

157 FERC ¶ 61,093  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Northwest Pipeline, LLC

Docket No. CP15-8-001

ORDER ON REHEARING

(Issued November 8, 2016)

1. On April 11, 2016, the Commission issued Northwest Pipeline, LLC (Northwest) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> to construct and operate a 3.1-mile-long pipeline, metering, and appurtenant facilities in Cowlitz County, Washington (Kalama Lateral Project).<sup>3</sup> On May 11, 2016, the Cowlitz County Cemetery District No. 6 (Cemetery) filed a timely request for rehearing. This order dismisses or denies the Cemetery's request for rehearing.

**I. Background**

2. The April 11 Order authorized the construction and operation of the Kalama Lateral Project, a 3.1-mile-long, 24-inch-diameter pipeline that will extend from Northwest's Ignacio to Sumas Mainline to Northwest Innovation Works' (NWIW) contemplated Kalama Manufacturing & Marine Export Facility (Methanol Plant) to be located in the Port of Kalama, Cowlitz County, Washington.<sup>4</sup> The Kalama Lateral Project will provide for 320,000 dekatherms per day (Dth/day) of firm transportation service from the interconnection with Northwest's Mainline to NWIW's Methanol Plant.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. pt. 157 (2016).

<sup>3</sup> *Northwest Pipeline, LLC*, 155 FERC ¶ 61,026 (2016) (April 11 Order).

<sup>4</sup> A more detailed Project description appears in the April 11 Order, 155 FERC ¶ 61,026 at P 5.

3. The Commission found that the benefits the Project will provide to the market outweigh any adverse effects on existing shippers, on other pipelines and their captive customers, and on landowners and surrounding communities.<sup>5</sup> In addition, Commission staff prepared an Environmental Assessment (EA). Based on that analysis, the Commission found that, if constructed and operated in accordance with Northwest's application and supplements and the conditions imposed by the April 11 Order, the Project will not have a significant impact upon the environment.<sup>6</sup>

4. On rehearing, the Cemetery argues that the Commission: (1) failed to support its determination that the Project's benefits outweigh its adverse impacts; (2) violated the Clean Water Act and the Endangered Species Act; (3) erred by excluding NWIW's contemplated Methanol Plant from its environmental review; (4) erred in failing to prepare an environmental impact statement; (5) did not address the indirect effects of induced natural gas production; (6) did not adequately address greenhouse gas emissions; (7) did not evaluate reasonable alternatives to waterbody crossings; and (8) failed to address the environmental impacts to the Cemetery's property.

## II. Discussion

### A. April 11 Order Complied with the Commission's Certificate Policy Statement

5. The Cemetery argues that the Commission "erroneously" found stated that the Project would not adversely affect effects landowners and surrounding communities without providing any particularized discussion or analysis regarding the Project's impacts on the Cemetery's property.<sup>7</sup> We disagree.

6. Consistent with the Certificate Policy Statement,<sup>8</sup> the need for and benefits derived from the Kalama Lateral Project must be balanced against the adverse impacts on landowners. The Cemetery faults the Commission for failing to specifically mention

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<sup>5</sup> *Id.* P 15.

<sup>6</sup> *Id.* P 52.

<sup>7</sup> *Id.* at 10-11.

<sup>8</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,744 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*). *See also National Fuel Gas Supply Corp.*, 139 FERC ¶ 61,037, at P 12 (2012) (The Certificate Policy Statement's balancing of adverse impacts and public benefits is an economic, not environmental analysis).

potential impacts to its property. Of course, the Commission must balance the concerns of all interested parties and may not give undue weight to the interests of any particular party. Here, the Commission found that Northwest has taken steps to reduce any adverse impacts to landowners, including meeting with local, state, and federal officials, landowners, and other agency stakeholders to identify and resolve issues regarding route alternatives, environmental concerns, and special construction needs.<sup>9</sup> That conclusion applies equally to the Cemetery's property.

7. As discussed further below, the temporary workspace for the Project will encroach on a small portion of the cemetery parking area and a permanent right-of-way will impact a proposed cul-de-sac project planned for the Hale Barber Road near the cemetery parking area. After construction, Northwest must restore all roadway surfaces in the area to their original condition in accordance with Northwest's Erosion Control and Revegetation Plan. Additionally, Environmental Condition No. 13 of the April 11 Order requires that, prior to construction Northwest must coordinate with the Cemetery regarding property boundaries, the planned cul-de-sac project, and the parking area, and develop measures to avoid or minimize impacts to the cemetery.<sup>10</sup> Construction of the Project would have no long-term impacts to the cemetery or to associated roadways.<sup>11</sup> Based on the foregoing, we affirm the April 11 Order's conclusion that Northwest demonstrated public need for the Kalama Lateral Project.

8. The Cemetery also states that the Commission should have conditioned construction of the pipeline on NWIW receiving approval from the Port of Kalama and Cowlitz County to build the Methanol Plant. We disagree. To the extent that Northwest elects to proceed with construction, it bears the risk that NWIW will not receive approval to construct its proposed Methanol Plant.

