

163 FERC ¶ 61,190  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP15-77-001

ORDER DENYING REHEARING AND DISMISSING CLARIFICATION

(Issued June 12, 2018)

**I. Background**

1. On September 6, 2016, the Commission issued Tennessee Gas Pipeline Company, L.L.C. (Tennessee) authorizations under sections 7(b) and (c) of the Natural Gas Act (NGA)<sup>1</sup> to construct and operate certain compression facilities to be located in Kentucky, Tennessee, and West Virginia and to abandon certain compression facilities in West Virginia, referred to as the Broad Run Expansion Project.<sup>2</sup> The purpose of the Broad Run Expansion Project is to (1) increase firm incremental transportation service on the Tennessee system by 200,000 dekatherms per day (Dth/d) (Market Component); and (2) replace older, less efficient compression facilities with more efficient and cleaner burning compressor units (Replacement Component).

2. The Commission received multiple requests for rehearing of the September 2016 Order. On October 6, 2016, Lori Birckhead, Lane Brody, Jim Wright, and Mike Younger (the Intervenor), both in their individual capacity and as members of Concerned Citizens

---

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

<sup>2</sup> Tennessee Gas Pipeline Co., L.L.C., 156 FERC ¶ 61,157 (2016) (September 2016 Order).

for a Safe Environment (Concerned Citizens)<sup>3</sup> sought rehearing and a stay.<sup>4</sup> On the same day, Allegheny Defense Project, Heartwood, and Ohio Valley Environmental Coalition (collectively Conservation Groups) also requested rehearing. In addition, Tennessee filed a request for rehearing and clarification of the September 2016 Order. On October 26, 2016, Antero Resources Corporation (Antero) asked for leave to intervene out of time and comment on the request for rehearing.

## II. Procedural Issues

3. Although the Intervenors' request for rehearing was filed both in their individual capacities and as members of Concerned Citizens, the Intervenors acknowledge that Concerned Citizens did not intervene in this proceeding.<sup>5</sup> Under NGA section 19(a), only parties to a proceeding may seek rehearing of Commission orders.<sup>6</sup> Accordingly, the Commission will only consider the request for rehearing as having been filed by the Intervenors in their individual capacity.

4. A petitioner like Antero that seeks to intervene after issuance of a final order bears a high burden to show good cause for the late intervention, and it is the Commission's general policy to deny late intervention at the rehearing stage.<sup>7</sup> Antero, the sole shipper on the Project, has not justified its failure to intervene in this proceeding in a timely fashion; therefore, we deny its request for late intervention.

5. In any event, even if we were to grant Antero's late-filed intervention, we would reject its comments in response to Tennessee's request for rehearing. These comments amount to a late-filed request for rehearing. Untimely requests for rehearing are barred under NGA section 19 and Rule 713(b) of the Commission's Rules of Practice and Procedure.<sup>8</sup>

---

<sup>3</sup> The Intervenors note that Concerned Citizens did not intervene in this proceeding, but that Concerned Citizens filed comments on behalf of itself and its individual members.

<sup>4</sup> On November 29, 2016, the Commission issued an order denying the Individuals' stay request. *Tennessee Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,154 (2016).

<sup>5</sup> Intervenors' Request for Rehearing at 1 n.1.

<sup>6</sup> 15 U.S.C. § 717r(a).

<sup>7</sup> *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,066, at P 5 (2005).

<sup>8</sup> See 15 U.S.C. § 717r(a), 18 C.F.R. § 385.713(d)(1) (2017).

### III. Discussion

#### A. Evidence of Need

6. Intervenors state that the Commission must evaluate the need for the Broad Run Expansion Project and specifically Compressor Station 563 in Davidson County, Tennessee under both the National Environmental Policy Act (NEPA) and the NGA. They state that, under the statutes, the Commission can only grant a certificate if applicants demonstrate that the project is required by the public convenience and necessity.<sup>9</sup> They assert that the Commission failed to evaluate need appropriately and that the Commission's finding of need is arbitrary and capricious.

7. We affirm our finding in the September 2016 Order that there is a public need for the Broad Run Expansion Project.<sup>10</sup> In considering the need for the project, the Commission noted Intervenors' comments questioning the need for added infrastructure to transport Marcellus natural gas production.<sup>11</sup> The Commission disagreed with these assertions, and found "a strong showing of need based upon the fact that Tennessee has executed a binding precedent agreement for firm service using 100 percent of the design capacity of the pipeline project."<sup>12</sup> The Commission further noted that its engineering staff reviewed the hydraulic models and flow diagrams submitted by Tennessee, finding that Tennessee had

---

<sup>9</sup> Intervenors' Request for Rehearing at 14-15 (citing 15 U.S.C. § 717f(e) (2012)).

<sup>10</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 17. The September 2016 Order correctly applied the Certificate Policy Statement to analyze the need for the project and to determine whether the project will serve the public interest. *Id.* PP 13-22. *See Certificate 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).

<sup>11</sup> September 2016 Order, 156 FERC ¶ 61,157 at PP 16-17 (citing Intervenors' Comments at 8-9 (citing Commission 2014 State of the Market Report)).

<sup>12</sup> *Id.* *See Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) ("The criterion is "market need"—whether the pipelines will be self-supporting—which the applicants here satisfied by showing that 93% of their capacity has already been contracted for."); *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015) (*Myersville*) (evidence of "market need" can be established by evidence of "preconstruction contracts" for gas transportation service).

properly designed the Broad Run Expansion Project, including Compressor Station 563, to provide an additional 200,000 Dth/d of incremental firm transportation service.<sup>13</sup>

8. We also disagree with Intervenor's assertions that Antero's potential export of some of the natural gas transported by the Broad Run Expansion Project precludes the Commission from using Antero's precedent agreement as evidence of need because gas deliveries slated for export are not within the Commission's jurisdiction. As noted in the September 2016 Order, there is no record support for the "allegation that the project will induce further development of liquefied natural gas terminals, related export facilities, *and greater exports of natural gas.*"<sup>14</sup> On rehearing, Intervenor fails to cite any record evidence supporting their unsubstantiated belief that Antero will export the natural gas to be transported by the Broad Run Expansion Project facilities.<sup>15</sup> For this reason alone, we deny rehearing.

9. Regardless of the destination of the gas, it will be traveling in interstate pipelines in interstate commerce requiring a section 7(c) certificate. Any actual export does not occur until the gas leaves interstate commerce and enters export facilities subject to NGA section 3.<sup>16</sup> Reliance upon the precedent agreement, under which Antero subscribes to firm

---

<sup>13</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 17.

<sup>14</sup> *Id.* P 80 (emphasis added). Intervenor previously cited an Antero press release indicating that transportation over the facilities would give Antero the "ability to access Gulf Coast pricing hubs as well as international LNG markets." Intervenor April 11, 2016 Comments at 7 (quoting Press Release, Antero, Operations and Firm Transportation Update (April 14, 2014)). However, given the interconnected nature of the interstate natural gas pipeline grid, neither the Intervenor nor the Commission can say that Antero's gas is any more likely to be destined for export than any other shipper's gas having access to hubs in the Gulf Coast.

<sup>15</sup> *See, e.g.*, Intervenor Request for Rehearing at 2, 4, 16-17, 20 n.36, 32.

<sup>16</sup> *See Comanche Trail Pipeline, LLC*, 155 FERC ¶ 61,182, at P 19 (2016) ("When a company constructs a pipeline to import or export volumes of natural gas, only a small segment of the pipeline close to the border is deemed to be the import or export facility for which section 3 authorization is necessary; the rest of the pipeline may be jurisdictional under section 7, if it will be used to transport gas in interstate commerce, or it may be NGA-exempt, if it will be used to gather gas or for intrastate transportation service."). In contrast to these proceedings involving facilities over which the ultimate destination of the natural gas molecules is substantially uncertain, there are numerous examples of previous proceedings where the Commission has approved an NGA section 7 application for pipeline facilities needed solely to deliver supply to an export facility. *See, e.g., Cameron LNG, LLC*, 147 FERC ¶ 61,230, at P 2 (2014) (approving 21 miles of 42-inch-diameter pipeline

service for the entire design capacity of the project, as sufficient evidence of need is consistent with the Certificate Policy Statement. Additionally, we do not agree with the Intervenor's suggestion that the Commission should consider the individual business reasons behind contracting parties' decisions to enter into precedent agreements.<sup>17</sup> Nor are we required to do so under the Certificate Policy Statement or Commission precedent. Further, as the Commission has explained in other proceedings, the Secretary of Energy, not this Commission, acts on applications for authorization to export or import gas.

10. Relying upon a mistaken interpretation of a single graph, Intervenor's claim that Commission staff's 2014 State of the Markets Report establishes that there is more than enough proposed pipeline capacity to transport gas from West Virginia, Ohio, and Pennsylvania.<sup>18</sup> In support of this contention, Intervenor's reference an energy consultant's claim of a "pipeline bubble" with the potential for an overbuild of pipeline capacity.<sup>19</sup> The slide from the 2014 State of the Markets Report relied upon by Intervenor's – entitled "Marcellus Production Overwhelms Infrastructure" – belies their claim.<sup>20</sup> According to the graph, if infrastructure is halted in 2016, projected production would very quickly exceed pipeline capacity, thereby causing constraint. The graph actually shows that by 2020 the lines depicting the projected gas production and likely pipeline capacity come close to intersecting, suggesting no overbuild. Finally, the report narrative never discusses

---

under NGA section 7 that will "enable [the pipeline] to transport domestically-sourced gas . . . to the LNG terminal where the gas will be liquefied for export"). Under Intervenor's theory, the Commission could not approve the pipeline facilities in such proceedings under NGA section 7.

<sup>17</sup> See Intervenor's Request for Rehearing at 19.

<sup>18</sup> *Id.* at 4, 17-18 (citing EA Comments at 9). The 2014 State of the Markets Report was presented to the Commission on March 19, 2015: "This report is staff's annual opportunity to share our assessment on natural gas, electric, and other energy markets developments during the past year to better inform the Commission's understanding of current and future trends."

<sup>19</sup> Intervenor's Request for Rehearing at 18 (quoting Natural Gas Daily, *Marcellus on Pace for Overbuild*, (June 9, 2016)).

<sup>20</sup> We note that the 2014 State of the Markets Report contains Commission staff's assessment of then current and future trends in the energy markets. The opinions and conclusions articulated therein are not necessarily those of the Commission or its individual members. See *Texas Eastern Transmission, LP*, 131 FERC ¶ 61,164, at PP 67-68 (2010).

infrastructure overbuild, which would have been an obvious discussion point under Intervenor's incorrect interpretation of the slide.

11. In their rehearing request, Intervenor's "reserve[d] the right to supplement [their] rehearing request" with additional analysis from Dr. Robertson based upon Critical Energy/Infrastructure Information (CEII) requested from the Commission.<sup>21</sup> On August 7, 2017, Dr. Robertson filed an analysis of recently-received flow diagrams.<sup>22</sup> Dr. Robertson is not a party to these proceedings, and the Intervenor's have not supplemented their rehearing request or otherwise referred to Dr. Robertson's newly filed analysis. In any event, parties are not permitted to supplement their rehearing requests after the thirty-day period imposed by NGA section 19(a)<sup>23</sup> has expired.<sup>24</sup> Accordingly, we must reject the comments as an untimely request for rehearing by a nonparty. Nonetheless, for the sake of completeness we address Dr. Robertson's comments below.<sup>25</sup>

12. In his August 7, 2017 comments, Dr. Robertson stated that he examined CEII protected flow diagrams,<sup>26</sup> and concluded that there are "significant deficiencies and errors in the flow diagram that was used to justify the project" and that Tennessee's proposed facilities result in a system that can transport substantially more than the volume allowed

---

<sup>21</sup> Intervenor's Request for Rehearing at 21.

