164 FERC ¶ 61,102
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.

Dominion Energy Cove Point LNG, LP Docket No. CP17-15-001

ORDER DENYING REHEARING

(Issued August 10, 2018)

1. On January 23, 2018, the Commission issued, pursuant to section 7(c) of the Natural Gas Act (NGA), a certificate authorizing Dominion Energy Cove Point LNG/ LP (Cove Point LNG) to construct, install, operate, and maintain natural gas compression facilities in Charles County, Maryland, and Loudoun and Fairfax Counties, Virginia (Eastern Market Access Project), to provide up to 294,000 dekatherms per day (Dth/d) of firm transportation service.[1] On February 22, 2018, Accokeek Intervenors[2] filed a request for rehearing[3] of the Certificate Order on the grounds that the Commission has, *inter alia*, violated the National Environmental Policy Act (NEPA).[4] We deny rehearing.

[1] *Dominion Energy Cove Point LNG/ LP*, 162 FERC ¶ 61,056 (2018) (Certificate Order).

[2] Accokeek Intervenors (also referred to as "Accokeek") are comprised of Accokeek, Mattawoman, Piscataway Creeks Community Council, Kelly Canavan, Joshua Kaufman, Osman Kivrak, Dr. Theresa Lazar, Paul Livingston, Jasmine Waring and the Moyaone Association.

[3] Accokeek Intervenors Request for Rehearing and Motion to Reopen Record, FERC Docket CP17-15-001 (Feb. 22, 2018) (Accokeek Request for Rehearing).

[4] 42 U.S.C. §§ 4321, *et seq*. (2012).

I. Background

2. Cove Point LNG, is a subsidiary of Dominion Resources, Inc. (Dominion), a natural gas company as defined by section 2(6) of the NGA.[5] The company owns the Cove Point Liquefied Natural Gas (LNG) Terminal in Calvert County, Maryland, and the 88-mile Cove Point Pipeline (including two compressor stations) that extends west from the terminal to connections with interstate pipelines in Fairfax and Loudoun Counties, Virginia.[6]

3. The Eastern Market Access Project would add compression to the Cove Point LNG Pipeline to enable the provision of up to 294,000 Dth/d of incremental firm natural gas transportation service to two shippers, Washington Gas Light Company (WGL) and Mattawoman Energy, LLC. Specifically, Cove Point LNG proposes to construct a new compressor station, expand an existing compressor station, re-wheel another existing compressor station, and construct two new delivery interconnects.[7] The project utilizes the existing pipeline system and right-of-way on property owned by Dominion.[8]

4. Accokeek Intervenors challenge only one component of the Eastern Market Access Project, the Charles Station, a 24,370-horsepower (hp) compressor station Cove Point LNG proposes to construct on its existing property in Charles County, Maryland. Charles Station would consist of an 11,150-hp Solar Taurus 70 natural gas turbine compressor unit and a 13,220-hp Solar Mars 90 natural gas turbine compressor unit housed in a new compressor building. Cove Point LNG also proposes to construct an auxiliary building and a drum storage building as well as additional appurtenant and auxiliary equipment.[9]

5. The Certificate Order issued a certificate of public convenience and necessity to Dominion Energy Cove Point LNG to construct and operate the Eastern Market Access Project, subject to conditions. The conditions include environmental conditions

[5] 15 U.S.C. § 717a(6) (2012).

[6] Certificate Order, 162 FERC ¶ 61,056 at P 3.

[7] *Id.*

[8] *Id.* P 4.

