

155 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Rockies Express Pipeline LLC

Docket No. CP15-102-000

ORDER ISSUING CERTIFICATE

(Issued April 7, 2016)

1. On March 2, 2015, Rockies Express Pipeline LLC (Rockies Express) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to operate its existing Seneca Lateral pipeline and compression facilities in Noble and Monroe Counties, Ohio. The existing Seneca Lateral facilities were originally constructed by Rockies Express to provide service under section 311 of the Natural Gas Policy Act (NGPA).³ Rockies Express now seeks NGA certification for the facilities to authorize their use for open-access transportation service under Part 284, Subpart G of the regulations.⁴ Rockies Express proposes no new construction in this proceeding.

2. As discussed below, the Commission will grant the requested certificate authorization, subject to the conditions discussed herein.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2015).

³ 15 U.S.C. § 3371. Services provided by an interstate pipeline in compliance with the Commission's Part 284, Subpart B regulations implementing section 311 of the NGPA, 18 C.F.R. § 284.101 *et seq.* (2015), are regulated by the Commission pursuant to its NGPA jurisdiction and are exempted by that Act from the Commission's NGA jurisdiction.

⁴ 18 C.F.R. § 284.221 *et seq.* (2015).

I. Background and Proposal

3. Rockies Express is registered as a jointly owned limited liability company in Delaware⁵ and is a natural gas company, as defined by section 2(6) of the NGA,⁶ as it is engaged in the transportation of natural gas in interstate commerce that is subject to the Commission's NGA jurisdiction. Rockies Express's 1,698-mile-long mainline is an NGA-certificated facility on which it provides Part 284 open-access transportation service in Wyoming, Colorado, Nebraska, Kansas, Missouri, Illinois, Indiana, and Ohio.

4. Rockies Express's Seneca Lateral facilities, currently used solely for service under NGPA section 311, include a 14.7-mile-long, 24-inch-diameter lateral pipeline that interconnects with Rockies Express's downstream mainline, a compressor station consisting of five compressors totaling 15,980 horsepower (Seneca Compressor Station),⁷ and a meter station. The Seneca Lateral facilities are designed to provide up to 600,000 dekatherms (Dth) per day of natural gas transportation service.

5. The Seneca Lateral extends from the MarkWest Energy Partners, L.P. (MarkWest) Seneca Processing Plant in Noble County, Ohio, through the northwest portion of Monroe County, Ohio, to its interconnection with Rockies Express's mainline in Noble County, Ohio. The Seneca Compressor Station is located near the interconnection with the mainline in Noble County, Ohio. The meter station is at the MarkWest gas processing plant.

6. Section 284.3(c) of the Commission's regulations provides that facilities constructed solely to provide service under NGPA section 311 are exempt from the Commission's NGA jurisdiction.⁸ Accordingly, rather than file an application for a certificate of public convenience and necessity under NGA section 7, on August 26, 2013, in Docket No. CP13-539-000, Rockies Express filed an advanced notification, as

⁵ The joint ownership is comprised of: Rockies Express Holdings, LLC, an indirect wholly owned subsidiary of Tallgrass Development, LP (50 percent); P&S Project I, LLC, a subsidiary of Sempra Energy (25 percent); and COPREX LLC, a subsidiary of Phillips 66 (25 percent).

⁶ 15 U.S.C. § 717a(6).

⁷ The five compressors comprise one 1,480 horsepower Waukesha 7042GSI/Ariel JGD2 unit; two 2,250 horsepower Waukesha P9394GSI/Ariel JGD4 units; and two 5,000 horsepower Caterpillar G3616LE/Ariel JGD6 units.

⁸ 18 C.F.R. § 284.3(c) (2015).

required by section 284.11 of the regulations, to give the Commission 30-days of notice prior to commencing construction of the Seneca Lateral facilities for service under section 311 of the NGPA.⁹ The notice described the Seneca Lateral pipeline and the Seneca Compressor Station, consisting of two compressor units.