<sup>22</sup> See William Robertson August 7, 2017 Comments. According to his August 7, 2017 comments, Dr. Robertson did not seek access to the flow diagrams until September 7, 2016, a day after issuance of the Commission's order in this proceeding.

<sup>23</sup> 15 U.S.C. § 717r(a).

<sup>24</sup> See *Public Utility District No. 1 of Klickitat County, Washington*, 155 FERC ¶ 61,056, at P 6 n.8 (2016) (observing that "the Commission does not allow parties to supplement their rehearing requests after the 30-day period has run"); *Reliability Standard for Geomagnetic Disturbance Operations*, 149 FERC ¶ 61,027, at P 1 n.2 (2014) ("On August 18, 2014, Foundation moved to supplement its request for rehearing. As Foundation's supplement was filed beyond the 30 days allowed by statute, 16 U.S.C. § 825l(a) (2012), the Federal Power Act does not allow us to consider the supplement here."); *City of Banning, Cal.*, 148 FERC ¶ 61,199, at P 16 n.18 (2014) ("We do not permit supplements or amendments to requests for rehearing filed, as is the case here, more than 30 days after the date of the order at issue.").

<sup>25</sup> Dr. Robertson previously filed comments on the design of Tennessee's project on June 26, 2016, and September 5, 2016.

<sup>26</sup> Accession No. 20151202-5206.

under the certificate. Dr. Robertson asserted that the shortcomings in the flow diagrams make a definitive evaluation unreliable, but that a “reasonable interpretation of the data given” supports his “original contention that proposed [Compressor Station 563] is overbuilt.” Dr. Robertson separately filed analysis to support his conclusions under the CEII designation.

13. Contrary to Dr. Robertson’s assertions, although there were some typos in the flow diagrams, there are no large, significant errors as Dr. Robertson alleges, and the diagrams accurately depict the existing and proposed designs of the Tennessee system. Staff reviewed the diagrams and found them to be entirely consistent with the hydraulic models provided by Tennessee in support of its proposal. Further, consistent with Commission staff’s long-standing practice, staff used an industry standard hydraulic pipeline simulation software package to evaluate whether the proposed project has been properly designed to meet existing and proposed system delivery requirements. Based upon these detailed pipeline hydraulic simulations conducted by Commission staff, the Commission accurately predicted the impacts of the proposed project and concluded that the project “has been properly designed to provide the additional 200,000 Dth/d of incremental capacity proposed for the project.”<sup>27</sup>

14. Additionally, Dr. Robertson misunderstands the flows and data presented on the diagrams and thus draws incorrect conclusions. Flow diagrams are renderings of pipeline schematics that generally illustrate how a system operates, but they typically do not include all design assumptions underlying the results they depict. In this proceeding, staff’s review weighed heavily on the pipeline hydraulic models, filed as CEII, which take into account all relevant design assumptions necessary to validate the operation of Tennessee’s Broad Run Expansion Project. These models were developed by Tennessee using industry standard pipeline hydraulic modeling software. From these hydraulic models, staff properly evaluated the Broad Run Expansion Project and made the determination that Tennessee has properly designed its project to provide the new services while meeting all of its existing transportation obligations and design pressures. This resulted in its approval by the Commission and contributed to the determination that the Broad Run Expansion Project is in the public convenience and necessity. Dr. Robertson offers an over-simplified analysis of Tennessee’s proposal that lacks many of the design assumptions underlying the project. All of Tennessee’s design assumptions are included in its filed hydraulic models.

15. Dr. Robertson also tried to validate his concerns that Tennessee’s Compressor Station 563 was over-designed by comparing it to another compressor station.<sup>28</sup>

---

<sup>27</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 17.

<sup>28</sup> See Intervenors’ Request for Rehearing at 4 (claiming that the Commission failed

Specifically, Dr. Robertson compared Tennessee's Compressor Station 563 with the Cane Ridge Compressor Station proposed by Columbia Gulf Transmission as part of its Gulf XPress Project in Docket No. CP16-361-000.<sup>29</sup> The only similarities between the compressor stations are that they are both in the State of Tennessee and they both involve the use of Solar gas-turbine compressor units, though of different sizes. Dr. Robertson's June 26, 2016 analysis is an oversimplified comparison of the two compressor stations that does not take into account any of the specific operating parameters and configurations of either the Tennessee or Columbia Gulf pipeline systems. His study is simply a stand-alone theoretical comparison of compressor stations without any context. Specifically, the flow characteristics for both compressor stations and their connected pipelines, both upstream and downstream, are different. These differences include: gas volumes transported, system design operating pressure before and after the compressor station, compression ratio, design operating temperatures, gas flow velocities, and operational efficiencies for the compressor units. As a result of these differences, an exact comparison cannot be made. Based upon staff's review, we affirm our finding that the proposed facilities, including Compressor Station 563, are properly designed to accommodate the new proposed service.

16. Intervenors have not raised any arguments on rehearing that change the finding of need in the September 2016 Order; therefore, we deny rehearing on this issue.

#### **B. Project Alternatives**

17. Intervenors state that, under both NEPA and the NGA, the Commission must consider all reasonable alternatives to a project. They assert that Tennessee provided only limited alternative locations in its application and failed to supplement its application until 11 months later when it produced more information on 12 alternative sites. Intervenors further assert that, when project need is lacking, there is a greater need to consider and adopt project alternatives to minimize harm.

18. Intervenors specifically discuss Site C1 as an alternative to Compressor Station 563, asserting that this site is preferable in nearly all respects and that the Commission ignored an expert engineering study by Dr. Robertson showing Site C1 as an available and environmentally preferable alternative. Intervenors note that Site C1 would affect fewer

---

to respond to Dr. Robertson's June 26, 2016 comments).

<sup>29</sup> See William Robertson June 26, 2016 Comments.

acres,<sup>30</sup> save nine acres of mature trees used as roosting ground for two endangered bat species, and have only one residence within 0.5 mile of the site.<sup>31</sup>

19. Intervenors further state that Site C1 is better positioned between two adjacent compressors, thereby reducing the size of the compressor needed.<sup>32</sup> Intervenors contend that selecting Site C1 would avoid a conflict with a local city zoning ordinance.

20. Intervenors assert that the deciding factor for the Commission in approving the Compressor Station 563 alternative was Tennessee's assertions that the Site C1 landowner was unlikely to sell. They state that this factor is irrelevant given that NGA section 7(h) provides for the use of eminent domain to obtain property necessary to construct and operate a project when a certificate holder cannot otherwise secure the property through voluntary negotiations. Finally, Intervenors state that the Commission failed to adequately address the no-action alternative.

21. For the reasons discussed above, we disagree with Intervenors' assertions that there is a lack of need for the project that requires greater impetus for the Commission to consider and adopt project alternatives to reduce potential harm. We also disagree that the Commission failed to consider reasonable alternatives to the project. The Commission evaluated 12 alternative sites, including alternate sites to Compressor Station 563 both within and outside Davidson County.<sup>33</sup>

22. With respect to Site C1, the Commission explained that, some factors at that site are more favorable, but others are not.<sup>34</sup> Based on an overall assessment of the various factors,

---

<sup>30</sup> In this regard, Intervenors claim that the record contradicts the Commission's claim that Site C1 would affect 43.2 acres. Intervenors Request for Rehearing at 26-27 (citing September 2016 Order, 156 FERC ¶ 61,157 at P 111).

<sup>31</sup> Intervenors assert that Tennessee's original resource report listed one residence within 0.5 mile of Site C1 while the EA Table 3.4 listed 13. Intervenors Request for Rehearing at 24-25.

<sup>32</sup> *Id.* at 27-28 (citing Exhibit 1 – Robertson engineering calculations showing relationship between compressor size and distance from other stations).

<sup>33</sup> *See* EA at 127-29. *See also* *Myersville*, 783 F.3d at 1323 (“consideration of alternatives in an [EA] need not be as rigorous as the consideration of alternatives in an EIS”).

<sup>34</sup> *See* September 2016 Order, 156 FERC ¶ 61,157 at P 111 (“Regarding alternative site C1 for Compressor Station 563, some factors are more favorable at this site (e.g., less prime farmland would be affected, no high seismicity areas or faults are within 10 miles,

which are not weighted equally, the Commission determined that none of the alternatives to Compressor Station 563, including Site C1, offer significant environmental advantage over the proposed site while accomplishing the project's objectives.<sup>35</sup> Nothing in Intervenors' rehearing request persuades us that this determination was erroneous.<sup>36</sup> Therefore, we deny rehearing on this issue.

23. We also disagree with Intervenors' expert that there are 60 residences within 0.5 mile of the proposed site and only one within 0.5 mile of Site C1. The record indicates that there are 25 residential structures within 0.5 mile of the proposed site and 13 residential structures within 0.5 mile of Site C1.<sup>37</sup> The record also indicates that there is one park near Compressor Station 563 and none near Site C1.<sup>38</sup> However, contrary to Intervenors' suggestion, proximity to a proposed site does not necessarily indicate potential environmental impacts on residences or recreational facilities. In this case, the EA found that construction and operation of Compressor Station 563 would have "no visual impacts" and would "not have a significant impact on the noise environment in the vicinity of the compressor stations."<sup>39</sup> We affirm our finding that Site C1 does not offer a significant environmental advantage over the proposed site.

24. In the September 2016 Order, the Commission acknowledged that the EA inadvertently understated the number of forested acres impacted by Site C1.<sup>40</sup> An updated

---

and 12 fewer residences would be within 0.5 mile of the facility). Some factors are less favorable (e.g., greater area of steep slopes and an intermittent waterbody would be crossed).").

<sup>35</sup> *See id.*

<sup>36</sup> In fact, NEPA does not impose an obligation to select the most environmentally benign alternative. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) ("[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.").

<sup>37</sup> EA at 129 (Table 3-4).

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

<sup>39</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 148.

<sup>40</sup> *Id.* P 111. The EA indicated that there would be 33.8 acres of deciduous, evergreen, and mixed forest affected. EA at 129 (Table 3-4). However, this number only included 31.6 acres for deciduous forest and 2.2 acres for mixed forest, omitting 9.4 acres for evergreen forest. *See* Tennessee November 12, 2015 Supplemental Data Response at 24. Thus, the September 2016 Order correctly stated that Site C1 would affect 43.2 acres of

analysis reveals that Site C1 impacts slightly more forested lands than the proposed site. Intervenors attempt to enhance the favorability of their preferred alternative site by claiming that trees near the proposed site are serving as roosting grounds for two endangered bat species,<sup>41</sup> but the EA states,<sup>42</sup> and Intervenors acknowledge,<sup>43</sup> that neither the proposed site nor Site C1 include any acres of critical wildlife habitat.