[9] *Id.* P 5.

applicable to the construction and operation of the new Charles Station, such as the issuance of air quality permits by the State of Maryland.[10]

II. Accokeek Rehearing Request

6. The Accokeek rehearing request concerns the proposed gas compression facilities at Charles Station in Charles County, Maryland. Accokeek asserts that by "not paying any attention to the exhaustive fact finding exercise of the Charles County Board of Appeals" (Charles County BOA) for the Charles Station facilities, the Commission failed to take the requisite "hard look" at potential environmental consequences of the proposed action as required by NEPA.[11]

7. Accokeek also charges that because Charles Station "will lead to the emissions of millions of tons of greenhouse gases annually the Commission must prepare an EIS rather than an EA in order to fully consider the significance of this impact on the human environment."[12] Accokeek further asserts that the "cursory treatment" in the EA of adverse impacts on wildlife "falls short of the hard look NEPA requires."[13] Accokeek also argues that the emission of methane from Charles Station is underestimated in the EA because it relies on inaccurate information regarding the number of blowdowns expected per year and associated emissions.[14] Accokeek also contends that the Commission's determination that the project impacts on wildlife are minor is erroneous.[15]

8. Accokeek claims that the Commission's finding of no "significant impact" from the proposed action on the human environment violates the "arbitrary and capricious"

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[10] *Id.* at ordering para. (B)(3).

[11] *See*, *e.g.*, Accokeek Request for Rehearing at 30 (citing *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 864 (9th Cir. 2005) ("If an agency . . . opts not to prepare an EIS, it must put forth a 'convincing statement of reasons' that explain why the project will impact the environment no more than insignificantly.") (citation omitted). *See also* NEPA section 102, 42 U.S.C. § 4332 (2012).

[12] Accokeek Request for Rehearing at 3.

[13] *Id.* at 29.

[14] EA at 23.

[15] Accokeek Request for Rehearing at 25-29.

standard of the Administrative Procedure Act (APA).[16] Moreover, Accokeek faults the Commission for not "looking at the big picture or cumulative impacts as required by law."[17] In addition, Accokeek charges that the Commission's "reliance on incorrect and incomplete information supplied by the Applicant" is "arbitrary and capricious and not the product of reasoned decision making."[18] To this point, Accokeek claims that the Commission inappropriately disregarded the "exhaustive fact-finding exercise by the Charles County BOA."[19]

9. In addition, Accokeek asserts that "the Commission's approach to state and local concerns is exactly the opposite of what CEQ [the Council on Environmental Quality] prescribes."[20] Accokeek opines that the Commission acted to "override local rules," referring to state permits under the Clean Air Act, in a manner that was "capricious."[21]

10. Accokeek also contends that the Commission has erred because "as a matter of prudential management" it is a "better practice in siting major infrastructure to work with local and state government rather than ignore them."[22] Accokeek also charges that the Commission has erred by not complying with NEPA requirements and procedures for identifying and mitigating land use and environmental conflicts between the agency and state and local governments, engaging in "inadequate outreach" and acting contrary to Commission policies concerning "intergovernmental cooperation."[23]

III. Procedural Matters

11. Accokeek requests that the Commission reopen the record of this proceeding to include the zoning proceedings of the Charles County BOA regarding Charles Station.[24]

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[16] 5 U.S.C. § 706(2) (A) (2012).

[17] Accokeek Request for Rehearing at 5, 30-31.

[18] *Id*.

[19] *Id*. at 6.

[20] *Id.* at 7.

[21] *Id*. at 6-7.

[22] *Id*. at 4, 15.

[23] *Id*. at 4, 7-9.

[24] Accokeek Request for Rehearing at 31-34.

The record of a proceeding may be reopened if there is "a change in core circumstances that goes to the very heart of the case."[25] Accokeek claims that "the very existence of a contested zoning proceeding" meets the standard for reopening the record.[26] We disagree. Accokeek has not identified any "change in core circumstances." As further discussed below, the Commission need not delay action to take into account local zoning proceedings. Therefore, the Accokeek motion to reopen the record is denied.

12. On March 6, 2018, and July 11, 2018, Accokeek filed self-styled motions to lodge: (1) alleged evidence of harm to the Northern Long-eared bat from the Charles Station and; (2) the Charles County BOA decision denying Dominion's zoning application. While Accokeek denominates their submissions as motions to lodge, we are not bound by the parties' own characterization of the pleadings. We instead examine the substance of the pleadings. Here, the motions reflect Accokeek's effort to expound on the arguments in their request for rehearing, through additional arguments and factual allegations. The motions are, in effect, late-filed supplements to Accokeek's request for rehearing. Parties are not permitted to supplement their rehearing requests after the thirty-day period imposed by NGA section 19(a),[27] has expired, as it has here.[28] Therefore, the Accokeek attempts to supplement its rehearing request as motions to lodge are rejected.