7. Commission staff conducted a review to ensure that Rockies Express's proposed construction of the Seneca Lateral facilities would comply with the environmental requirements of section 157.206(b) of the Commission's blanket certificate regulations, as required by section 284.11 of the regulations.¹⁰ Staff issued its Environmental Assessment Report in Docket No. CP13-539-000, which found compliance, on September 25, 2013.

8. Rockies Express completed construction of the Seneca Lateral and placed it in service on June 20, 2014. The two compressor units comprising the Seneca Compression Station were placed in service on November 1, 2014. The Seneca Lateral's initial capacity after construction of the pipeline and the two compressors was 250 million standard cubic feet (MMscf) per day.

9. On April 18, 2014, Rockies Express filed an advanced notification, again pursuant to section 284.11, in Docket No. CP14-194-000 stating its intent to add three additional compressor units at the Seneca Compressor Station and make modifications to the measurement facilities at the Seneca Lateral's upstream interconnection with the MarkWest Seneca Processing Plant.

10. Staff conducted a compliance review of the project and on May 19, 2014, issued its Environmental Assessment Report in Docket No. CP14-194-000. Staff's report concluded that Rockies Express's construction activities would comply with all the applicable environmental requirements in section 157.206(b).¹¹

11. Rockies Express completed modification of the metering station on September 19, 2014, and placed the three additional compressor units in service on January 20, 2015. With the additional compression in service, the Seneca Lateral's capacity increased from 250 MMscf per day to 600 MMscf per day.

⁹ 18 C.F.R. § 284.11(b).

¹⁰ 18 C.F.R. §§ 157.206(b), 284.11(a) (2015).

¹¹ 18 C.F.R. § 157.206(b) (2015).

12. An interstate pipeline may provide service under the statutory requirements of NGPA section 311 if the service provided is “on behalf of” an intrastate pipeline or local distribution company (LDC).¹² This requirement limits the shippers to which service on the Seneca Lateral can be provided. While Rockies Express currently has a Seneca Lateral shipper with a 20-year contract for 600,000 Dth per day of firm service under NGPA section 311 and Part 284, Subpart B of the regulations, no unused or released Seneca Lateral capacity can be made available to interruptible or other firm shippers unless that service can also meet the statutory “on behalf of” requirements of NGPA section 311. In order for Rockies Express to provide service utilizing the Seneca Lateral facilities under the NGA and Rockies Express’s Subpart G blanket certificate, it must first receive an NGA section 7 certificate for the facilities.

13. As noted above, no new construction is proposed in this proceeding. Rockies Express proposes incremental firm and interruptible recourse rates for Seneca Lateral service under the NGA and its Part 284, Subpart G blanket certificate, based on its costs to construct the Seneca Lateral facilities, approximately \$136 million. In addition, it proposes an incremental fuel rate that would be applicable to service on the Seneca Lateral.

II. Notice, Interventions, Comments, and Protests

14. Notice of Rockies Express’s application was issued by the Commission on March 12, 2015, and published in the Federal Register on March 18, 2015, with interventions, comments, and protests due by April 2, 2015.¹³ The following parties filed timely, unopposed motions to intervene: Allegheny Defense Project (Allegheny); Antero Resources Corporation (Antero); Concord Energy LLC; ConocoPhillips Company; EQT Energy, LLC; Exelon Corporation; FreshWater Accountability Project (Freshwater); Heartwood; Independent Oil & Gas Association of West Virginia, Inc.; Ohio Valley

¹² Under the Commission’s regulations, service by an interstate pipeline satisfies NGPA section 311’s “on behalf of” test if: (1) the intrastate pipeline or LDC that is the designated “on behalf of” entity (a) has physical custody of and transports the natural gas at some point, or (b) holds title to the gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or LDC; or (2) the gas is delivered at some point to a customer that either is located in an LDC’s service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and that LDC or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service. 18 C.F.R. § 284.102(d).

¹³ 80 Fed. Reg. 14,105 (2015).