25. As we noted in the September 2016 Order, Tennessee indicated that the landowner associated with Site C1 would be unlikely to sell,<sup>44</sup> while Tennessee had found a landowner willing to sell property at the proposed site.<sup>45</sup> Intervenors state that the lack of site ownership is irrelevant because the NGA provides for the use of eminent domain.<sup>46</sup> On the contrary, although site ownership is not dispositive, the avoidance of the need to exercise eminent domain is a relevant factor in evaluating the suitability of a site under consideration.<sup>47</sup> Here, that factor supported the Commission's determination that Site C1 does not have a significant advantage over the proposed site.

---

forest.

<sup>41</sup> Intervenors Request for Rehearing at 26.

<sup>42</sup> EA at 129.

<sup>43</sup> Intervenors Request for Rehearing at 24 (table showing zero acres of critical wildlife habitat for both the proposed site and for C1).

<sup>44</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 111.

<sup>45</sup> EA at 127.

<sup>46</sup> Intervenors Request for Rehearing at 30 n.49.

<sup>47</sup> See, e.g., *Natural Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 101 (2017) (eliminating alternative site based, in part, on the need for “the use of eminent domain to take property rights”); *Algonquin Gas Transmission*, 154 FERC ¶ 61,048, P 241 (2016) (“Because the availability of that site is unknown, coupled with the Commission’s policy to encourage applicants to negotiate for the use of a right-of-way or workspace over the use of eminent domain, the final EIS concluded that the alternative meter site was less feasible than the proposed site.”). See also *Tres Palacios Gas Storage, LLC*, 141 FERC ¶ 61,192, P 18 (2012) (noting that, under the Certificate Policy Statement, the Commission seeks to

avoid the “unnecessary exercise of eminent domain in evaluating new storage and pipeline construction”).

26. Even accepting Intervenors' assertion that the size of the compressor could have been decreased if Site C1 had been selected, it does not follow that selection of C1 would have significant environmental advantage over the proposal at Compressor Station 563.<sup>48</sup> For the reasons stated in the EA, i.e. projected emissions well below the National Ambient Air Quality Standards,<sup>49</sup> Tennessee's compliance with various Clean Air Act regulations, and Tennessee's commitment to air quality mitigation measures,<sup>50</sup> the proposed compressor stations will not have a significant impact on regional air quality.<sup>51</sup> Thus, any improvement in air quality impacts by alternative compressor Site C1 will not be significant. Finally, we note that the Commission's engineering staff reviewed the hydraulic models and flow diagrams submitted by Tennessee, finding that Tennessee had properly designed the Broad Run Expansion Project, including Compressor Station 563.<sup>52</sup>

27. Despite Intervenors' assertions otherwise, the EA did consider the no-action alternative and determined that "no alternative projects have been planned that could meet the purpose and need for the proposed project."<sup>53</sup> The EA adequately explained that, although avoiding the adverse and beneficial impacts of the Broad Run Expansion Project, the no-action alternative would not meet the objectives of the project, namely the expansion of capacity on Tennessee's system to provide up to 200,000 Dth/d of firm incremental transportation service and replacement of older compression facilities with newer and more efficient facilities.<sup>54</sup> Intervenors attack this reasoning, distinguishing between Tennessee's demonstration of an economic interest in the project and the "underlying purpose" of an incremental 200,000 Dth/d of transportation service.<sup>55</sup> However, Intervenors' disagreement

---

<sup>48</sup> EA at 127 ("Based on our review of the compressor station site alternative, we conclude that none of the alternatives offer significant environmental advantages over the proposed site for Compressor Station 563.").

<sup>49</sup> *Id.* at 103.

<sup>50</sup> *Id.* at 104.

<sup>51</sup> *Id.*

<sup>52</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 17.

<sup>53</sup> EA at 121.

<sup>54</sup> *Id.*

<sup>55</sup> Intervenors Request for Rehearing at 34-35 ("The Commission did not address, in any meaningful fashion whatsoever, the underlying purpose of the transport of 200,000 Dth/day of natural gas.").

with the purpose does not render it invalid, especially when that purpose is aligned with the underlying purpose of the NGA.<sup>56</sup> As discussed in the Certificate Policy Statement, there are numerous public benefits that can justify issuance of a certificate of public convenience and necessity.<sup>57</sup> In this case, the Broad Run Expansion Project enables Tennessee to “transport incremental natural gas volumes for [Antero] to service the growing demand for firm transportation service to markets in the southeastern United States.”<sup>58</sup> The precedent agreement between Tennessee and Antero is strong evidence of market demand.<sup>59</sup> Furthermore, the Replacement Component will enable Tennessee to replace “less efficient older existing compression facilities on its system with newer, more efficient, cleaner burning, and lower emission compressor units.”<sup>60</sup>

28. For all of these reasons, we deny Intervenors’ request for rehearing on these issues.

**C. Air Quality Impacts**

29. Intervenors state that Tennessee must obtain an air quality permit from the Metropolitan Nashville and Davidson County Public Health Department to construct and operate Compressor Station 563 (a major source of emissions). According to Intervenors, the Metropolitan Government of Nashville and Davidson County amended their regulations in July 2016 to prohibit issuance of a permit unless a new source complies with the Metropolitan Zoning Code. Intervenors claim that Compressor Station 563 does not comply

---

<sup>56</sup> See, e.g., *Nat’l Ass’n for Advancement of Colored People v. FPC*, 425 U.S. 662, 669–70 (1976) (“In the case of the [Federal Power Act and NGA] it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.”); *S. Coast Air Quality Mgmt. Dist. v. FERC*, 621 F.3d 1085, 1099 (9th Cir. 2010) (noting that the “statutory purpose of the NGA” is “to encourage the development of adequate natural gas supplies at reasonable prices”).

<sup>57</sup> Certificate Policy Statement, 88 FERC at 61,748 (“The types of public benefits that might be shown are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.”).

<sup>58</sup> Tennessee January 30, 2015 Application at 4.

<sup>59</sup> Certificate Policy Statement, 88 FERC at 61,749 (observing that precedent agreements can be strong evidence of market demand and potential public benefits).

<sup>60</sup> *Id.*

with rural and agricultural zoning classification and, therefore, the new ordinance would preclude the granting of an air quality permit for the construction of Compressor Station 563. Intervenors assert that, because air quality issues are still being considered by local and state regulators under Clean Air Act authority, the Commission's findings that the project will not harm air quality and the issuance of the certificate are premature.<sup>61</sup>

30. On June 23, 2017, the Metropolitan Nashville and Davidson County Public Health Department, Pollution Control Division issued the Clean Air Act construction permits for Compressor Station 563.<sup>62</sup> Intervenors' request for rehearing on this issue is thus moot and we therefore deny rehearing.

#### **D. Safety**

31. Intervenors assert that the Commission erred in concluding that the project will not impact safety because they have submitted evidence of the existence of exposed and corroded pipes in Sycamore Creek and near Compressor Station 563. Although Tennessee disputes Intervenor's assertion,<sup>63</sup> the Commission reported the issue to the Department of Transportation, which has jurisdiction over safety standards for pipeline facilities.<sup>64</sup> Intervenors argued this is insufficient and the Commission should have made its own findings regarding Tennessee's ability to provide service safely.<sup>65</sup>

32. "DOT's Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Pipeline Safety administers the national regulatory program to ensure the safe transportation of natural gas and other hazardous materials by pipeline. In general, the Commission appropriately relies on PHMSA to monitor the pipeline's construction and operation of natural gas facilities to determine compliance with its design and safety standards."<sup>66</sup> The Commission's regulations require that an applicant certify that it will design, operate, and maintain its natural gas facilities in accordance with the federal safety

---

<sup>61</sup> Intervenors' Request for Rehearing at 35-37.

<sup>62</sup> See June 23, 2017 Tennessee Gas Pipeline Company Request for Notice To Proceed With Construction, at 1.

<sup>63</sup> Tennessee June 3, 2016 Answer at 24-28.

<sup>64</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 149.

<sup>65</sup> Intervenors' Request for Rehearing at 39.

<sup>66</sup> *Nexus Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 137 (2017) (footnotes omitted). See September 2016 Order, 156 FERC ¶ 61,157 at P 149.

standards promulgated by the Department of Transportation or that it has been granted a waiver of those standards.<sup>67</sup> Tennessee has provided such a certification.<sup>68</sup> We believe that this certification, coupled with the requirements imposed by the September 2016 Order,<sup>69</sup> are sufficient to support the conclusion that Tennessee will construct and operate the facilities safely.<sup>70</sup>

**E. EA v. EIS**

33. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.<sup>71</sup> However, if an agency determines that a federal action is not likely to have significant adverse effects, it may rely on an EA for compliance

---

<sup>67</sup> See 18 C.F.R. § 157.14(a)(10)(vi) (2017) (“The applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection or shall certify that it has been granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Pertinent details concerning the waiver shall be set forth.”).

<sup>68</sup> Tennessee January 30, 2015 Application, Exhibit G-II, Flow Diagram Data.

<sup>69</sup> See September 2016 Order, 156 FERC ¶ 61,157, Appendix C, Environmental Conditions 17 and 18.

<sup>70</sup> See EA at 112 (“[W]e are confident that with the implementation of the required design criteria for these compressor stations, Tennessee would construct and operate the facilities safely.”); September 2016 Order, 156 FERC ¶ 61,157 at P 49 (agreeing with Commission staff’s EA recommendations and finding “that the project will not result in significant impacts”).

<sup>71</sup> 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. § 1502.4 (2017).

with NEPA.<sup>72</sup> On rehearing, Intervenors reiterate their claim that Commission staff should have prepared an EIS instead of an EA.<sup>73</sup>

34. Intervenors contend that one of the factors identified by the Council on Environmental Quality (CEQ) for guiding agency decisions as to the preparation of an EA or EIS<sup>74</sup> – whether the action violates a federal, state, or local law – is particularly relevant here. Intervenors claim that siting Compressor Station 563 will violate a local zoning law which would only allow the siting of a gas compressor station in industrial zoning districts. They additionally state that the Commission determined that siting the compressor station would not violate the local zoning law only because the NGA preempts local zoning. Intervenors acknowledge that the NGA preempts many local laws, but assert that NGA preemption does not apply until after the certificate is granted.

35. Intervenors further argue that the Commission understated the intensity of the project's impacts by failing to evaluate appropriately the impacts on both parkland and forest affected by Compressor Station 563. In this regard, Intervenors claim that Tennessee will not remediate the tree loss because it will not replant the trees it cuts down to build the compressor station nor will it replant trees elsewhere to make up for the tree loss.

36. Intervenors' arguments largely repeat those discussed and rejected in the September 2016 Order.<sup>75</sup> We need not tarry over Intervenors' contention that local laws are not preempted until a certificate is issued. The fact is that the construction and operation of Compressor Station 563 can only take place pursuant to a certificate issued under the NGA. Thus, when such construction takes place, the local zoning law will have been preempted. In addition, contrary to Intervenors' contention, the Commission did not base its decision to prepare an EA on the assumption that Tennessee would remediate tree removal at the compressor site.<sup>76</sup> The EA explains that the conversion of forested land for project

---

<sup>72</sup> 40 C.F.R. §§ 1501.3-1501.4 (2017). An EA is meant to be a “concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact.” 40 C.F.R. § 1508.9(a) (2017). Pursuant to the Commission's regulations, if an EA is prepared first, “[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared.” 18 C.F.R. § 380.6(b) (2017).