**B. Authorization Prior to Determination Under the Clean Water Act**

9. The Cemetery argues that the Commission violated the Clean Water Act by issuing the April 11 Order before Northwest received its water quality certification from the Washington Department of Ecology.<sup>12</sup>

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<sup>9</sup> April 11 Order, 155 FERC ¶ 61,026 at P 14.

<sup>10</sup> April 11 Order, 155 FERC ¶ 61,026 at Environmental Condition No. 13.

<sup>11</sup> EA at 54.

<sup>12</sup> Cemetery's Rehearing Request at 1 and Exhibit 2 (Joint Public Notice for the Methanol Plant's and Kalama Lateral's Application for approval under sections 401 and 404 of the Clean Water Act and section 10 of the Rivers and Harbor's Act).

10. As we have explained in prior cases,<sup>13</sup> we disagree with the parties' assertion that the plain language of the Clean Water Act erects an absolute bar to Commission action on a project application prior to a state's issuance of a water quality certification. Section 401(a)(1) of the Clean Water Act provides that no federal "license or permit shall be granted until the" state certifies that any activity "which may result in a discharge into the navigable waters" will comply with the applicable provisions of the Act.<sup>14</sup> Consistent with this language, the April 11 Order, and specifically Environmental Condition 9,<sup>15</sup> ensures that unless and until the Washington Department of Ecology issues the water quality certification, Northwest may not begin an activity, i.e., pipeline construction, which may result in a discharge into jurisdictional waterbodies.

11. In considering statutes structured similar to the Clean Water Act, courts have affirmed agency actions authorizing projects conditioned on subsequent receipt of other necessary federal and state approvals.<sup>16</sup> For instance, in *City of Grapevine*, the D.C. Circuit held that an agency's conditional approval of an airport runway did not violate the National Historic Preservation Act, because the Act specifically prohibited only the approval of expenditures of federal funds, and not any other approval. The Commission

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<sup>13</sup> See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 154 FERC ¶ 61,166, at PP 43-47 (2016); *Constitution Pipeline Company, LLC*, 154 FERC ¶ 61,046, at PP 62-69 (2016).

<sup>14</sup> 33 U.S.C. § 1341(a)(1) (2012).

<sup>15</sup> April 11 Order, 155 FERC ¶ 61,026 at Environmental Condition No. 9 requires Northwest to document that it has acquired all applicable federal authorizations before receiving authorization to commence construction of the Project.

<sup>16</sup> See *City of Grapevine*, 17 F.3d 1502 (finding that that the U.S. Department of Transportation had not violated the National Historic Preservation Act by conditioning its approval of a new airport runway on the review process required by that federal statute); see also *Myersville*, 783 F.3d at 1315, 1317-21 (finding the Commission did not violate the NGA or the Clean Air Act by conditioning its approval of new compressor station on the review process required by the Clean Air Act); *Pub. Utils. Comm'n of Cal.*, 900 F.2d at 282 (noting that Commission expressly conditioned pipeline on completion of environmental review under the National Environmental Policy Act); *Delaware Department of Natural Resources and Environmental Control v. FERC*, 558 F.3d 575, 578 (D.C. Cir. 2009) (dismissing an appeal of a certificate order conditioned on the favorable outcome of Delaware's environmental reviews because the court was "unable to see how [the Commission's] allegedly illegal procedure causes Delaware any injury in light of [the Commission's] acknowledgment of Delaware's power to block the project ....").

has likened the National Historic Preservation Act to the Clean Water Act because they each expressly prohibit a federal agency from acting prior to compliance with their terms, but those terms do not bar all agency actions.<sup>17</sup> And, as in *City of Grapevine*, if a certificate holder commits its own resources to further development activities prior to receipt of all federal approvals, “it does so at the risk of losing its investment . . . .”<sup>18</sup>

12. Cases cited by the Cemetery, by contrast, are not on point. They primarily address the extent to which the Commission must verify that a state’s water quality certification is valid,<sup>19</sup> or simply summarize the requirements of the Clean Water Act, confirming that state certification is, of course, necessary before the Commission authorizes activities “which may result in a discharge into the navigable waters.”<sup>20</sup>

13. The Commission’s approach, which ensures that a state’s certification is given full effect, appropriately respects the integration of the various permitting requirements for interstate pipelines, as reflected in the Natural Gas Act and the Clean Water Act.<sup>21</sup> It is also a “practical response to the reality that, in spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission’s issuance of its certificate without unduly delaying the project.”<sup>22</sup>

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<sup>17</sup> See *AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 72 (2009); *Broadwater Energy LLC*, 124 FERC ¶ 61,225, at P 60 (2008); *Georgia Strait Crossing Pipeline LP*, 108 FERC ¶ 61,053, at P 16 (2004).

<sup>18</sup> *City of Grapevine*, 17 F.3d at 1509.

<sup>19</sup> See *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006); see also *Keating v. FERC*, 927 F.2d 616, 624-25 (D.C. Cir. 1991).