Environmental Coalition (Ohio Valley); Range Resources-Appalachia, LLC; Sequent Energy Management, L.P.; Shell Energy North America (US) L.P.; Tenaska Marketing Ventures; and Ultra Resources, Inc. (Ultra).¹⁴ Ultra's motion to intervene included a protest and a request for a trial-type evidentiary hearing and limited discovery. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁵

15. The U.S. Fish and Wildlife Service (FWS) filed comments on March 25, 2015. Its comments focus on the threatened and endangered species listed under the Endangered Species Act, species of concern, and migratory birds potentially located within the area of the Seneca Lateral facilities.

16. On April 2, 2015, Allegheny, Freshwater, Heartwood, and Ohio Valley (collectively Allegheny) filed a joint-protest and comments on Rockies Express's application for NGA-certification of the Seneca Lateral facilities. Allegheny alleges that the Commission improperly segmented its environmental review of Rockies Express's construction of the Seneca Lateral facilities under NGPA section 311 and the present conversion of the Seneca Lateral facilities from NGPA section 311 jurisdiction to NGA section 7 jurisdiction from the review of Rockies Express's application under NGA section 7 to construct and operate its East-to-West Project,¹⁶ which involved the modification of mainline compressor and meter stations to make them bi-directional to enable east-to-west transportation on the mainline. Allegheny asserts that the Commission's environmental review of the projects therefore failed to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA).

¹⁴ As an anchor shipper on Rockies mainline project, Ultra contracted for at least 200,000 Dth per day but less than 500,000 Dth per day of west-to-east service on the mainline prior to construction of the mainline facilities. *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234, at Appendix B (2008).

¹⁵ 18 C.F.R. § 385.214(c) (2015).

¹⁶ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161 (2015) (authorizing modifications to mainline compressor and meter stations to allow for bi-directional flow on the mainline).

17. Rockies Express filed an answer on April 17, 2015 to Ultra's and Allegheny's protests and comments.¹⁷ Ultra filed a reply to Rockies Express's answer on May 1, 2015.

18. On January 21, 2016, Ultra filed a notice pursuant to Rule 216 of the Commission's Rules of Practice and Procedure to withdraw both its motion to intervene and protest and its reply.¹⁸ In its notice of withdrawal, Ultra states that it and Rockies Express reached a settlement regarding the scope and applicability of Ultra's Most Favored Nation rights under certain negotiated rate agreements.

III. Discussion

19. Since Rockies Express seeks authorization to use the existing Seneca Lateral facilities for the transportation of natural gas in interstate commerce that is subject to the Commission's NGA jurisdiction, Rockies Express's certificate application is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁹

A. Application of the Certificate Policy Statement

20. Although the Commission's Certificate Policy Statement²⁰ was developed to provide guidance for evaluating proposals seeking certificate authority to construct new facilities, the Commission also applies the Certificate Policy Statement in assessing applications for certificate authority to acquire existing facilities²¹ or, as is the case here, to use existing facilities constructed under NGPA section 311 authority for service under

¹⁷ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits the filing of answers to protests or answers to answers, but this rule may be waived for good cause shown. In this instance we find good cause to allow Rockies Express's answer and note that doing so will not cause undue delay. 18 C.F.R. § 385.213(a)(2).

¹⁸ Ultra's notice of withdrawal for its pleadings was unopposed and therefore became effective on February 5, 2016 pursuant to Rule 216. 18 C.F.R. § 385.216 (2015).

¹⁹ 15 U.S.C. §§ 717f(c), (e).

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

²¹ *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 123 FERC ¶ 61,153, at P 31 (2008).

the NGA.²² The Certificate Policy Statement establishes criteria for determining whether granting certificate authority for a company to construct, acquire, or operate facilities will serve the public interest.

21. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, or as applied, the certification of existing NGPA section 311 facilities under the NGA, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

22. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

23. As discussed above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. Rockies Express proposes to charge incremental rates for firm and interruptible transportation service on the Seneca Lateral. As discussed below, the incremental rates are designed to recover the full cost of service associated with the Seneca Lateral and will be paid only by shippers that use the Seneca Lateral. Accordingly, we find the project will not be subsidized by existing customers whose services do not use the Seneca Lateral, and the threshold requirement of no subsidization is met.