<sup>73</sup> September 2016 Order, 156 FERC ¶ 61,157 at PP 52-53.

<sup>74</sup> Intervenors Request for Rehearing at 40 (citing 40 C.F.R. § 1508.27).

<sup>75</sup> See September 2016 Order, 156 FERC ¶ 61,157 at PP 46-53.

<sup>76</sup> Intervenors Request for Rehearing at 43.

operations would result in permanent impacts, with 82.9 acres of forest land permanently converted to developed land for the facilities and access roads.<sup>77</sup> Further, the EA concludes that these permanent impacts on forested land would not be significant because the vegetation areas that would be permanently cleared are relatively small and within larger areas of similar vegetation.<sup>78</sup>

37. Finally, we find that preparing an EIS would not have provided any additional meaningful information to assist in the Commission's decision-making process. Accordingly, we affirm that preparation of the thorough, detailed EA was appropriate in this case.

## **F. Segmentation**

38. On rehearing, Intervenors and Conservation Groups raise the issue of segmentation. In the September 2016 Order, the Commission carefully analyzed whether the Broad Run Expansion and Abandoned Capacity Restoration Project (ACRP)<sup>79</sup> were "connected actions," "cumulative actions," or similar actions" to determine whether the Commission needed to review them together under CEQ's regulations.<sup>80</sup> The Commission similarly analyzed whether the Commission should consider the Broad Run Expansion Project and the Broad Run Flexibility Project in the same NEPA analysis. The Commission determined it did not need to analyze the ACRP and Broad Run Expansion Project under the same NEPA analysis. The Commission similarly concluded that the Commission did not need to consider the Broad Run Expansion Project and Broad Run Flexibility Project together in the agency's NEPA review.

### **1. Abandonment and Capacity Restoration Project (ACRP)**

39. Intervenors state that the Commission improperly segmented NEPA review of the ACRP and the Broad Run Expansion Project. They assert that the ACRP is the first step in a plan to transport natural gas liquids from the Northeast to the Southeast, Gulf Coast, and Texas. They claim that, once the ACRP is completed, the abandoned line will be sold to

---

<sup>77</sup> See EA at 78.

<sup>78</sup> *Id.* at 54.

<sup>79</sup> The Commission approved Tennessee's ACRP in Docket No. CP15-88-000 on September 29, 2017. *Tennessee Gas Pipeline Co. L.L.C.*, 160 FERC ¶ 61,144 (2017). A request for rehearing of the ACRP order is pending.

<sup>80</sup> September 2016 Order, 156 FERC ¶ 61,157 at PP 89-102 (citing 40 C.F.R. § 1508.25(a)(1)-(3)).

another entity for construction and operation as a natural gas liquids pipeline known as the Utica Marcellus Texas Pipeline Project. Also, according to Intervenors, the ACRP application treats Compressor Station 875 as an existing station to which capacity can be added. Finally, they assert that ACRP and the Broad Run Expansion Project are all temporally and geographically proximate.

40. Conservation Groups also claim that the Commission unlawfully segmented review of the Broad Run Expansion Project and the ACRP.<sup>81</sup> They assert that the projects are connected actions that should be considered in one NEPA analysis because the ACRP cannot proceed as planned if the Broad Run Expansion Project is not constructed.<sup>82</sup> Conservation Groups claim that the Commission itself stated that Compressor Station 875, under the Broad Run Expansion Project, is necessary for ACRP to proceed as planned.<sup>83</sup> Conservation Groups also assert that the Commission mischaracterized their comments, stating that the Broad Run Expansion Project is dependent on the ACRP when they actually asserted that the ACRP is dependent upon the Broad Run Expansion Project.<sup>84</sup> Conservation Groups further claim that the Commission misconstrued the CEQ's regulations by requiring both common timing and common geography for similar actions.<sup>85</sup>

41. Conservation Groups state that the regulations suggest using "common timing or geography" as two alternative methods for making a determination as to whether actions are similar.<sup>86</sup> They assert that, although the Commission acknowledged that regulations suggest using common timing or geography as alternative methods for determining if actions are similar, the Commission then required both common timing and geography.<sup>87</sup>

42. The September 2016 Order analyzed whether the Broad Run Expansion Project and the ACRP were connected actions and found that the two projects are "separate, distinct

---

<sup>81</sup> Conservation Groups Request for Rehearing at 2.

<sup>82</sup> *Id.* at 4.

<sup>83</sup> Conservation Groups Request for Rehearing at 4 (quoting September 2016 Order, 156 FERC ¶ 61,157 at P 96).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* (citing September 2016 Order, 156 FERC ¶ 61,157 at PP 101-102).

<sup>86</sup> *Id.* at 5.

<sup>87</sup> *Id.* (citing September 2016 Order, 156 FERC ¶ 61,157 at PP 101-102).

projects, each with independent utility.”<sup>88</sup> The Commission determined that the Broad Run Expansion Project and the ACRP were not connected actions. The Commission stated that the Broad Run Expansion Project would provide 200,000 Dth/d of incremental transportation service.<sup>89</sup> In contrast, ACRP will not increase incremental capacity at all, but will be used to maintain the level of capacity needed to serve existing customers.<sup>90</sup> Additionally, the Commission determined that the fact that Tennessee proposed a compressor unit at Compressor Station 875 as part of the ACRP did not make the Broad Run Expansion Project dependent upon the ACRP. Specifically, the Commission noted that the Broad Run Expansion Project could proceed without the ACRP. Additionally, the ACRP is not dependent upon the Broad Run Expansion Project. Instead, the ACRP could proceed without the Broad Run Expansion Project with only a minor alteration to build a compressor station to house the 10,771 horsepower unit that is necessary for the project.<sup>91</sup> The Commission also found that the fact that Tennessee may have a broader corporate strategy with regard to moving Marcellus and Utica shale gas to markets in the Gulf Coast does not make them connected actions.<sup>92</sup>

43. The Commission also considered whether the ACRP cumulatively impacted the same resources as the Broad Run Expansion Project, but found that any impacts would be minimal and therefore did not have the potential to produce cumulatively significant impacts.<sup>93</sup>

44. Conservation Groups assert that regulations suggest using “common timing or geography” as two alternative methods for making a determination as to whether actions are similar. They assert that the Commission utilized both factors in its analysis instead of looking solely at timing or geography. As an initial matter, Conservation Groups themselves acknowledge that these factors are merely suggestions. As the Commission noted in the September 2016 Order, the regulations state that an agency may wish to consider similar actions “in the same impact statement, but is not required to do so.”<sup>94</sup> The

---

<sup>88</sup> *Id.* P 95 (citing EA at 17).

<sup>89</sup> *Id.* P 95.

<sup>90</sup> *Id.* P 96 (citing Application filed by Tennessee Gas Pipe Line Company, LLC in Docket No. CP15-88-000 on February 13, 2015).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* P 97.

<sup>93</sup> *Id.* P 99.

<sup>94</sup> *Id.* P 101 (citing 40 C.F.R § 1508.25(a)(3) (2017) (defining similar actions)).

Commission conducted a reasoned analysis to determine whether to analyze the two projects in the same NEPA document, but determined that, while the timing is close, the ACRP is geographically distinct from the Broad Run Expansion Project with the exception of construction at Compressor Station 875. The Commission therefore determined it was not necessary or helpful to assess the two projects in the same NEPA document.

45. Neither Intervenors nor Conservation Groups have raised any new arguments on rehearing that cause us to change the determination in the September 2016 Order. We therefore deny rehearing on this issue.

## 2. Broad Run Flexibility Project

46. Intervenors assert that the Commission erroneously segmented the Broad Run Flexibility and Expansion Projects. They claim that the Commission should have considered the impacts of these projects together, given that they constitute a single course of action to deliver greater volumes of natural gas to the Gulf Coast. As evidence of this, they point out that Antero agreed to both projects under the same precedent agreement. Additionally, they note that the completion of the Broad Run Flexibility Project triggers construction of the Broad Run Expansion Project.

47. Intervenors point out that the Commission stated that the Broad Run Flexibility Project is not subject to an EA requirement because Tennessee constructed it under section 2.55 (for auxiliary projects) and blanket authority activities that are categorically exempt from NEPA.<sup>95</sup> They state that there is no evidence that this project properly qualified for the exclusion and that information is missing from the public record.

48. As the Commission stated in the September 2016 Order, the Broad Run Flexibility Project is not subject to an EA requirement because it consists solely of “auxiliary” and “replacement” facilities as defined by section 2.55 (a) and (b) of the Commission’s regulations<sup>96</sup> and eligible facilities under Tennessee’s Part 157 blanket authority activities.<sup>97</sup> The Commission has provided automatic authority in section 2.55 for the construction of qualifying auxiliary and replacement facilities. As a result, the Commission does not conduct an EA for section 2.55 facilities. Additionally, the construction of eligible blanket

---

<sup>95</sup> Intervenors Request for Rehearing at 46 (citing September 2016 Order, 156 FERC ¶ 61,157 at P 104 (citing 18 C.F.R. § 380.5(b)(1) (2017))).

<sup>96</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 104 (citing 18 C.F.R. § 2.55(a) and (b)).

<sup>97</sup> *Id.* (citing 18 C.F.R. § 157.201 Subpart F (2017) (“Eligible facilities” consist of facilities necessary to provide service within existing certificated levels)).

certificate facilities is categorically exempt from NEPA review.<sup>98</sup> Intervenor provide no evidence to support its assertion that the Broad Run Flexibility Project was inappropriately categorized as facilities falling under section 2.55 or Tennessee's Part 157 blanket authority. Additionally, this is not the appropriate forum to question the categorization of these facilities under the Commission regulations.<sup>99</sup> 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.<sup>100</sup> As such, we deny rehearing on this issue.

### **G. Cumulative Impacts Related to Induced Production**

49. Intervenor assert that the Commission failed to consider the cumulative impacts of the project as required under NEPA.<sup>101</sup> They claim that the September 2016 Order fails to make any effort to determine the effects of induced gas production, claiming that "the scope of impacts from any such induced production is not reasonably foreseeable."<sup>102</sup> Intervenor state that the potential amount of increased production is readily ascertainable. They specifically point out that Antero committed to 200,000 Dth/d of firm transportation service with the option to purchase an additional 590,000 Dth/d on the Broad Run Flexibility Project, further claiming that the "nature of the potential indirect impacts is also known."<sup>103</sup>

---

<sup>98</sup> *Id.* (citing 18 C.F.R. § 380.4(a)(21)).

<sup>99</sup> *ANR Pipeline Co.*, 128 FERC ¶ 61,183, at P 44 (2009) ("The appropriate forum for making allegations that a pipeline may have violated its tariff or other rules and regulations not relevant to a specific certificate proceeding is a complaint proceeding.").

<sup>100</sup> 706 F.3d 1085, 1097 (9th Cir. 2013). *See also Utah Envtl. 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.").

<sup>101</sup> In their rehearing request, Intervenor refer to "indirect cumulative effects." Intervenor Request for Rehearing at 50. The concepts of indirect effects, 40 C.F.R. § 1508.8(b), and cumulative impacts, 40 C.F.R. § 1508.7, are separate. To the extent intervenor argue that induced production is an indirect effect of our approval in these proceedings, that argument is addressed below in the next section.

<sup>102</sup> Intervenor Request for Rehearing at 51 (quoting the September 2016 Order, 156 FERC ¶ 61,157 at P 82).