<sup>20</sup> 33 U.S.C. § 1341(a)(1) (2012). See *Pub. Util. Dist. No. 1 of Jefferson Cnty.*, 511 U.S. 700 (holding that a state may include minimum stream flow requirements in a water quality certification for a hydroelectric project), see also *S.D. Warren Co. v. Me. Bd. of Env’tl. Prot.*, 547 U.S. 370, 384 (2006) (holding that FERC-licensed hydroelectric dams result in a discharge requiring state water quality certification).

<sup>21</sup> See *Keating v. FERC*, 927 F.2d at 622.

<sup>22</sup> *Broadwater Energy*, 124 FERC ¶ 61,225, at P 59; see also *AES Sparrows Point*, 129 FERC ¶ 61,245, at P 67.

14. Nothing in the April 11 Order limits state agencies from imposing conditions pursuant to their authority. By the terms of section 401(d) of the Clean Water Act,<sup>23</sup> any limitations or monitoring prescribed in the water quality certification to ensure that the applicant will comply with federal or state standards under the Clean Water Act shall become conditions of the federal license or permit and thus control the construction and operation of the project.<sup>24</sup> Nor does anything in the April 11 Order require states to accept applications that would otherwise be deficient.

**C. National Environmental Policy Act (NEPA) Review**

**1. Environmental Review of Non-Jurisdictional Facilities**

15. The Cemetery asserts that the Commission improperly segmented its environmental review of the Kalama Lateral Project from NWIW's contemplated Methanol Plant.<sup>25</sup> Specifically, the Cemetery argues that under NEPA, the Commission was required to analyze both the federal and non-federal portions of a project when the projects would not exist independently of one another.<sup>26</sup> The Cemetery argues that the Kalama Lateral Project and the Methanol Plant are "connected" or "cumulative" actions under section 1508.25(a)(1) of the regulations implementing NEPA,<sup>27</sup> and that the Commission must conduct a combined review of both projects.<sup>28</sup> The Cemetery explains that the purpose of the Kalama Lateral Project is to supply natural gas to the Methanol Plant and that without the Project, the Methanol Plant would not exist; therefore, the projects are so "interconnected and interdependent that they should have been treated as one federal action" and their impacts disclosed in one NEPA document.<sup>29</sup>

16. We disagree. The requirement that an agency consider connected or cumulative actions in a single environmental document is to "prevent agencies from dividing one

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<sup>23</sup> 33 U.S.C. § 1341(d) (2012).

<sup>24</sup> *See U.S. Dep't of Interior v. FERC*, 952 F.2d 538, 548 (D.C. Cir. 1992).

<sup>25</sup> Cemetery's Rehearing Request at 3.

<sup>26</sup> *Id.* at 5, 13.

<sup>27</sup> 40 C.F.R. § 1508.25(a)(1) (2016).

<sup>28</sup> Cemetery's Rehearing Request at 3-5, 13.

<sup>29</sup> *Id.* at 5, 17.

project into multiple individual actions” with less significant environmental effects<sup>30</sup> and “to prevent the government from ‘segmenting’ its *own* “federal actions into separate projects and thereby failing to address the true scope and impact of the activities that should be under consideration.”<sup>31</sup> The Council on Environmental Quality’s (CEQ) connected action regulation “does not dictate that NEPA review encompass private activity.”<sup>32</sup> Thus, while agencies may not conduct separate NEPA reviews of pieces of an agency-action jigsaw puzzle; the same agency is not required to “add a multitude of private pieces to the puzzle and so require [NEPA] review of a much larger picture.”<sup>33</sup> The Commission has no authority over the construction, operation, or maintenance of methanol manufacturing facilities. As stated in the April 11 Order, the Methanol Plant is a non-jurisdictional project that is not a “federal action”<sup>34</sup> subject to the Commission’s environmental review under NEPA.<sup>35</sup> Thus, the Commission did not impermissibly segment its environmental review.

17. Nevertheless, in considering the cumulative impacts attributable to the Kalama Lateral Project, the EA identified NWIW’s Methanol Plant as one project that may, when its impacts are added to those of the proposed action, result in cumulative environmental impacts.<sup>36</sup> The EA found that due to spatial and temporal overlap of construction and

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<sup>30</sup> *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015) (Court approved FERC’s determination that, although a Dominion-owned pipeline project’s excess capacity may be used to move gas to the Cove Point terminal for export, the projects are “unrelated” for purposes of NEPA); *see also City of W. Chicago, Ill. v. U.S. Nuclear Regulatory Comm’n*, 701 F.2d 632, 650 (7th Cir. 1983) (citing *City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 972 (2d Cir.1976)).

<sup>31</sup> *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 49-50 (D.C. Cir. 2015) (emphasis added) (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014)).

<sup>32</sup> *Id.* at 49 (holding that even though portions of a private activity, construction of an oil pipeline, were subject to federal review and approval, the connected action regulation did not dictate that NEPA review encompass the rest of the pipeline).

<sup>33</sup> *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 50 (D.C. Cir. 2015) (noting that the connected actions regulation lacks any reference to private parties).

<sup>34</sup> 40 C.F.R. § 1508.18(b) (2016) (listing categories of federal actions).