²² See, e.g., *Natural Gas Pipeline Co. of America*, 108 FERC ¶ 61,204 (2004) (applying the Certificate Policy Statement and granting a certificate for Natural to acquire Northern Natural Gas Company's 38.6-mile-long Black Marlin pipeline that was constructed under NGPA section 311 authority).

24. The Seneca Lateral carries gas between the MarkWest Seneca Processing Plant and Rockies Express's mainline. While Rockies Express has been involved in disputes with its existing mainline shippers regarding changing their delivery points to more western points on the mainline and the rates they will pay for the east-to-west service that was not available at the time they entered into their existing service agreements, granting Rockies Express a certificate to use its Seneca Lateral for NGA service will not adversely affect Rockies Express's ability to meet its obligations under its existing service agreements or the quality of service under those existing services agreements. Nor is there any evidence that granting a certificate for Rockies Express's Seneca Lateral will result in the displacement of any services on any other pipelines or have any other effects that could adversely impact other pipelines' captive customers. Conversion of the Seneca Lateral facilities to NGA jurisdictional service will, however, make a wider range of transportation service available to the interstate market without the impacts associated with the construction of additional facilities as service on the Seneca Lateral facilities will no longer have to satisfy NGPA section 311's requirement that the service be "on behalf of" an intrastate pipeline or LDC.

25. Since no new construction is necessary in order for Rockies Express to use the existing Seneca Lateral facilities for NGA service, there is no potential that eminent domain will be needed to obtain property rights and authorization of the proposal will not result in any changes in land use or operations that could have adverse economic impacts on landowners or communities.

26. Granting certificate authority for the Seneca Lateral facilities will broaden the range of transportation services that can be provided on the facilities. Based on the benefits of granting certificate authority for the Seneca Lateral facilities, the lack of adverse effects on Rockies Express's existing services for its customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Rockies Express's proposal, subject to the conditions discussed below.

B. Rates

27. Section 284.102(b) of the Commission's regulations, which governs service under section 311 of the NGPA, provides that the rates charged by an interstate pipeline for such service may not exceed its rates established under section 284.10 of Part 284, Subpart A, i.e., its approved rates for NGA service under its Part 284, Subpart G blanket certificate. Rockies Express and Antero executed the Rate Schedule FTS Form of Transportation Service Agreement in Rockies Express's then-currently effective tariff for firm transportation service under NGPA section 311 at negotiated rates beginning on the in-service date of the Seneca Lateral for volumes ultimately ramping up to service of 600,000 Dth per day upon completion of the Seneca Lateral facilities, for a primary term of 20 years. Rockies Express filed Antero's negotiated rate agreement with the

Commission on June 25, 2014, in Docket No. RP14-1058-000, and amended contracts on November 26, 2014, in Docket No. RP15-219-000, and December 31, 2014, in Docket No. RP15-300-000. The Commission accepted these filings by letter orders dated July 23, 2014, December 16, 2014, and January 29, 2015, respectively in the referenced dockets.

28. Rockies Express states that the Seneca Lateral facilities are beneficial only to shippers that use the facilities. Therefore, for certificated NGA service on the Seneca Lateral, Rockies Express proposes separately stated incremental recourse transportation rates and incremental recourse fuel retainage rates. The proposed incremental rates are applicable only to transportation on the Seneca Lateral. A shipper transporting on the Seneca Lateral and the mainline would pay the Seneca Lateral rate in addition to the applicable zonal rates for downstream transportation on Rockies Express's mainline.

29. Rockies Express's proposed incremental firm and interruptible transportation recourse rates for service using the Seneca Lateral facilities are cost-based rates derived from the cost of the facilities, \$135,950,429. Rockies Express uses an annual cost of service of \$29,812,359, which includes operation and maintenance (O&M) expenses of \$660,000, depreciation expenses of \$3,784,930, ad valorem taxes of \$5,612,914 for Monroe and Noble Counties, and a pretax return of rate base of \$19,745,515. In calculating the proposed incremental recourse rates, Rockies Express used the depreciation rate and pretax return underlying its currently-effective rates as approved by the Commission in Docket Nos. CP07-208-000 and CP07-208-001.²³ For billing determinants, Rockies Express uses the Seneca Lateral Facilities' design capacity of 600,000 Dth per day, plus imputed interruptible transportation volumes of 10,000 Dth per day.