<sup>103</sup> Intervenor Request for Rehearing at 51.

They assert that *Sierra Club v. FERC*<sup>104</sup> is not relevant here because the court in that case determined that the Commission did not have to consider the effects of natural gas exports in its EA. They assert that the D.C. Circuit based its decision on the fact that the natural gas exports were under the sole authority of the Department of Energy.<sup>105</sup> Intervenors claim that the facts here more closely resemble the court's findings in *Mid States Coalition for Progress v. Surface Transp. Bd.*<sup>106</sup>

50. Finally, Intervenors state that the Commission created a circular definition of induced production where the Commission "cannot reasonably foresee indirectly induced production because it has defined indirectly induced production to be not reasonably foreseeable."<sup>107</sup> They assert that the ACRP, Broad Run Flexibility Project, and Broad Run Expansion Project greatly increase production and that the logical source of the natural gas to be transported is the region where the projects are located.

51. We disagree with Intervenors' assertions. CEQ defines cumulative impacts as "the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."<sup>108</sup> The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts. The "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."<sup>109</sup> CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."<sup>110</sup> Further, a cumulative impact analysis need only include "such information

---

<sup>104</sup> 827 F.3d 36 (D.C. Cir. 2016) (*Freeport LNG*).

<sup>105</sup> *Id.* at 47.

<sup>106</sup> 345 F.3d 520, 549-50 (8th Cir. 2003) (*Mid States*) (holding that the increase in rail shipping capacity for coal would reasonably foreseeably lead to the increased production). See Intervenors Request for Rehearing at 51-52.

<sup>107</sup> Intervenors Request for Rehearing at 52.

<sup>108</sup> 40 C.F.R. § 1508.7.

<sup>109</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

<sup>110</sup> CEQ, Considering Cumulative Effects Under the National Environmental Policy Act at 8 (January 1997), [https://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-](https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-)

as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”<sup>111</sup> A meaningful cumulative impacts analysis must identify five things: “(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected *in that area* from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts *in the same area*; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.”<sup>112</sup> An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative effects analysis.<sup>113</sup>

52. Although the scope of our cumulative impacts analysis will vary from case to case, and resource to resource, depending on the facts presented, we have concluded that where the Commission lacks meaningful information about potential future natural gas production within the geographic scope of a project-affected resource, then production-related impacts are not reasonably foreseeable so as to be included in a cumulative impacts analysis.<sup>114</sup> As we have explained, the Commission generally does not have sufficient information to

---

ConsidCumulEffects.pdf, (1997 CEQ Guidance).

<sup>111</sup> *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

<sup>112</sup> *TOMAC v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) (emphasis added) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002)). See also *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

<sup>113</sup> See CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2-3 (June 24, 2005), [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf), (2005 CEQ Guidance).

<sup>114</sup> *Id.* P 120. See also *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,255, P 120 (2017). To the extent Intervenor are arguing that the reasonably foreseeable impacts of production include downstream use, this same reasoning applies. See Intervenor’s Request for Rehearing at 53 n.85. Since the Commission does not have information about future power plants, storage facilities, or distribution networks, within the geographic scope of project-affected resources, these impacts are not reasonably foreseeable in this case.

determine the origin of the gas that will be transported on a pipeline, and that is the case here.<sup>115</sup>

53. The September 2016 Order appropriately considered the issue of cumulative impacts of the Broad Run Expansion Project.<sup>116</sup> The EA determined the Broad Run Project had a geographic scope for potential cumulative impacts of 50 kilometers surrounding each proposed compressor station, or the Air Quality Control Region if applicable.<sup>117</sup> In total, the EA identified 87 actions that may have an incremental impact on air quality, including two natural gas production wells.<sup>118</sup> The Commission also stated that the Marcellus and Utica shale formations are immense with “the highly localized impacts of production mak[ing] any forecasting, by a state or federal agency, inherently speculative and impractical.”<sup>119</sup> Intervenors identify no specific locations where additional production will occur within the Broad Run Project geographic scope, and their failure to do so only highlights the speculative nature of the inquiry they advocate. Accordingly, we continue to believe that broadly analyzing effects related to upstream production using generalized assumptions will not assist us in making a reasoned decision regarding the siting of proposed natural gas pipelines.<sup>120</sup>

54. In the September 2016 Order, the Commission also disagreed with commenters’ assertions that the facts here resemble *Mid States*, finding that the Commission was not “simply ignor[ing]” the impact of future gas development.<sup>121</sup> As the Commission noted in

---

<sup>115</sup> See *infra* P 60.

<sup>116</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 81-85.

<sup>117</sup> EA at 118.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* P 82.

<sup>120</sup> Further, as we stated in *Dominion Transmission Inc.*, rehearing order for the New Market Project, Docket No. CP14-497-001, we are not “aware of any basis that indicates the Commission is required to consider environmental effects that are outside of our NEPA analysis of the proposed action in our determination of whether a project is in the public convenience and necessity under section 7(c).” *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 43 (2018) (*Dominion Transmission*) (citing *NAACP v. FPC*, 425 U.S. 662, 669-70).

<sup>121</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 84. We also note that *Mid States* addressed indirect effects, not cumulative effects.

the September 2016 Order,<sup>122</sup> the agency in *Mid States* acknowledged that the outcome was reasonably foreseeable, but then failed to consider its impact.<sup>123</sup> In this instance, the Commission found that “there are no ‘specific and causally linear indirect consequences that could reasonably be foreseen and factored into the Commission’s environmental analysis.’”<sup>124</sup>

55. In short, the impacts stemming from incremental production of natural gas that will purportedly be induced by the project do not constitute cumulative impacts associated with the project. Therefore, induced production is not required to be considered as part of the Commission’s NEPA review. The Commission fully responded to commenters’ concerns on this issue in the September 2016 Order.<sup>125</sup> Intervenors have not provided any additional information or arguments on rehearing to change this determination. We therefore deny rehearing on this issue.

## **H. Climate Change**

56. Intervenors state that, in August 2016, CEQ issued updated guidance to “assist Federal agencies in their consideration of the effects of GHG emissions and climate change when evaluating proposed Federal actions in accordance with” NEPA and the CEQ regulations for implementing NEPA. They state that, under this guidance, agencies must quantify and analyze the direct and indirect climate change impacts from a given project, using greenhouse gas (GHG) emissions as a proxy for climate change impacts. They state that the Commission failed to follow this guidance, instead asserting that no standard method exists that would enable the Commission to assess the global and physical environmental impacts from the project’s additional incremental GHG emissions. They also

---

<sup>122</sup> *Id.* (quoting *Freeport LNG*, 827 F.3d at 48 (finding that the Commission’s alleged failure to consider increased natural gas production following the authorization of liquefied natural gas export facilities “looks nothing like” *Mid States*)).

<sup>123</sup> *See Mid States*, 345 F.3d at 549-50.

<sup>124</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 84 (quoting *Freeport LNG*, 827 F.3d at 48).

<sup>125</sup> *See* September 2016 Order, 156 FERC ¶ 61,157 at PP 64-85. Nonetheless, the September 2016 Order identified studies and reports developed by other federal agencies that discuss potential environmental impacts associated with unconventional natural gas production activities, including hydraulic fracturing. *See id.* at P 70 (citing, in part, DOE Addendum, 79 Fed. Reg. 48,132 (analyzing air quality, water resource, greenhouse gas emissions, induced seismicity, and land use impacts from unconventional natural gas production activities in the lower 48 states)).

assert that the Intergovernmental Panel on Climate Change has provided guidance for GHG inventories of the energy sector since 2006. They state that with the 790,000 Dth/d of additional production on the Broad Run Expansion and Flexibility Projects, along with the natural gas liquids on the UMTP project, the Commission's impacts analysis is inadequate.

57. With respect to impacts from GHG, the EA discusses the direct GHG emissions from construction (7,684.76 metric tons per year CO<sub>2</sub> equivalent (tpy CO<sub>2e</sub>))<sup>126</sup> and operation (640,242 metric tpy CO<sub>2e</sub>).<sup>127</sup> The EA also includes a discussion of climate change impacts in the region and the regulatory structure for GHG emissions under the Clean Air Act.<sup>128</sup>

58. However, with regard to impacts related to upstream production, the Commission determined that "there is no record evidence that the Broad Run Expansion Project will induce incremental production of natural gas and, even if additional gas is induced, the amount, timing, and location of such development activity is speculative."<sup>129</sup> Specifically, the Commission stated that, even where both the producer of gas to be shipped on a pipeline and the general location of that producer's existing wells is known, the Commission could only speculate with regard to the number or location of potential additional wells.<sup>130</sup> The Commission cited multiple other factors that could potentially drive new drilling.<sup>131</sup> With respect to effects related to downstream consumption of natural gas, the Commission did not quantify those effects. We affirm the Certificate Order and find that in this case effects related to the production or consumption of natural gas are not indirect effects of the Broad Run Expansion Project and that the Commission is not required to consider those effects under NEPA or the NGA.

---

<sup>126</sup> EA at 102 (Table 2-26).

<sup>127</sup> *Id.* at 103; Tennessee January 30, 2015 Application, Resource Report 9 at 9-21 to 9-40.

<sup>128</sup> EA at 99 and 118.

<sup>129</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 84 and n.119 (quoting *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d at 90 (holding that an agency need not "consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative"))).

<sup>130</sup> *Id.* P 82.

<sup>131</sup> *Id.* (citing *Dominion Transmission, Inc.*, 153 FERC ¶ 61,284 (2015)). *See also - Dominion Transmission*, 163 FERC ¶ 61,128 at P 60.

59. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations.<sup>132</sup> A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).<sup>133</sup> Contrary to the assertion that approval of transportation projects spurs the production of natural gas, there is nothing in the record that indicates that is the case here.<sup>134</sup> The fact that natural gas production and transportation are all components of the general supply chain required to bring natural gas to market is not in dispute. However, this does not mean that the Commission's action of approving a particular pipeline project will cause or induce the effect of additional shale gas production. Rather, a number of factors, such as domestic natural gas prices and production costs, drive new drilling.<sup>135</sup>

---

<sup>132</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 F.App'x. 472, 474-75 (2nd Cir. 2012) (unpublished opinion).

<sup>133</sup> See *cf. Sylvester v. U.S. Army Corps of Engineers*, 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 project). See also *City of Carmel-by-the-Sea v. U.S. Dep't of Transportation*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the proposed freeway's potential to induce additional development); *Laguna Greenbelt, Inc. v. U.S. Dep't of Transportation*, 42 F.3d 517, 525 (9th Cir. 1994) (upholding the EIS's determination that the proposed highway would not result in further growth because the surrounding land was already developed or otherwise committed to uses not contingent on highway construction).

<sup>134</sup> See *Dominion Transmission*, 163 FERC ¶ 61,128 at P 60.

<sup>135</sup> See, e.g., *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would

60. Even if a causal relationship between the proposed action here and upstream production were presumed, the scope of the impacts, as discussed above, is not reasonably foreseeable.<sup>136</sup> As we have explained, neither the Commission nor the applicant generally has sufficient information to determine the origin of the gas that will be transported onto a pipeline. We disagree with the assertion that we lack information about specific upstream production, or downstream uses, simply because we “did not ask for it.”<sup>137</sup> To be clear, the Commission only has jurisdiction over the pipeline applicant, whose sole function is to transport gas from and to the contracted for delivery and receipt points.<sup>138</sup> While the shippers might contract with a specific producer<sup>139</sup> for their gas supply, the shipper would

---

induce development).