<sup>35</sup> April 11 Order, 155 FERC ¶ 61,026 at P 37 and EA at 19.

<sup>36</sup> April 11 Order, 155 FERC ¶ 61,026 at P 37 and EA at 79.

operation of the Methanol Plant with the Kalama Lateral Project, the Plant would likely impact environmental resources also affected by the Project, including land use, air quality, noise, water quality, and wildlife habitat.<sup>37</sup> However, the April 11 Order and the EA stated that the Project's impacts will be short-term due to construction of the Project and the impacts would be contained within the right-of-way and extra workspaces.<sup>38</sup> Therefore, the EA concluded that most impacts would be temporary and localized and adding the Project's impacts to the impacts of the Methanol Plant would not result in a significant cumulative impact on the environment.<sup>39</sup> We find that the EA contained sufficient information of both the Kalama Lateral Project and NWIW's Methanol Plant to provide a meaningful NEPA analysis.<sup>40</sup>

18. The Cemetery also contends that the Methanol Plant is an indirect impact of the Project, and therefore should have been considered as part of the NEPA analysis.<sup>41</sup> As stated above, the EA identified and analyzed information regarding impacts of the Methanol Plant as part of its cumulative impacts analysis of the Project.<sup>42</sup> While the Cemetery contends that the Commission erred by failing to consider the Methanol Plant as an indirect impact of the Project, the Cemetery makes no effort to explain why our analysis was insufficient.<sup>43</sup> Moreover, the Cemetery has not persuaded the Commission to conclude that the Methanol Plant is an indirect effect of the Project. There is no evidence that the proposed construction of Kalama Lateral Project induced the siting and

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<sup>37</sup> April 11 Order, 155 FERC ¶ 61,026 at P 38 and EA at 79.

<sup>38</sup> *Id.*

<sup>39</sup> EA at 80.

<sup>40</sup> See *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976) (scope of an impacts analysis is a task assigned to the "special competency" of the agency).

<sup>41</sup> Cemetery's Rehearing Request at 5.

<sup>42</sup> EA at 11-80.

<sup>43</sup> See *WildEarth Guardians v. Jewell*, 738 F.3d 298, 312 (D.C. Cir. 2013) (because the NEPA process "involves an almost endless series of judgment calls . . . [t]he line-drawing decisions . . . are vested in the agencies, not the courts") (quoting *Duncan's Point Lot Owners Ass'n, Inc. v. FERC*, 522 F.3d 371, 376 (D.C. Cir. 2008)); see also *Bear Lake Watch, Inc. v. FERC*, 324 F.3d 1071, 1077 (9th Cir. 2003) (court defers to agency expertise unless agency has "completely failed to address some factor, consideration of which was essential to a truly informed decision") (quoting *Inland Empire Pub. Lands Council v. Schultz*, 992 F.2d 977, 981 (9th Cir. 1993)).

construction of the Methanol Plant or that the plant would not have been proposed absent the construction of this particular project.

19. Further, the Commission notes that the Port of Kalama and Cowlitz County, Washington are conducting a regulatory review of NWIW's proposed Methanol Plant in compliance with the State of Washington's Environmental Policy Act (SEPA).<sup>44</sup> Under SEPA, the Port of Kalama and Cowlitz County prepared a Final Environmental Impact Statement (EIS) that considered the combined impacts from the development and operation of the Kalama Lateral Project and the Methanol Plant.<sup>45</sup> That review concluded, among other things, that, if constructed and operated in accordance the applicant-proposed and agency-recommended conditions, the project would have no significant impacts on earth and geology, air quality or greenhouse gas emissions, water resources, vegetation and wildlife, energy and natural resources, environmental health and safety, land and shoreline use, aesthetics and visual resources, historic and cultural resources, transportation, public service and utility resources, and noise.<sup>46</sup>

## 2. EA v. EIS

20. The Cemetery contends that the Kalama Lateral Project together with the NWIW's Methanol Plant would result in significant environmental impacts. Therefore, the Commission should have prepared an EIS for the Project and the Plant, rather than an EA for only the Project. We disagree. As discussed above, the Methanol Plant is not a

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<sup>44</sup> On rehearing, the Cemetery filed a copy of joint comments from environmental interest groups on the Port of Kalama's and Cowlitz County's draft EIS for the Methanol Plant. *See* Cemetery's Rehearing Request at Exhibit 1. As we stated above, the Methanol Plant is a non-jurisdictional project that is not subject to the Commission's review. Therefore, we find that the comments on the Methanol Plant's draft EIS is immaterial to this proceeding and will not assist in our decision-making for this Project. As the court stated in *Sylvester v. Corps of Engineers*, "ordinary notions of efficiency suggest a federal environmental review should not duplicate competently performed state environmental analysis." 884 F.2d 394, 401 (9<sup>th</sup> Cir. 1989) (cited in *Tennessee Gas Pipeline Company*, 95 FERC ¶ 61,169 (May 3, 2001)).

<sup>45</sup> Final EIS for the Kalama Manufacturing & Marine Export Facility issued on September 30, 2016, available at <http://kalamamfgfacilitysepa.com>.

