetts, together with the complexities in comparing old and new pipeline system capacity, risk a major future increase in pipeline transmission and thus greenhouse gas emissions. The simple solution is for the Commission to accept Algonquin’s representations, approve the replacement at the level of the Certificate of Public Convenience, but bar future expansion of capacity beyond the Certificated level without further Commission approval. This will not interfere with FERC’s decision or Algonquin’s immediate start on construction but will retain the Commission’s claim of jurisdiction to prevent future increases in emissions.

Commission staff says the Commission’s authority to do this is preempted by FERC. We respectfully disagree. While the legal issue is not free from doubt, the Commission is obligated to enforce its Regional Policy Plan and should not unilaterally narrow its governing statute absent a court decision. The Cape Cod Commission Act vests responsibility for enforcing the RPP in the Commissioners, not in their staff.

FERC pipeline approval does preempt certain forms of State regulation: for example, State attempts to control interstate wholesale pricing, pipeline safety, etc. – matters fully entrusted to FERC – would clearly be preempted. But this DRI involves the Canal pipeline replacement which is an intrastate line beneath a canal located entirely within Bourne from one neighborhood to another. Indeed, the project is simply replacing existing pipelines currently operated by National Grid as local pipelines clearly under State jurisdiction. The Natural Gas Act limits Federal preemption of State authority over purely intrastate transportation:

> “the States retain jurisdiction over intrastate transportation, local distribution, and distribution facilities”. *NW Central Pipeline vs. Kansas Corporation Commission, 489 U.S. 493, 507 (1989).*

The Supreme Court has repeatedly upheld State authority over gas pipelines in a variety of contexts, and the outcome hinges on detailed analysis of the State regulatory role and its nexus to interstate commerce:

> “the Natural Gas Act ‘was drawn with meticulous regard for the exercise of state power, not to handicap or dilute it in any way . . . we must proceed cautiously, finding pre-emption only where detailed examination convinces us that a matter falls within the pre-empted field”. *Oneok, Inc. v. Learjet, Inc., 575 U.S. 373 (2015).*

Courts balance the nature and objectives of the state regulatory scheme against the impact on interstate commerce:

> the Court, in determining the validity of state regulations, has been less concerned to find a point in time and space where the interstate commerce in gas ends and intrastate

> commerce begins, and has looked to the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce. *Panhandle Pipe Line Co. v. Public Service Commission, 332 U.S. 507, 512 fn 7 (1947)*.

The State objective in the Cape Cod Commission Act is particular to the unique vulnerability of the environment of Cape Cod. *Cape Cod Commission Act, Section 1(a)*. The Cape Cod Commission Act is not a State attempt to regulate interstate gas but a narrow localized measure to preserve a fragile ecosystem. A condition limiting transmission through the replacement pipeline to currently certificated use, which is all the applicant has requested, will not interfere with any federal interest impacting interstate commerce and is not preempted. Since the condition would have no immediate impact on Algonquin or any of its plans, it would not be ripe for challenge until and unless Algonquin does subsequently seek a new Certificate of Public Convenience to enlarge its pipeline system.