<sup>136</sup> “Reasonable foreseeability” does not include “highly speculative harms” that “distort[] the decisionmaking process” by emphasizing consequences beyond those of “greatest concern to the public and of greatest relevance to the agency’s decision.” *Robertson*, 490 U.S. at 355-56 (internal quotation marks and citations omitted). See *Dominion Transmission*, 163 FERC ¶ 61,128 at P 61 n.143.

<sup>137</sup> Although some assert that we generally could obtain more information, it is not clear how such information would alter our conclusion regarding causation, as opposed to simply providing more detail on environmental impacts of actions, i.e., upstream production and downstream GHG emissions, which we have determined, consistent with CEQ regulations and case law, are not caused by the Broad Run Expansion Project. Further, the “reasonably close causal relationship” required under NEPA is analogous but not identical to proximate causation from tort law. As courts have noted: “We ‘look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.’” *Sierra Club v. DOE*, 867 F.3d 189, 198 (D.C. Cir. 2017) (quoting *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metropolitan Edison*)). See also *New Jersey Dep’t of Env’tl. Prot. v. U.S. Nuclear Regulatory Comm’n*, 561 F.3d 132, 141 (3d Cir. 2009) (quoting *Metropolitan Edison* for the proposition that the agency must “draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not,” and observing that “this line appears to approximate the limits of an agency’s area of control”). See *Dominion Transmission*, 163 FERC ¶ 61,128 at P 63 n.154. However, a “but for” causal relationship is insufficient to establish a cause for purposes of NEPA.

<sup>138</sup> *Dominion Transmission*, 163 FERC ¶ 61,128 at P 61.

<sup>139</sup> Conversely the shippers may purchase gas from marketers at a hub.

not know the source of the producer's gas, and, for that matter, producers are not required to dedicate supplies to a particular shipper and thus likely will not know in advance the exact source of production. In short, "just ask[ing] for it" would be an exercise in futility.<sup>140</sup> Moreover, there are no forecasts in the record which would enable the Commission to meaningfully predict production-related impacts, many of which are highly localized.<sup>141</sup> The specific source of natural gas to be transported via the Broad Run Expansion Project is currently unknown and will likely change throughout the project's operation. Furthermore, where the project adds compression to an existing mainline, like this one, and there is not even an identified general supply area for the gas that will be transported on the project, any analysis of production impacts would be so generalized it would be meaningless.<sup>142</sup>

---

<sup>140</sup> Not even the states, which have jurisdiction over the production of natural gas, would have information regarding where (other than in a general region) gas that will be delivered into a particular new pipeline will be produced, or whether the gas will come from existing or new wells. *See generally Sierra Club v. DOE*, 867 F.3d at 200 (DOE's obligation under NEPA to "drill down into increasingly speculative projections about regional environmental impacts [of induced natural gas production] is also limited by the fact that it lacks any authority to control the locale or amount of export-induced gas production, much less any of its harmful effects") (citing *Pub. Citizen*, 541 U.S. at 768 ). *See Dominion Transmission*, 163 FERC ¶ 61,128 at P 61 n.146.

<sup>141</sup> The dissent cites to *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, at 1310 (D.C. Cir. 2014), to support its argument that where a developer cannot provide the specific source of natural gas or the ultimate end use, the Commission must evaluate reasonable forecasts of GHG emissions from production and consumption. This would be true only if the impacts from GHG emissions would be a reasonably foreseeable result of our action in approving the Broad Run Expansion Project, which we have explained is not the case. We find the connection between our approval of this project and the impacts resulting from production or consumption to be too tenuous to warrant consideration of comparative information.

<sup>142</sup> Even where there is a general source area, the Commission would still need 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, to develop a meaningful impacts analysis. *Dominion Transmission*, 163 FERC ¶ 61,128 at P 61 n.148. *Habitat Education Center v. U.S. Forest Service*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with enough specificity to make their consideration meaningful need not be included in the environmental analysis). *See also Sierra Club v. DOE*, 867 F.3d at 200 (accepting DOE's "reasoned explanation" as to why the indirect effects pertaining to induced natural gas production were not reasonably foreseeable where DOE noted the difficulty of predicting both the incremental quantity of

Accordingly, even assuming that natural gas production is induced by the Broad Run Expansion Project, the impacts of that production and consumption are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects.”<sup>143</sup> Contrary to Intervenor’s contentions, knowledge of these and other facts would be necessary in order for the Commission to fully analyze the related effects.

61. Furthermore, we do not find that approval of the Broad Run Expansion Project will spur additional identifiable gas consumption. The D.C. Circuit Court of Appeals in *Sierra Club v. FERC*,<sup>144</sup> held that where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should “estimate[] the amount of power-plant carbon emissions that the pipelines will make possible.”<sup>145</sup> However, we note that the Southeast Market Pipelines Project at issue in *Sierra Club v. FERC* is factually distinct from the Broad Run Expansion Project. The record in that case indicated that natural gas would be delivered to specific customers – power plants in Florida – such that the court concluded that the consuming of the gas in those plants was reasonably foreseeable and the impacts of that activity warranted environmental examination.<sup>146</sup> In contrast, here, the gas to be transported by the Broad Run Expansion Project will be delivered by the project’s sole shipper, a producer, into the interstate natural pipeline grid and not to a specific end user. The Commission does not know where the gas will ultimately be consumed or what fuels it will displace, and likely neither does the entity over

---

natural gas that might be produced and where at the local level such production might occur, and that an economic model estimating localized impacts would be far too speculative to be useful). We note that there is publically available information that identifies, on a generic, high-level basis, potential environmental impacts associated with unconventional natural gas production. See U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

<sup>143</sup> *Id.*

<sup>144</sup> 867 F.3d 1357.

<sup>145</sup> *Id.* at 1371. See also *Friends of Capital Crescent Trail v. FTA*, 877 F.3d 1051, 1065 (D.C. Cir. 2017) (explaining that in *Sierra Club v. FERC*, “the court invalidated an indirect effects analysis because the agency had technical and contractual information on ‘how much gas the pipelines [would] transport’ to specific power plants, and so could have estimated with some precision the level of greenhouse gas emissions produced by those power plants. The court also recognized that ‘in some cases quantification may not be feasible.’”) (citation omitted).

<sup>146</sup> 867 F.3d at 1371.

which the Commission has jurisdiction, i.e., the transporting pipeline. Without such information, the Commission is unable to estimate with any precision the level of GHG emissions from the consumption of the transported natural gas. Any attempt to quantify downstream GHG emissions on the record before us would result in a number so imprecise as to be meaningless. Furthermore, there is nothing in the record showing that specific end uses would not occur absent the proposed project facilities.

62. Accordingly, the potential increase of GHG emissions associated with the production, processing, distribution, or consumption of gas are not indirect impacts of the Broad Run Expansion Project. Companies will continue to negotiate for and find natural gas supplies; end use consumption of natural gas will occur regardless of whether the project before us is approved.<sup>147</sup>

63. Intervenors assert that the facts here are different from those in *Freeport LNG*, and therefore *Freeport LNG* is not relevant. We disagree. In *Freeport LNG*, the court determined that the Commission did not have to consider the impacts of the decision to export natural gas because that was a decision solely made by the Department of Energy. The Court found that petitioners had “not identified any specific and causally linear indirect consequences that could reasonably be foreseen and factored into the Commission’s environmental analysis that exist apart from the intervening Department of Energy decision to authorize exports.”<sup>148</sup> As a result, the *Freeport LNG* court did not determine that anything else was lacking in the Commission’s NEPA analysis. Similarly, Intervenors do not identify any effects related to the upstream or downstream activities that are causally related to the project and are reasonably foreseeable.

64. In *Mid States*, petitioners argued that the projected availability of 100 million tons of low-sulfur coal per year at reduced rates would increase the consumption by existing power plants of low-sulfur coal vis-à-vis other fuels (e.g., natural gas).<sup>149</sup> The court found that the likely increased consumption of low-sulfur coal by power plants would be an indirect impact of construction of a shorter, more direct rail line to transport the low-sulfur coal from the mining area to existing coal-burning power plants.<sup>150</sup> Thus, the Surface Transportation

---

<sup>147</sup> *Dominion Transmission*, 163 FERC ¶ 61,128 at P 63.

<sup>148</sup> *Freeport LNG*, 827 F.3d at 48.

<sup>149</sup> *Mid States*, 345 F.3d at 548.

<sup>150</sup> *Id.* at 550 (finding compelling the fact that while the Board’s draft EIS had stated that it would consider potential air quality impacts associated with the anticipated increased use of the transported coal, the final EIS failed to do so).

Board was required to consider the effects on air quality of such consumption.<sup>151</sup> As we explained in the September 2016 Order,<sup>152</sup> in *Mid States* it was undisputed that the proposed project would increase the use of coal for power generation. Here, it is unknown where and how the transported gas will be used and there is no identifiable end-use as there was in *Mid States*.<sup>153</sup> Further, unlike the case here, the Surface Transportation Board had stated that approval of the rail line would lead to increased coal production.<sup>154</sup> It is primarily for this reason that reliance on *Mid States* is “misplaced since the agency in *Mid States* stated that a particular outcome was reasonably foreseeable and that it would consider its impact, but then failed to do so,” and the Commission did neither of those things.<sup>155</sup>

65. The dissent parenthetically cites *Barnes v. Department of Transportation*,<sup>156</sup> to argue that we have fallen short of “‘best efforts’ to identify the consequences that our decisions will have for communities, individuals, and the environment.” In *Barnes*, the agencies argued that the proposal to add a third runway to a two-runway airport would not have growth-inducing effects on aviation activity as they anticipated that aviation activity at the airport was expected to increase at the same rate regardless of whether a new runway was built.<sup>157</sup> The court disagreed, finding that the case involved a major ground capacity expansion project with unique potential to create demand. The court therefore concluded that the EA was insufficient for failing to (i) to conduct a demand forecast based on three,

---

<sup>151</sup> However, the court did not require the Board to consider the impacts that would be associated with potential construction of any new power plants that might be “induced” as the result of the availability of inexpensive coal, because those impacts were speculative and not reasonably foreseeable. *Id.* at 549 (noting that where and what size additional power plants may be built is speculative and “hardly the reasonably foreseeable significant impacts that must be analyzed under NEPA”).

<sup>152</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 84.

<sup>153</sup> While it may be foreseeable, that the gas transported on the expansion will be burned, we have no information as to the extent such consumption will represent incremental consumption above existing levels, as opposed to substitution for existing sources of supply.

<sup>154</sup> *Mid States*, 345 F.3d at 549.

<sup>155</sup> See *Ark. Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 431 F.3d 1096, 1102 (8th Cir. 2005).

<sup>156</sup> 655 F.3d 1124, 1138 (9th Cir. 2011) (*Barnes*).

<sup>157</sup> *Barnes*, 655 F.3d at 1136.

rather than two runways, and (ii) discuss the impact of a third runway on aviation demand.<sup>158</sup> In contrast, here, the Broad Run Expansion Project is adding a small amount of incremental capacity on Tennessee's existing pipeline system<sup>159</sup> and there is no basis in the record for a conclusion that the project will increase demand.