<sup>46</sup> *Id.* at 3-18 (earth and geology), 4-29 (air quality and greenhouse gas emissions), 5-31 (water resources), 6-61 (vegetation and wildlife), 7-9 (energy and natural resources), 8-41 (environmental health and safety), 9-22 (land and shoreline use), 10-57 (aesthetic and visual resources), 11-11 (historic and cultural resources), 12-20 (transportation), 13-14 (public service and utility resources), and 14-26 (noise).

federal action subject to review as part of our action authorizing the Kalama Lateral Project. Here, the federal action subject to NEPA is Northwest's proposed 3.1-mile-long pipeline and a meter station. Based on its years of experience conducting NEPA review for pipeline projects, the Commission reasonably found that the Kalama Lateral Project would not constitute a "major" federal action requiring the preparation of an EIS.<sup>47</sup>

21. Moreover, CEQ regulations implementing NEPA state that one of the purposes of an EA is to assist agencies in determining whether to prepare an EIS. Here, Commission staff prepared an EA to determine whether the Kalama Lateral Project would have a significant impact, necessitating the preparation of an EIS. The EA addressed the impacts that could occur on a wide range of resources should the project be approved and constructed, including consideration of the cumulative impacts of the project when added together with the anticipated impacts of the Methanol Plant.<sup>48</sup> Based on the EA's analysis and staff's recommended mitigation measures, the EA concluded, and we agree, that approval of the Kalama Lateral Project would not constitute a major federal action significantly affecting the quality of the human environment.<sup>49</sup> Thus, an EIS is not required.<sup>50</sup>

### **3. Compliance with the Endangered Species Act**

22. The Cemetery argues that the Commission violated the Endangered Species Act by failing to ensure that the proposed Project would not jeopardize endangered species or

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<sup>47</sup> See, e.g., *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,140 (2010) (EA issued for a project consisting of 127.4 miles of 30-inch-diameter pipeline loops in Pennsylvania and New Jersey); *Colorado Interstate Gas Co.*, 131 FERC ¶ 61,086 (2010) (EA issued for a project which included two new 16-inch-diameter pipeline laterals totaling 118 miles in length in Colorado); *Equitrans, L.P.*, 117 FERC ¶ 61,184 (2006) (EA issued for a project which included 68 miles of new 20-inch-diameter pipeline in Kentucky).

<sup>48</sup> EA at 80 (concluding that the plant combined together with the project would not result in significant impacts).

<sup>49</sup> EA at 92. Under 40 C.F.R. § 1508.18 (2016) of CEQ's regulations, "a 'major federal action' includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly." "Significantly" requires consideration of both the context and intensity of the project. See *id.* § 1508.27.

<sup>50</sup> CEQ regulations state that where an EA results in a finding of no significant impact, an agency may proceed without preparing an EIS. See 40 C.F.R. §§ 1501.4(e), 1508.13 (2016).

degrade critical habitat. The Cemetery contends that in reaching its “no effect” determination, the Commission ignored potential impacts from the Methanol Plant on threatened and endangered species.<sup>51</sup>

23. The Endangered Species Act requires each federal agency to ensure that any actions authorized, funded, or carried out by the agency do not jeopardize the continued existence of a federally listed endangered or threatened species or result in the destruction or adverse modification of a listed species’ designated critical habitat.<sup>52</sup> Again, the Methanol Plant is not a federal action subject to the Commission’s jurisdiction. Nor were we compelled to consider the Methanol Plant as part of our action authorizing the Kalama Lateral Project for purposes of NEPA as discussed above. This does not mean the Methanol Plant’s potential impacts on threatened or endangered species will go unexamined.

24. The EA explains that the Army Corps assumed the role as lead federal agency for Endangered Species Act consultation purposes and will prepare a biological assessment for the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) evaluating the effects of the Project and the Methanol Plant on threatened and endangered species.<sup>53</sup> The Biological Assessment will incorporate the EA’s analysis of the Project’s impacts on threatened and endangered species.<sup>54</sup>

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<sup>51</sup> Cemetery’s Rehearing Request at 2.

<sup>52</sup> 16 U.S.C. § 1536(a) (2012).

<sup>53</sup> FWS requested Endangered Species Act consultation from one lead federal agency for both Northwest’s Kalama Lateral Project and NWIW’s Methanol Plant. *See* Email from FWS to Northwest filed on February 18, 2015. We note that FWS’ interpretation of its Endangered Species Act requirements does not sufficiently federalize the Methanol Plant and require the Commission to include the Methanol Plant in its environmental analysis.

<sup>54</sup> The EA evaluated the impacts of the Project on 14 threatened and endangered species and found that the Project may affect but is not likely to adversely affect Columbia white-tailed deer, marbled murrelet, and streaked horned lark and would have no effect on Nelson’s checker-mallow, yellow-billed cuckoo, bull trout, Columbia River chum, Lower Columbia River coho, Lower Columbia River chinook, Lower Columbia River steelhead, Upper Willamette River chinook, Upper Willamette River steelhead, green sturgeon, and Pacific eulachon. EA at 45-48.