IV. Commission Determination

A. Adequacy of the Environmental Assessment

13. NEPA requires a federal agency considering "major Federal actions significantly affecting the quality of the human environment" to prepare a "detailed statement" on the environmental impacts of the proposed action.[29] "NEPA is a procedural statute; it does

[25] 18 C.F.R. § 385.716 (2017).

[26] Accokeek Request for Rehearing at 31-32.

[27] 15 U.S.C. § 717r(a) (2012). This deadline passed on February 22, 2018.

[28] *See Pub. Util. Dist. No. 1 of Klickitat Cty., Wash.*, 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); *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.").

[29] 42 U.S.C. § 4332 (2012).

not force an agency to adopt environmentally friendly outcomes.[30] "Nor does NEPA mandate that every conceivable study be performed and each problem be documented from every angle to explore its every potential for good or ill."[31] Rather, it requires that officials and agencies take a "hard look" at environmental consequences."[32] The "hard look" requirement "encompasses a thorough investigation into the environmental impact of an agency's action and a candid acknowledgement of the risks that those impacts entail."[33] In carrying out their NEPA responsibilities, agencies are governed by the rule of reason.[34]

1. Direct Project Emissions

14. Accokeek acknowledges that the EA calculates direct project emissions, i.e. emissions from the construction and operation of the project facilities, but claims that the EA underestimates such emissions. Specifically, Accokeek asserts that the Commission's quantification of GHG emissions from Charles Station, including methane emissions, relied on an incorrect estimate of the likely number of annual "blowdown" events[35] at Charles Station.[36]

15. We acknowledge that the EA incorrectly stated that blowdowns would occur "several" times per year. However, other than the inadvertent use in the EA of the term "several" to describe the number of unit blowdowns per year, Accokeek does not explain why it believes the Commission's calculation of Charles Station emissions is not

[30] *National Audubon Society v. Department of the Navy*, 422 F.3d 174 (4th Cir. 2005).

[31] *Algonquin Transmission LLC*, 161 FERC ¶ 61,255, at P 65 (2018).

[32] *Id.*

[33] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (*Robertson*).

[34] *Algonquin Gas Transmission LLC*, 154 FERC ¶ 61,048, at P 223 (2016).

[35] A blowdown event is the process of releasing natural gas from a pressurized system into the atmosphere, which results in the release of primarily methane, as well as smaller volumes of other GHGs.

[36] Accokeek Request for Rehearing at 23 (citing EA at 55 which stated that "Unit blowdowns would occur several times per year").

accurate. As the Certificate Order explains,[37] and we reaffirm here, the estimate of the total potential operational emissions from Charles Station was calculated using the assumption that the station would have 100 blowdown events per year.[38] We further note that, contrary to Accokeek's assertion,[39] the Commission's greenhouse gas (GHG) emissions estimates account for methane leaks and fugitive emissions.[40] In any event, total emissions from Charles Station will be below the thresholds for permitting as a major source.[41] Instead Charles Station will be permitted by the Maryland Department of the Environment as a minor source for both the New Source Review and National Emission Standards for Hazardous Air Pollutants programs under the Clean Air Act.[42] We deny rehearing on these points.

2. Downstream Greenhouse Gas Emissions and Climate Change

16. Accokeek claims that the Commission inadequately or incorrectly considered GHG emissions in discussing the project's potential cumulative impact on climate change.[43] Accokeek acknowledges the Commission's quantitative assessment of GHG emissions and qualitative discussion of climate change impacts,[44] but claims that the Commission was required to determine whether GHG emissions associated with downstream combustion of the transported gas will result in significant impacts on the human environment, and further asserts that those emissions are significant "both absolutely and in context."[45]

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[37] Certificate Order, 162 FERC ¶ 61,056 at P 109.