30. Rockies Express's proposed recourse rates for firm transportation service consist of a monthly reservation charge of \$4.0215 per Dth and a commodity charge of \$0.0017 per Dth. For both authorized overrun service and interruptible service, Rockies Express proposes a maximum charge of \$0.1339 and a minimum charge of \$0.0017 per Dth. Rockies Express's proposed fuel reimbursement rate for service on the Seneca Lateral is 0.34 percent based on fuel consumption of 2,044 Dth per day to provide the lateral service.

31. We have reviewed Rockies Express's proposed incremental recourse rates and will approve its proposed cost of service, allocation and rate design, including its use of the depreciation rate of 2.86 percent used in calculating its existing rates. However, Rockies Express's proposed initial rates for NGA service do not reflect the amount of time that

²³ *Rockies Express Pipeline LLC*, 123 FERC ¶ 61,234 (2008).

the Seneca Lateral facilities have already been in service, some for well over a year.²⁴ Therefore, Rockies Express must revise the incremental rates to reflect depreciation from the in-service dates of the various Seneca Lateral facilities until the date Rockies Express accepts the certificate granted by this order. Rockies Express must submit the revised incremental rate and its derivation calculations when it files its actual tariff records sixty to thirty days prior to the commencement of any service under the NGA and its Part 284, Subpart G blanket certificate. We will approve the use of Rockies Express's proposed incremental fuel rate.

32. With this order's grant of certificate authority, the Seneca Lateral facilities become part of the certificated system over which Rockies Express's is authorized to provide NGA service. Since we are approving Rockies Express proposal to charge incremental rates for service on the Seneca Lateral facilities, we will require its bookkeeping and accounting for the Seneca Lateral facilities and services to be consistent with the requirements of section 154.309 of the Commission's regulations to ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.²⁵ Rockies Express must keep separate books and accounting of costs and revenues attributable to the incremental services on the Seneca Lateral facilities, and its books should be maintained with applicable cross-reference as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and is provided consistent with Order No. 710.²⁶

²⁴ See Rockies Express June 12, 2015 Response to Data Request (showing that the various facilities comprising the Seneca Lateral were placed into service on June 20, 2014, September 19, 2014, November 1, 2014 and January 20, 2015).

²⁵ 18 C.F.R. § 154.309 (2015). While as we have emphasized above, no new facilities are being constructed as part of this proposal, Rockies Express's existing NGA jurisdictional system is being expanded by the incorporation of the Seneca Lateral facilities and an incremental rate is being approved as the initial recourse rate for services on the facilities. Thus, the provisions of section 154.309 are applicable here.

²⁶ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 Fed. Reg. 19,389, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

C. Tariff

33. Rockies Express included *pro forma* tariff records in its application to state the recourse rates and fuel percentage rate for service on the Seneca Lateral and to define the Seneca Lateral in the definitions section of the General Terms and Conditions. The Commission has reviewed Rockies Express's proposed tariff changes and finds that they are appropriate.

D. Environmental Analysis

34. Granting a certificate for Rockies Express's Seneca Lateral facilities will allow the facilities constructed under NGPA section 311 to be used for service under the NGA. No ground disturbing actions, construction activities, or changes in the operation of the facilities are involved with the conversion from NGPA section 311 jurisdiction to NGA section 7 jurisdiction. In reviewing an application for certificate authority for facilities that were constructed pursuant to NGPA section 311 authority, the Commission considers whether the applicant still needs to undertake any measures to mitigate environmental impacts that resulted from construction of the facilities.²⁷ Here, there is no evidence that any certificate conditions are needed to mitigate past impacts from the construction of the Seneca Lateral facilities. In view of these considerations, Commission staff determined that granting Rockies Express's application for an NGA certificate for the Seneca Lateral facilities would not have a significant effect on the human environment and qualified for the categorical exclusion under section 380.4(a) of the Commission's regulations, which includes a categorical exclusion for the conversion of facilities from use under the NGPA to use under the NGA.²⁸ Therefore, staff concluded that preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) was not necessary for