25. The Endangered Species Act requires that consultation be completed before construction begins,<sup>55</sup> and that while consultation is pending “the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures . . . .”<sup>56</sup> The NGA authorization granted by our April 11 Order is consistent with Endangered Species Act’s requirements. The EA correctly concluded that there was “no effect” to endangered species;<sup>57</sup> therefore, no further consultation was required.

#### 4. Indirect Effects

26. The Cemetery argues that the EA failed to include induced natural gas production as an indirect impact of the Project. It states that it is reasonably foreseeable that the Kalama Lateral Project and Methanol Plant will consume gas produced in North America, largely through fracking.<sup>58</sup>

27. We dismiss the Cemetery’s argument that EA’s indirect impacts analysis was deficient because the Cemetery raises this argument for the first time on rehearing.<sup>59</sup> The Commission looks with disfavor on parties raising issues for the first time on rehearing

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<sup>55</sup> 16 U.S.C. § 1536(c)(1) (2012) (“before any contract for construction is entered into and before construction is begun with respect to such action”).

<sup>56</sup> *Id.* § 1536(d).

<sup>57</sup> EA at 46-48.

<sup>58</sup> Cemetery’s Rehearing Request at 6.

<sup>59</sup> “Persons challenging an agency’s compliance with NEPA must ‘structure their participation so that it . . . alerts the agency to the [parties’] position and contentions,’ in order to allow the agency to give the issue meaningful consideration.” *Public Citizen*, 541 U.S. at 674 (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978)).

that should have been raised earlier, particularly during NEPA scoping,<sup>60</sup> in part, because other parties are not permitted to respond to requests for rehearing.<sup>61</sup>

28. In any event, CEQ's regulations direct federal agencies to examine the indirect impacts of proposed actions.<sup>62</sup> The regulations define "indirect impacts" as those "which are caused by the action and are later in time or farther removed in distance, but are reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water or other natural systems, including ecosystems."<sup>63</sup> Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

29. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"<sup>64</sup> in order "to make an agency responsible for a particular effect under NEPA."<sup>65</sup> As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]."<sup>66</sup>

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<sup>60</sup> *Baltimore Gas & Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000) ("we look with disfavor on parties raising issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of a moving target for parties seeking a final administrative decision.").

<sup>61</sup> *See, e.g., PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) ("The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond."); *Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (2009) ("The Commission will not permit answers to requests for rehearing.").

<sup>62</sup> 40 C.F.R. § 1508.25(c) (2016).

<sup>63</sup> *Id.* § 1508.8(b).

<sup>64</sup> *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*)).

<sup>65</sup> *Id.* *See Sierra Club and Galveston Baykeeper v. FERC*, No 14-1275, slip op., at 16 (D.C. Cir. June 28, 2016); *Sierra Club v. FERC*, No 14-1249, slip op., at 13-14 (D.C. Cir. June 28, 2016).

<sup>66</sup> *Id.*

Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if the causal chain is too attenuated.<sup>67</sup> Further, the Court has stated 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.”<sup>68</sup>

30. An effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”<sup>69</sup> NEPA requires “reasonable forecasting,” but an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>70</sup>

31. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gas emissions and climate change, would be localized. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the Environmental Protection Agency (EPA) under the Safe Drinking Water Act, as well as air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

32. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a natural gas infrastructure project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations.<sup>71</sup> A causal relationship sufficient to warrant Commission analysis of non-jurisdictional

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<sup>67</sup> *Metro. Edison Co.*, 460 U.S. at 774.

<sup>68</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 at 770.

<sup>69</sup> *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

<sup>70</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

<sup>71</sup> *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion) (*Central New York*).

activities and facilities as an indirect impact would only exist if the proposed project would transport or induce new production from a specified production area and that production would not occur in the absence of the proposed project (i.e., there will be no other way to move the gas).<sup>72</sup> To date, the Commission has not been presented with a proposed project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of infrastructure to move the produced gas to market. It would make little economic sense to undertake construction of an infrastructure project in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed facilities as best suited for moving their gas to market.

33. Even accepting, *arguendo*, that a specific infrastructure project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be exported from a particular terminal, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an

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<sup>72</sup> See *c.f. Sylvester v. U.S. Army Corps of Eng’rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex). See also *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. United States Dept. of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project’s potential to induce additional development).

environmental analysis of the impacts related to a proposed interstate natural gas pipeline facilities.<sup>73</sup>

34. Here, the potential environmental impacts associated with additional natural gas production are not sufficiently causally related to Northwest's Kalama Lateral Project to warrant a detailed analysis, nor are the potential environmental impacts reasonably foreseeable, as contemplated by the CEQ regulations.<sup>74</sup> Moreover, while the capacity created by the Kalama Lateral Project may be used to transport conventional or unconventional gas production, the Project's purpose is to provide for 320,000 Dth/day of firm transportation service from an interconnection with Northwest's existing Mainline to NWIW's Methanol Plant, regardless of where the gas is produced; the Project purpose is not to facilitate additional natural gas production in any particular region, which may occur for reasons unrelated to the project and over which the Commission has no jurisdiction. In any event, production will likely continue regardless of whether the Kalama Lateral Project is approved because multiple existing and proposed transportation alternatives are available for regional production.