66. As we have explained, the link here between the pipeline and the local distribution company shippers on one hand, and between the pipeline and the producer on the other, is much more attenuated than the links in *Mid States* and *Barnes*.<sup>160</sup> The Commission has found that downstream local distribution companies will continue to negotiate for and find natural gas supplies. *Mid States* warned that “if the *nature* of the effect is reasonably foreseeable but its *extent* is not . . . the agency may not simply ignore the effect.”<sup>161</sup> The Commission has not ignored the impacts of end use GHG emissions. We have explained the lack of causation and reasonable foreseeability. The EA's discussion of climate change impacts in the region<sup>162</sup> and the regulatory structure for GHG emissions under the Clean Air Act<sup>163</sup> satisfy the directive to analyze the nature of an impact whose extent cannot be known. NEPA's hard look and the NGA's public interest standards require no more.

67. Moreover, as the Commission stated in the September 2016 Order, the Commission cannot make a finding whether a particular quantity of GHG emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.<sup>164</sup> We continue to find that no standard

---

<sup>158</sup> *Id.* at 1136, 1138-39; *see also id.* at 1138 (distinguishing *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 575 (9th Cir. 1998), in which the Ninth Circuit held that the FAA did not have to consider the impacts of an increase in air traffic resulting from a new flight arrival path because “the project was implemented in order to deal with existing problems; the fact that it might also facilitate further growth is insufficient to constitute a growth-inducing impact under 40 C.F.R. § 1508.8(b)”).

<sup>159</sup> The Market Component is designed to provide 200,000 Dth/d of firm incremental transportation service, and is less than two percent of Tennessee's system, which consists of approximately 14,000 miles of pipeline and has a design capacity of approximately 12,000,000 Dth/d. September 2016 Order, 156 FERC ¶ 61,157 at P 4.

<sup>160</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 84 (distinguishing *Mid States*).

<sup>161</sup> *Mid States*, 345 F.3d at 549 (emphasis in original).

<sup>162</sup> EA at 118.

<sup>163</sup> *See* EA at 99 and 118.

<sup>164</sup> September 2016 Order, 156 FERC ¶ 61,157 at P 174; EA at 118. *See National*

methodology exists.<sup>165</sup> Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of GHG emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.<sup>166</sup>

68. Further, we cannot find a suitable method to attribute discrete environmental effects to GHG emissions. Integrated assessment models were developed to estimate certain global and regional physical climate change impacts due to incremental GHG emissions under specific socioeconomic scenarios. It would be inappropriate to run the integrated assessment models to estimate global and broad regional physical climate change impacts from the project-related GHG emissions. This is because we would have to arbitrarily determine whether the models' outputs of the potential increase in atmospheric GHG concentration, rise in sea level, rise in sea water temperatures, or other calculated physical impacts would be significant for that particular pipeline project. We are not aware of a widely accepted standard – which was established by international or federal policy, or by a recognized scientific body – to ascribe significance to a given rate or volume of GHG emissions.

69. Other models, such as atmospheric modeling used by the Intergovernmental Panel on Climate Change, Environmental Protection Agency, National Aeronautics and Space Administration, and others are not reasonable for project-level analysis. The ability to determine localized impacts from GHG emissions by use of these models is not possible at this time. Appropriate scientific methodologies are necessary in order for the Commission to analyze the related climate change effects.

70. Our decision not to use integrated assessment models or other atmospheric modeling methods does not in any way indicate that the Commission is not cognizant of the potentially severe consequences of climate change, undermine our hard look at the effects of

---

*Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 at P 188. EA at 118.

<sup>165</sup> EA at 118. See also *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238, P 79 (2018) (explaining that “[t]he Commission’s policy on the use of the Social Cost of Carbon has been to recognize the availability of this tool, while concluding that it is not appropriate for use in project-level NEPA reviews”); *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, PP 30-51 (2018) (discussing determination not to employ the Social Cost of Carbon in FERC proceedings); *W. Org. of Res. Councils v. U.S. Bureau of Land Management*, No. CV 16-21-GF-BMM, slip op. at 36 (D. Mon. Mar. 26, 2018) (holding that NEPA does not require an agency to use a global carbon budget analysis or to undertake cost-benefit analysis using the Social Cost of Carbon protocol).

<sup>166</sup> See *National Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145 at P 187.

the Broad Run Expansion Project and our disclosure of these effects to the public, or undermine informed public comment or informed decision making. Nevertheless the Commission is committed to monitoring climate science, state and national targets, and climate models that may inform our decision making.<sup>167</sup>

### **I. Rate Issues**

71. Tennessee requests rehearing and clarification regarding certain rate issues. Tennessee states that it proposed to use its currently effective fuel rates listed in its FERC NGA Gas Tariff as the fuel and lost and unaccounted for rates on the Market Component of the Project. Tennessee asserts that the Commission rejected its proposal with no real explanation and required it to identify the incremental fuel associated with the Market Component and develop incremental fuel rates.<sup>168</sup>

72. Tennessee asserts that there is no evidence to support the Commission's conclusion that including the Project's fuel costs in Tennessee's general system fuel rates could result in existing customers subsidizing the Broad Run Expansion Project. In response to the Commission's data request, Tennessee provided a fuel study which demonstrated that the Broad Run Expansion Project may slightly increase general system fuel rates under current operating conditions.<sup>169</sup> Nevertheless, Tennessee expects those fuel rates to remain well below peak day design levels on a pre-expansion basis.<sup>170</sup> Tennessee states the best way to consider the Broad Run Expansion Project's impacts on general fuel rates is to compare the pre-expansion general system fuel rates during peak day design conditions with the post-expansion general system fuel rate during current operating conditions.<sup>171</sup> Tennessee asserts that its analysis demonstrated that the post-expansion general system fuel rates – based upon current operating conditions – would not exceed the pre-expansion general system fuels rates based on peak day design conditions.<sup>172</sup> Therefore, existing shippers would not be

---

<sup>167</sup> See *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded . . . , the BLM was not required to identify specific effects on the climate in order to prepare an adequate EIS.”).

<sup>168</sup> Tennessee Request for Rehearing at 1 (citing September 2016 Order, 156 FERC ¶ 61,157 at P 33).

<sup>169</sup> *Id.* at 4.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 4-5.

<sup>172</sup> *Id.* at 5.

subsidizing Broad Run Expansion Project shippers. Tennessee also asserts that the Commission did not consider other project benefits supporting rolling project fuel costs into the system-wide fuel rates.

73. In its fuel study, Tennessee stated that its system was initially designed to move gas from the Gulf in the South to the Northeast markets. Given the large amount of gas production in the Marcellus and Utica regions, the system is now bi-furcated with flows going both south-to-north and north-to-south. According to Tennessee, the result is that all shippers on the system benefit from lower fuel rates created by numerous expansion projects. Tennessee states that the large volumes of new gas supply resulted in substantial volume displacement and multiple null points on Tennessee's system.<sup>173</sup> It states that the result has been lower fuel consumption per unit of throughput on Tennessee's system with lower fuel rates than what would occur based upon peak day design conditions. Tennessee asserts that, while the project may slightly increase general system rates, its July 10, 2015 fuel study shows that, even with the project fuel costs included in general system rates, system fuel rates will continue to be well below pre-expansion design levels. According to its study, the north-to-south flows for peak day summer design conditions pre-expansion is 0.352 percent per 100 Dth-Mile.<sup>174</sup> Tennessee contrasts this percentage with its estimated average post-expansion general system fuel rate based on current operating conditions of 0.255 percent per 100 Dth-Mile.<sup>175</sup>

74. In making a determination on whether to grant a pre-determination of rolled-in fuel rates, the Commission compares the pipeline's estimated incremental fuel rates to the pipeline's existing system-wide fuel rates. In conducting this analysis, the Commission considers whether allowing the rolled-in fuel rates will cause existing customers to subsidize the costs associated with the expansion. When the purpose of a project is to increase capacity and serve new load, as is the case here, the Commission does not generally consider the types of potential system benefits that Tennessee raises in its rehearing request in making this determination.<sup>176</sup>

75. Although Tennessee asserts that there is no evidence to support the Commission's conclusion that including the project's fuel costs in Tennessee's general system fuel rates could result in existing customers subsidizing the Broad Run Expansion Project, we

---

<sup>173</sup> *Id.* at 7 (citing July 10 Data Response at 1).

<sup>174</sup> *Id.* (citing July 10 Data Response at 2).

<sup>175</sup> *Id.*

<sup>176</sup> *Southeast Supply Header, LLC*, 151 FERC ¶ 61,032, at P 13 (2015); *ANR Pipeline Co.*, 152 FERC ¶ 61,021, at P 10 (2015).

disagree. Tennessee itself provided the record evidence for the Commission to make this determination. Tennessee acknowledged that the Broad Run Expansion Project could increase general system fuel rates under current operating conditions.<sup>177</sup> Based on current operating conditions, Tennessee's July 10, 2015 fuel study estimates the pre-expansion adjusted total fuel rate to be 2.230 percent compared to an estimated post-expansion adjusted total fuel rate of 2.390 percent for Zone 3-1.<sup>178</sup> Tennessee attempts to justify this increase by comparing the estimated total post-expansion general system fuel rate to pre-expansion peak day summer design conditions. We do not agree with Tennessee that this is the appropriate methodology for determining whether existing customers will be subsidizing new shippers nor has Tennessee provided us with any additional reasoning as to why we should utilize this method in making our determination. Instead, the Commission continues to believe that the appropriate comparison is between general system fuel rates under current operating conditions and estimated post-expansion fuel rates under current operating conditions. Tennessee has not provided us with additional information that would change the determination in the September 2016 Order with respect to this issue and therefore we deny rehearing. As noted in the September 2016 Order, this finding is without prejudice to Tennessee proposing to roll the project's fuel costs into its general system fuel rate in a general or limited NGA section 4 filing.

#### **J. Oil Change International**

76. Tennessee also asks for clarification that parties requesting rehearing may not rely upon the comments filed by Oil Change International which filed a comment letter 18 months after the Tennessee application comment deadline.<sup>179</sup> No party requesting rehearing relied upon the comments filed by Oil Change International. Therefore, Tennessee's request for clarification is dismissed as moot.

---

<sup>177</sup> See Tennessee July 10, 2015 Data Response at Response to Information Request at 1 ("While the Project may result in a slight increase in the general system fuel rates compared to recent history, the fuel rates with the roll-in of the Project into the general system are expected to remain well below design levels on a pre-expansion basis."); see also Tennessee July 10, 2015 Data Response at Response to Information Request, Attachment 1 at 1.

<sup>178</sup> See Tennessee July 10, 2015 Data Response at Attachment 1 to Information Request 4, Page 1 of 2, line 11, columns (5) and (7).

<sup>179</sup> Tennessee Request for Rehearing at 9 (citing Comments of Oil Change International on Greenhouse Gas Emissions from Natural Gas Pipelines, Docket No. CP15-554-000, *et al.* (Aug. 8, 2016)).

The Commission orders:

(A) The requests for rehearing filed by Intervenors, Conservation Groups, and Tennessee are denied.