²⁷ See, e.g., *Northwest Pipeline Corp.*, 55 FERC ¶ 61,439, at 62,316 (1991). In *Northwest Pipeline Corp.*, the Commission explained that it considered a decision to grant certificate authority to convert NGPA section 311 facilities to NGA service to be an administrative decision that relies on the use of existing facilities. The Commission further explained, however, if need be it would first require that an applicant undertake any appropriate measures to address construction impacts that still needed to be addressed. In that proceeding, the Commission found, based on Northwest's agreement to implement four mitigation measures recommended by staff and supplemental environmental compliance documentation that the construction of the facilities had been brought into compliance with the Commission's applicable regulations and environmental requirements, that certification of the facilities would not constitute a major federal action significantly affecting the quality of the human environment.

²⁸ 18 C.F.R. § 380.4(a)(32) (2015).

Rockies Express's request for certificate authority for the Seneca Lateral facilities.²⁹ We agree, and discuss below issues raised by FWS and Allegheny regarding environmental matters.

35. FWS commented that it would recommend consultation and surveying if Rockies Express's application for certificate authority for the Seneca Lateral facilities would involve any tree clearing or construction activities that could have potential impacts on federally listed endangered or threatened species, species of concern, migratory birds, or bald eagles. As discussed above, the Seneca Lateral facilities were constructed and placed into service prior to the filing of this request for NGA certification and the facilities were constructed in compliance with the environmental requirements in section 157.206(b) of the Commission's regulations. Granting the instant request for NGA section 7 certification of the existing Seneca Lateral facilities involves no tree clearing or other construction activities.

36. We note that prior to commencing construction of the Seneca Lateral facilities under NGPA section 311, Rockies Express consulted with FWS and the Ohio Department of Natural Resources (DNR) regarding federally threatened and endangered species, proposed candidate species, and species of concern for Monroe and Noble Counties, Ohio, where construction activities would occur. In consultation with the Ohio DNR and the FWS, Rockies Express identified two kinds of endangered mussels, the sheepnose (*Plethobasus cyphus*) and snuffbox (*Epioblasma triquetra*), that could occur in the area. Rockies Express's consultant evaluated the sites for sheepnose and snuffbox mussels and neither type of mussel nor suitable habitat was found. FWS concurred that sheepnose and snuffbox mussels would not be adversely impacted by the construction of the Seneca Lateral facilities.³⁰

37. Rockies Express also coordinated with FWS and the Ohio DNR to ensure that construction of the Seneca Lateral facilities would not adversely impact the endangered Indiana bat (*Myotis sodalists*) or suitable roosting habitat. Most of the pipeline route had been cleared of trees prior to the development of the project. In accordance with FWS's May 2013 Revised Range-Wide Indiana Bat Summer Survey Guidelines, Rockies Express's consultant implemented acoustic monitoring of bats in areas where tree

²⁹ Environmental Assessment Report Docket No. CP15-102-000 (issued July 16, 2015) (issuing a categorical exclusion for the conversion of the Seneca Lateral from NGPA section 311 to NGA section 7).

³⁰ Rockies Express August 26, 2013 Advance Notice Filing in Docket No. CP13-539-000, Attachment A-7 at 29.

clearing was planned for the pipeline route and compressor station. No Indiana bats were detected.³¹

38. In its April 2, 2015 protest to Rockies Express's application for a certificate to use the Seneca Lateral facilities for service under the NGA, Allegheny asserts that the Commission needs to prepare a single EIS for Rockies Express's certificate application, Rockies Express's projects previously completed under NGPA section 311 to construct and add compression to the Seneca Lateral facilities, and Rockies Express's East-to-West Project to make its mainline compressor and meter stations bi-directional in order to provide east-to-west transportation service on the mainline.