35. Nonetheless, we note that although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with natural gas production in order to provide the public with a more complete understanding of the potential impacts. The U.S. Department of Energy (DOE) has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts, may have temporary, minor impacts on water resources.<sup>75</sup> The EPA has reached a similar

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<sup>73</sup> *Habitat Educ. Ctr.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with sufficient specificity to make their consideration meaningful need not be included in the environmental analysis).

<sup>74</sup> *See, e.g., Central New York*, 137 FERC ¶ 61,121 at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104 at PP 33-49 (2012), *petition for review denied, sub nom. Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2d Cir. 2012) (upholding the Commission's analysis of the development of Marcellus shale natural gas reserves where the Commission reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

<sup>75</sup> U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, at 19 (Aug. 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

conclusion.<sup>76</sup> With respect to air quality, the DOE found that natural gas development leads to both short- and long-term increases in local and regional air emissions.<sup>77</sup> It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, the DOE found that there may be a net positive impact in terms of climate change.<sup>78</sup>

## 5. Climate Change

36. The Cemetery argues that the Commission did not take a hard look at climate change caused by the Project. It claims that the EA relied on general statements about possible effects and lacked detailed information on greenhouse gas emissions.<sup>79</sup> The Cemetery states that the EA should have analyzed greenhouse gas emissions from producing natural gas, refining the natural gas to methanol, and exporting methanol to China.<sup>80</sup>

37. The Cemetery's greenhouse gas concerns are similar to those raised by the EPA and addressed by the April 11 Order.<sup>81</sup> The Order found that the EA appropriately identified and quantified: (1) the greenhouse gas emissions that would result from the construction and operation of the project; and (2) the climate change related environmental effects in the Project's Northwest region that would result from overall greenhouse gas emissions, including higher temperatures, declining snowpack, and sea

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<sup>76</sup> See U.S. Environmental Protection Agency, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, at ES-6 (June 2015) (external review draft), [http://ofmpub.epa.gov/eims/eimscomm.getfile?p\\_download\\_id=523539](http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539) (finding the number of identified instances of impacts on drinking water resources to be small compared to the number of hydraulically fractured wells). See also *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands*, 80 Fed. Reg. 16,128, 16,130 (Mar. 26, 2015) (U.S. Bureau of Land Management promulgated regulations for hydraulic fracturing on federal and Indian lands to "provide significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health").

<sup>77</sup> DOE Addendum at 32.

<sup>78</sup> *Id.* at 44.

<sup>79</sup> Cemetery's Rehearing Request at 6.

<sup>80</sup> *Id.* at 7, 17.

<sup>81</sup> April 11 Order, 155 FERC ¶ 61,026 at PP 41, 43-45.

level rise.<sup>82</sup> As discussed in the April 11 Order and EA, the Project's greenhouse gas emissions would contribute to the overall amount of atmospheric greenhouse gases, but the contribution would be short term.<sup>83</sup> During Project construction, emissions are not expected to cause or significantly contribute to a violation of any applicable air quality standard."<sup>84</sup> And during Project operation, there are no permanent sources of operational emissions, with the exception of minor fugitive methane emissions.<sup>85</sup> Accordingly, we agree with the April 11 Order that no further analysis is needed.

38. We note that the Port of Kalama and Cowlitz County evaluated the impacts of the Methanol Plant on greenhouse gases in its Final EIS and concluded operation of the Methanol Plant would not have a significant impact for greenhouse gas emissions. NWIW proposed two technology alternatives for the Methanol Plant's operation: the Combined Reformer Alternative and the Ultra-Low Emissions Alternative. The Final EIS found that the Ultra-Low Emissions Alternative would result in direct greenhouse gas emissions of 554,000 metric tons of carbon dioxide per year, which would be 31.4 percent lower than the Combined Reformer Alternative (1,420,000 metric tons of carbon dioxide per year). However, the Final EIS did not recommend any additional mitigation measures for either alternative to reduce greenhouse gas emissions.<sup>86</sup>

## 6. Stream Crossing Alternatives

39. The Cemetery states that the EA did not adequately analyze a full range of alternatives, including the use of horizontal directional drilling technology at all waterbody crossings as requested by the EPA and Washington DFW.<sup>87</sup>

40. We disagree. The April 11 Order adequately addressed EPA's and Washington DFW's concerns and the EA evaluated the effects of the Kalama Lateral Project crossing

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<sup>82</sup> *Id.* P 43. EA at 64-65 (construction), 66 (operation), and 83-84 (climate-change-related environmental effects).

<sup>83</sup> April 11 Order, 155 FERC ¶ 61,026 at P 44; EA at 84.

<sup>84</sup> EA at 65.

<sup>85</sup> April 11 Order, 155 FERC ¶ 61,026 at P 44; EA at 66.