(B) Tennessee's request for clarification is dismissed as moot.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

Commissioner Glick is dissenting in part with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C

Docket No. CP15-77-001

(Issued June 12, 2018)

LaFLEUR, Commissioner, *concurring*:

Today's order denies rehearing of the order approving Tennessee's Broad Run Expansion Project. I supported our original authorization of this project by finding that on balance, the project was in the public interest. I write separately to provide additional context for continuing to find the project is in the public interest. I will also address how, in light of ongoing disagreements on the Commission concerning the scope of our environmental review in Natural Gas Act (NGA) section 7 proceedings, I will try to address these cases going forward.

I continue to support the project at issue in this docket despite my strong disagreement with the Commission's new policy, which was recently announced in the *New Market*<sup>1</sup> rehearing order and is applied in today's order, that limits the review and disclosure of upstream and downstream greenhouse gas (GHG) impacts as part of our National Environmental Policy Act (NEPA) responsibilities and public interest determination under the NGA.<sup>2</sup> I fully explained in my dissent in *New Market* why I oppose this change in policy.

In my time at the Commission, whether voting with the majority or in dissent, I have tried to address each case as if my vote and views determined the outcome of the

---

<sup>1</sup> *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*) (*New Market*).

<sup>2</sup> *See also, Florida Southeast Connection, LLC*, 163 FERC ¶ 61,158 (2018) (LaFleur, Comm'r, *concurring*) and *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*) (these separate statements address the Commission's responsibility to determine the significance of downstream GHG emissions and use of Social Cost of Carbon to translate the GHG emissions to climate harm).

matter. With respect to our certificate review, despite my strong disagreement with the majority's new policy refusing to disclose and consider certain environmental effects, I recognize that a project under review may be needed to serve customers and is in the public interest. As a result, I am hesitant to allow the majority's troubling statements dictate that I dissent in each case, especially where, as here, I believe the record supports approval of a certificate. Going forward, I intend to the best of my ability, to move beyond our disagreement on the Commission's approach, however important it may be, to consider whether a particular project is in the public interest. I will base this determination on the facts in the record—even ones overlooked by the majority—and the governing law as I read it.

In this case, the record for the Broad Run Project did not contain specific information on the end-use for the project's 200,000 dekatherms per day (Dth/d) of firm transportation service on the Tennessee system. On rehearing, intervenors argue that the Commission's GHG impacts analysis is inadequate, and in particular, failed to sufficiently consider the upstream and downstream GHG impacts of the project. The Commission nonetheless declines to disclose additional information or provide additional analysis, arguing that upstream and downstream impacts are not indirect impacts of the proposed pipeline project, and thus no additional analysis is necessary. To address my concerns about the Commission decision to ignore downstream emissions impacts in this proceeding, I have myself considered the downstream GHG emissions as part of my public interest determination.<sup>3</sup>

Using a methodology developed by the Environmental Protection Agency (EPA) to estimate the downstream GHG emissions from the project, and assuming all of the gas to be transported is eventually combusted, 200,000 Dth/d of natural gas service would result in the emission of approximately 3.7 million metric tpy of CO<sub>2e</sub>.<sup>4</sup> This is an upper

---

<sup>3</sup> I believe that it is reasonably foreseeable in the vast majority of cases that the gas being transported by a pipeline we authorize will be burned for electric generation or residential, commercial, or industrial end uses. In those circumstances, there is a reasonably close causal relationship between the Commission's action to authorize a pipeline project that will transport gas and the downstream GHG emissions that result from burning the transported gas. See *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8<sup>th</sup> Cir. 2003) (*Mid States*). In *Mid States*, the Court concluded that the Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which the transported coal would be burned, the Court concluded the nature of the impact was clear.

<sup>4</sup> This estimate also assumes the maximum capacity is transported 365 days per

bound estimate because some of the gas may displace fuels (*i.e.*, fuel oil and coal) meaning that the combustion of gas could result in lower total CO<sub>2e</sub> emissions. The 3.7 million tons of GHG emissions from downstream use would result in at most a 5.7 percent increase in GHG emissions from fossil fuel combustion in Mississippi, and less than 0.1 percent increase nationally. I recognize that this full-burn estimate is simply a mathematical derivative of pipeline volume, but I still want to disclose it and consider it as part of my public interest determination, particularly where there is not more precise evidence of downstream pipeline utilization.<sup>5</sup> More information in the record with an identified end use would enable the Commission to more accurately assess the indirect impacts of downstream GHG emissions by calculating gross and net GHG emissions.<sup>6</sup>

I also do not support the Commission's application of its new policy announced in *New Market* to exclude all generic upstream information from its public interest determination. While it is less clear that upstream effects are caused by the pipeline, I believe we should respond to concerns raised regarding upstream GHG impacts by disclosing the best available information, such as the Department of Energy (DOE) studies cited in past orders.<sup>7</sup> In fact, the Commission's earlier certificate order

---

year, which is not usually the case because many projects are designed for peak use.

<sup>5</sup> One reason the Commission lacks the specificity of information to determine causation and reasonable foreseeability is because we have not asked applicants to provide this sort of detail in their pipeline applications. I note that some of the questions in the notice of inquiry on pipeline review ask commenters to weigh in on the types of information the Commission should seek as part of its pipeline review process. I believe that in the future we should have more information included in the record to consider when reviewing a project proposal.

<sup>6</sup> *See, Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*). In *Sabal Trail*, the Court concluded because the pipeline was delivering gas to an identified end use, four downstream power plants, the burning of gas at those power plants was an indirect impact to be quantified and considered as part of our NEPA responsibilities. Commission staff quantified the gross, net, and full burn of downstream GHG emissions. The gross total represents the expected use of the downstream power plant facilities. The net total includes the gross total minus the offset from coal-fired generating facility retirements. The full burn estimate is the calculation of the complete combustion of the total pipeline capacity. *See Sabal Trail* Supplemental Environmental Impact Statement (SEIS) at 4-5.

<sup>7</sup> In the recent past, Commission orders used DOE studies, such as, Dep't of Energy and Nat'l Energy Tech. Laboratory, *Life Cycle Analysis of Natural Gas Extraction and Power Generation*, DOE/NETL-2015/1714 (Aug. 30, 2016) (2016

authorizing the Broad Run Project discussed impacts of upstream production by referencing the general information and studies released by the DOE and EPA on natural gas production.<sup>8</sup>

After balancing the economic need for the Broad Run Project and all of its environmental impacts, I continue to believe that it is in the public interest.

While I do not intend to fully delineate my disagreement with the majority's review approach in each case, I do believe that it should be thoroughly reexamined as part of our ongoing Notice of Inquiry on the Certificate Policy Statement.<sup>9</sup> This review is an important and timely opportunity to engage broadly with stakeholders on all aspects of

---

DOE/NETL Study); U.S. Energy Info. Admin., *The Growth of U.S. Natural Gas: An Uncertain Outlook for U.S. and World Supply* (June 15, 2015), <http://www.eia.gov/conference/2015/pdf/presentations/staub.pdf>; Dep't of Energy and Nat'l Energy Tech. Laboratory, *Environmental Impacts of Unconventional Natural Gas Development and Production*, DOE/NETL-2014/1651, (May 29, 2014) (2014 DOE/NETL Study), to identify potential environmental impacts associated with unconventional natural gas production related to the proposed project. *E.g.*, *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022 (2017); *National Fuel Gas Supply Corporation*, 158 FERC ¶ 61,145 (2017); *Tennessee Gas Pipeline Company, LLC*, 158 FERC ¶ 61,110 (2017); *Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017); *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (2017); and *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046 (2017).

<sup>8</sup> *Tennessee Gas Pipeline Company, L.L.C.*, 156 FERC ¶ 61,157 at P 70 (2016) (“Nonetheless we note that although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The 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 to water resources. The EPA has reached a similar conclusion. 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. 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>9</sup> *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

the Commission's pipeline review. I particularly look forward to an open and productive conversation on how the Commission should consider climate change in our environmental reviews and am hopeful that this conversation will yield a better path forward in this aspect of our work.

For all of these reasons, I concur.

---

Cheryl A. LaFleur  
Commissioner

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP15-77-001

(Issued June 12, 2018)

GLICK, Commissioner, *dissenting in part*:

In today's order, the Commission again concludes that it need not consider the impact that new pipeline facilities have on climate change.<sup>1</sup> Because I do not believe the Commission can find that the Broad Run Expansion Project is in the public interest without first determining the significance of this impact, I dissent in part from today's order.

Mirroring its recent decision in *Dominion Transmission, Inc.*,<sup>2</sup> the Commission concludes that the Natural Gas Act<sup>3</sup> (NGA) and the National Environmental Policy Act<sup>4</sup> (NEPA) do not require the Commission to consider the significance of greenhouse gas emissions from the production or consumption of natural gas that are the reasonably foreseeable result of the Commission's certification decisions. To support this conclusion, the Commission adopts an untenably narrow definition of indirect effects, one that refuses to recognize the essential role that interstate pipelines have in facilitating natural gas consumption and production.<sup>5</sup> Applying this definition, the Commission argues that the Broad Run Expansion Project will have no identifiable effect on natural gas production or consumption and that asking for information about these potential effects "would be an exercise in futility."<sup>6</sup>

I disagree that it is futile for the Commission to seek to determine the extent to

---

<sup>1</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,190, at PP 59–62 (2018).

<sup>2</sup> *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 (2018) (*New Market*).

<sup>3</sup> 15 U.S.C. 717f (2012).

<sup>4</sup> National Environmental Policy Act of 1969, Pub. L. No. 91–190, 83 Stat. 852.

<sup>5</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,190 at PP 59, 62.

<sup>6</sup> *Id.* P 60.

which a proposed pipeline expansion might contribute to the existential threat that climate change poses. As I explained in my partial dissent in *New Market*, “the determination of what environmental effects must be considered under NEPA should turn on a record-by-record inquiry of what effects are reasonably foreseeable, not on generic pronouncements divorced from the facts of any specific case.”<sup>7</sup> In deeming an entire category of potential consequences not reasonably foreseeable and any inquiry into the matter an “exercise in futility,” the Commission excuses itself from making any effort to develop that record in the first place. That falls short of our obligations under NEPA and the NGA to make our “best efforts” to identify the consequences that our decisions will have for communities, individuals, and the environment.<sup>8</sup>

In addition, as I explained in my dissent in *Sabal Trail*, NEPA and the NGA’s public interest standard require the Commission to consider the harm resulting from greenhouse gas emissions caused by a new pipeline.<sup>9</sup> I cannot support issuing a certificate where the Commission has not made its best effort to consider a project’s potential contribution to climate change. This includes considering the results produced by readily available tools, such as the Social Cost of Carbon, which translates the long-term damage done by a ton of carbon dioxide into a monetary value, thereby providing a meaningful and informative approach for satisfying an agency’s obligation to consider how its actions contribute to the harm caused by climate change.

For these reasons, I respectfully dissent in part.

---

Richard Glick  
Commissioner

---

<sup>7</sup> *New Market*, 163 FERC ¶ 61,128 at 4 (Glick, Comm’r, dissenting in part).

<sup>8</sup> *Id.* at 3-5 (Glick, Comm’r, dissenting in part) (citing *Barnes v. Dep’t of Transp.*, 655 F.3d 1124, 1136 (9th Cir. 2011)).

<sup>9</sup> *See Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, at 5 (2018) (Glick, Comm’r, dissenting) (citing cases that discuss the Social Cost of Carbon when evaluating whether an agency complied with its obligation under NEPA to evaluate the climate change impacts of its decisions).