39. According to Allegheny, these proposals are "connected, cumulative, and similar actions" under NEPA because they are all designed to allow Rockies Express to receive gas from the Marcellus and Utica Shale formations and transport that gas westward. In addition, Allegheny maintains that the Commission needs to consider the direct and indirect effects and cumulative impacts of the Seneca Lateral facilities and the production of Marcellus and Utica Shale gas, and the Commission should prepare a programmatic EIS to review the Seneca Lateral Project and numerous other projects that create pipeline capacity to transport gas produced from the Marcellus and Utica Shale formations. Therefore, Allegheny asserts that Rockies Express's proposal to apply a categorical exclusion in this case is not appropriate.

40. Allegheny also claims that by permitting Rockies Express to construct the Seneca Lateral facilities under NGPA section 311, the Commission allowed Rockies Express to "circumvent the certificate application procedures under Section 7 of the NGA and, a more rigorous environmental review process under NEPA."³² It claims that the environmental review of Rockies Express's construction of the Seneca Lateral facilities under NGPA section 311 authority was inadequate because "FERC's entire 'environmental analysis' of the construction of the 14-mile lateral pipeline and the Seneca Compressor Station in Docket No. CP13-539 and the expansion of the Seneca Compressor Station in Docket No. CP14-194 is contained on a total of ten pages."³³ Allegheny claims that the Commission would "aid and abet the circumvention of NEPA"

³¹ *Id.* at 30. Rockies Express included information in Attachment B-8 regarding its coordination with FWS and the Ohio DNR. The Indiana bat acoustic monitoring report was included in Attachment B-9. Rockies Express August 26, 2013 Advance Notice Filing in Docket No. CP13-539-000, Attachment B-8, B-9.

³² Allegheny April 2, 2015 Protest at 5 (footnote omitted).

³³ Allegheny April 2, 2015 Protest at 5.

by considering the present Seneca Lateral conversion to NGA section 7 an “administrative action.”³⁴

41. In accordance with the Council on Environmental Quality (CEQ) regulations,³⁵ the Commission has identified certain categories of actions, known as categorical exclusions, which generally do not have significant environmental effects and do not require the preparation of an EA or an EIS.³⁶ The types of activities generally categorically excluded are procedural, ministerial, or administrative in nature. In determining whether a categorical exclusion is appropriate, CEQ regulations also require that an agency evaluate whether any extraordinary circumstances are present in which a normally excluded action would instead have a significant impact.³⁷ To that end, before issuing a categorical exclusion the Commission evaluates the applicant’s environmental information and any comments on the proposal to determine if any extraordinary circumstances are present and if no extraordinary issues are present then staff may issue a categorical exclusion.³⁸

42. In this case, Commission staff determined that a categorical exclusion was appropriate. Section 380.4(a)(32) of the Commission’s regulations states that “neither an [EA] nor an [EIS] will be prepared for the . . . conversion of facilities from use under the NGPA to use under the NGA.”³⁹ This is the exact action that Rockies Express requested in this proceeding. After considering the record in this proceeding, including Allegheny’s comments, Commission staff did not identify any extraordinary circumstances that indicated that the present action may have a significant environmental effect requiring the preparation of an EA or EIS.

³⁴ Allegheny April 2, 2015 Protest at 7.

³⁵ 40 C.F.R. § 1508.4 (2015).

³⁶ 18 C.F.R. § 380.4.

³⁷ 40 C.F.R. § 1508.4 (2015).

³⁸ If a categorical exclusion should not be applied, the Commission prepares an EA or an EIS to evaluate the environmental impacts. 18 C.F.R. § 380.4(b).

³⁹ *Id.* § 380.4(a)(32). *See, e.g., Panhandle Eastern Pipe Line Co.*, 79 FERC ¶ 61,183, at 61,872 (1997) (finding the conversion of a pipeline from existing NGPA section 311 jurisdiction to NGA jurisdiction does not involve any construction and does not constitute “a major federal action significantly affecting the quality of the human environment”).