<sup>86</sup> Final EIS for the Kalama Manufacturing & Marine Export Facility issued on September 30, 2016, at 4-28 and Table 4-4, available at <http://kalamamfgfacilitysepa.com>.

<sup>87</sup> Cemetery's Rehearing Request at 8.

seven waterbodies.<sup>88</sup> As explained in the EA, the horizontal directional drilling method is “sometimes used to avoid direct impacts on sensitive environmental features or areas that otherwise would present difficulties for standard pipeline construction.”<sup>89</sup> None of the seven waterbodies that Northwest proposes to cross are listed as impaired or polluted waters or waters of special concern by the State of Washington.<sup>90</sup> However, Northwest proposed to use the horizontal directional drilling method to cross two of the waterbodies with perennial flow and proposed to use a dry open cut or upland crossing method at the five waterbodies with intermittent flow.<sup>91</sup> The EA fully assesses the impacts to surface waters and wildlife resulting from construction and operation of the proposed project, and finds that the project would not significantly impact water quality. The EA recognized that constructing the pipeline using dry open cut or upland crossing could temporarily disrupt waterbody flow, increase turbidity and sedimentation, and adversely affect water quality, while the use of horizontal directional drilling would significantly reduce the potential impacts on these waterbodies. But, the EA did not find that horizontal directional drilling method was necessary to mitigate any potential water quality impacts from a dry open cut or upland crossing method. We affirm the April 11 Order’s finding that Northwest’s plan to minimize potential impacts to waterbodies is sufficient.<sup>92</sup> Specifically, Northwest plans to implement a number of protective measures including restoring pre-construction contours; using temporary and permanent erosion control devices; sampling stormwater discharges to waterbodies for parameters such as turbidity and pH; monitoring horizontal directional drilling operations and the drill path; conducting re-fueling activities at least 100 feet from any waterway or wetland; secondary containment of stored fuel and lubricants; routine inspection of materials and containers; and pre-positioning of spill-response equipment.<sup>93</sup>

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<sup>88</sup> April 11 Order, 155 FERC ¶ 61,026 at PP 46-48. EA at 35-37.

<sup>89</sup> EA at 15.

<sup>90</sup> *Id.* at 35.

<sup>91</sup> *Id.* Northwest committed to performing dry open cut crossings if water is present during the permitted Washington DFW-designated in-water construction windows.

<sup>92</sup> April 11 Order, 155 FERC ¶ 61,026 at P 47.

<sup>93</sup> EA at 36-37.

## 7. Impacts to the Cemetery's Property

41. The Cemetery owns property along the pipeline route and contends that the Project will significantly and adversely impact its property rights by depriving the Cemetery of the use of its property. Specifically, construction of the pipeline will inhibit the Cemetery carrying out planned improvements to and expansion of the cemetery grounds, including a planned cul-de-sac area. The Cemetery also contends that the EA did not address any impacts to the Cemetery and the April 11 Order incorrectly found that the Project would have no significant effects on landowners.<sup>94</sup>

42. We disagree. The EA fully addressed the impacts of pipeline construction on the Cemetery's property.<sup>95</sup> In approving the Kalama Lateral Project, the Commission determined that, on balance, approving the pipeline along the recommended route is an environmentally acceptable action.<sup>96</sup> With respect to the purported irreparable injury to the affected cemetery grounds, the EA explains that the temporary construction workspace for the Project will encroach on a small portion of the cemetery parking area and a permanent right-of-way will impact a proposed cul-de-sac project planned for the Hale Barber Road near the cemetery parking area.<sup>97</sup> After construction, Northwest must restore all roadway surfaces in the area to their original condition in accordance with Northwest's Erosion Control and Revegetation Plan. The EA recognized that construction activities would be seen and heard by the Cemetery's users. In order to address this issue, Environmental Condition No. 13 of the April 11 Order requires that, prior to construction Northwest must coordinate with the Cemetery regarding property boundaries, the planned cul-de-sac project, and the parking area, and develop measures to avoid or minimize impacts to the cemetery.<sup>98</sup> The EA concluded that construction of the

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<sup>94</sup> Cemetery's Rehearing Request at 7, 17 and Exhibits 3 and 4 (maps showing that the Kalama Lateral will impact the Cemetery's property).

<sup>95</sup> EA at 87-88, 92.

<sup>96</sup> *Id.*

<sup>97</sup> The Cemetery incorrectly contends that the EA failed to acknowledge that it owns any property along the pipeline route or that it objected to impacts on its property. These arguments are without merit. The EA directly addressed impacts to the Cemetery's property and acknowledged Mr. William Spencer's, an elected Commissioner of the Cemetery, objection to the pipeline's impacts on the cemetery. EA at 51, 54-55.

<sup>98</sup> April 11 Order, 155 FERC ¶ 61,026 at Appendix, Environmental Condition No. 13.

Project would have no long-term impacts to the Cemetery or to associated roadways.<sup>99</sup> Therefore, we find that the Project will not adversely affect the Cemetery's use of its property.

The Commission orders:

Cowlitz County Cemetery District No. 6's request for rehearing is dismissed or denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>99</sup> EA at 54.