43. We agree with staff's decision to issue a categorical exclusion for the conversion of the Seneca Lateral. As explained above the conversion does not involve any ground disturbing actions, construction activities, or change in the operations of the facilities. Neither Commission staff nor Allegheny has identified any operational changes or other factors resulting from the conversion that may cause any significant direct or indirect environmental impact. As such, we find that the conversion of the Seneca Lateral facilities from NGPA section 311 to NGA section 7 is an administrative action with no environmental impacts.⁴⁰ Thus, we agree that the proposed action qualifies for a categorical exclusion under NEPA and our regulations and requires no further environmental analysis.⁴¹ Our action is consistent with the court's ruling in *Center for Biological Diversity v. Salazar*, which found that an agency did not need to analyze connected, cumulative, and similar actions and impacts when issuing a categorical exclusion.⁴²

44. We also find that Allegheny's attempt here to challenge the adequacy of the environmental review conducted in the previous NGPA section 311 proceedings for the Seneca Lateral facilities is an impermissible collateral attack on those proceedings. Now, during this purely administrative proceeding, which involves no impacts on the environment, Allegheny attempts to raise issues that are not presently before the Commission.⁴³ In any event, as discussed above, Commission staff previously reviewed Rockies Express's construction of the Seneca Lateral facilities under the advance

⁴⁰ See 18 C.F.R. § 380.4; 40 C.F.R. § 1500.5(k) (2015).

⁴¹ 40 C.F.R. § 1500.5(k) (2015). See *National Trust for Historic Preservation in U.S. v. Dole*, 828 F.2d 776, 781 (D.C. Cir. 1987) (“[b]y definition, [categorical exclusions] are categories of actions that have been predetermined not to involve significant environmental impacts, and therefore require no further agency analysis absent extraordinary circumstances”).

⁴² 706 F.3d 1085, 1097 (9th Cir. 2013). See also *Utah Env'tl. Cong. v. Bosworth*, 443 F.3d 732, 741 (10th Cir. 2006) (“By definition, then, a categorical exclusion does not create a significant environmental effect; consequently, the cumulative effects analysis required by an environmental assessment need not be performed.”).

⁴³ See, e.g., *Columbia Gas Transmission, LLC.*, 152 FERC ¶ 61,131, at P 9 n.11 (2015).

notification proceedings and verified that it complied with sections 284.11(b) and 157.206(b) of the Commission's regulations.⁴⁴

45. Finally, we note that Allegheny raised similar arguments in Rockies Express's East-to-West Expansion Project proceeding in Docket No. CP15-137-000, claiming there that the Commission had improperly segmented its review of Rockies Express's construction of the Seneca Lateral facilities, its East-to-West Project, and its East-to-West Expansion Project. In our East-to-West Expansion Project order, we address Allegheny's allegations at length, ultimately rejecting its arguments.⁴⁵ In addition, we note that in the EA prepared for the East-to-West Expansion Project, Commission staff performed an analysis to identify any cumulative impacts the East-to-West Expansion Project may have had when added to the impacts of the Seneca Lateral and East-to-West Projects and no significant impacts were identified.⁴⁶

46. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Rockies Express to operate its Seneca Lateral, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Rockies Express's compliance with all of the Commission's applicable regulations including, but not limited to, Parts 154, 157, 284, and paragraphs (a), (e), and (f) of section 157.20 of the Commission's regulations.

(C) Rockies Express shall file actual tariff records with its incremental transportation rates for service on the Seneca Lateral, revised as directed herein to reflect depreciation of the Seneca Lateral facilities from their in-service dates until the date of acceptance of the certificate issued in Ordering Paragraph (A). Rockies Express shall file

⁴⁴ Environmental Assessment Reports Docket Nos. CP13-539-000 and CP14-194-000.

⁴⁵ See *Rockies Express Pipeline LLC*, 154 FERC ¶ 61,139, at PP 32-68 (2016).

⁴⁶ See East-to-West Expansion Project EA at 34-38 (issued August 31, 2015 in Docket No. CP15-137-000).

its actual tariff records not more than sixty nor less than thirty days prior to the commencement of any service on the Seneca Lateral under the NGA and its Part 284, Subpart G blanket certificate.

(D) Rockies Express's request to charge its proposed incremental fuel rate for service on the Seneca Lateral is approved.

(E) Rockies Express shall keep separate books and accounting of costs attributable to the proposed incremental capacity and service, as more fully discussed above.

(F) Allegheny's, FreshWater's, Heartwood's, and Ohio Valley's protest is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.