[38] *Id.* (explaining that the EA uses Cove Point's estimated number of blowdowns, i.e., 100 blowdown events for its emissions calculation). *See also* Cove Point LNG Application, Res. Report 9. App. 9-C at 2-3. *See also* EA at 56, Tbl. B.8.1-4.

[39] Accokeek Request for Rehearing at 23.

[40] EA at 51. *See also* Certificate Order, 162 FERC ¶ 61,056 at P 126.

[41] EA at 49-51.

[42] *Id.*

[43] Accokeek Request for Rehearing at 21-25, 30-31.

[44] *Id.* at 21-23. *See also* EA at 78-80.

[45] *Id.* at 24-25 (citing *Sierra Club v. FERC*, 867 F.3d. 1357, 1374. (D.C. Cir. 2017) (*Sierra Club*)).

17. The EA conservatively estimated the GHG emissions that full combustion of the volume of natural gas transported would produce.[46] The EA explained that this was likely an overestimate of GHG emissions, and added that displacement of other fuel could actually lower total GHG emissions.[47]

18. Accokeek contends that the GHG emissions are significant.[48] As the EA explained, however, "there is currently no scientifically accepted methodology to correlate specific quantities of GHG emissions with discrete changes to average temperature, annual precipitation, surface water temperature, or other physical effects on the environment in the northeast region."[49] We agree.[50] Accokeek insists that the Commission can and must ascribe significance to the quantified emissions, and offers comparisons to vehicle emissions and coal-fired power plant emissions in support.[51] Such comparisons do not, however, address the issue identified by the Commission – i.e., the absence of a standard methodology to determine how a project's contribution to GHG emissions would meaningfully translate into physical effects on the environment for the purposes of evaluating the Project's impacts on climate change. We are aware of no standard established by international or federal policy, or by a recognized scientific body that would assist us to ascribe significance to a given rate or volume of GHG emissions.[52]

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[46] EA at 79-80.

[47] *Id.* at 80.

[48] Accokeek Request for Rehearing at 23, 25.

[49] EA at 80.

[50] Certificate Order, 162 FERC ¶ 61,056 at P 140.

[51] Accokeek Request for Rehearing at 22-25.

[52] *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233, at PP 26-51 (2018), *order denying reh'g*, 164 FERC ¶ 61,099, at PP 23-37 (2018) (explaining that there is no widely-accepted threshold of significance for GHG emissions and why Social Cost of Carbon is not pertinent to the Commission's review of certificate applications); *see also* EA at 80. Further, the dissent relies on *High Country Conservation Advocates v. U.S. Forest Service* (*High Country*), 52 F. Supp. 3d 1174, 1193 (D. Colo. 2014) and *Montana Environmental Information Center v. U.S. Office of Surface Mining (Montana Environmental Information Center*) No. CV 15-106-M-DWM, 2017 WL 5047901 (D. Mont. Nov. 3, 2017) to argue that the Commission must calculate the Social Cost of Carbon. For the same reasons we have previously explained, *High Country* and *Montana Environmental Information Center* are distinguishable from the circumstances here. *See Millennium Pipeline Co., L.L.C.*, 164 FERC ¶ 61,039 at PP 23-28 (2018) (distinguishing

Nonetheless, the EA included a qualitative discussion that addressed various effects from GHG emissions.[53] The EA acknowledges that the quantified greenhouse gas emissions from the project itself and from the end-use combustion of transported gas will contribute incrementally to climate change.[54]

19. Accokeek also asserts that the Commission was required to take into account impacts on the "global climate system" because GHG "emissions affect the planet as a whole."[55] The Commission has repeatedly recognized that GHGs are gases that absorb infrared radiation in the atmosphere, and have been "determined to endanger public

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Montana Environmental Information Center); *Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095 (2015) (distinguishing *High Country*), *aff'd sub nom. EarthReports*, 828 F.3d 949.

[53] EA at 79. Accokeek also asserts that "the EA fails to require or assess mitigation measures to reduce greenhouse gas emissions from the Project." Accokeek Request for Rehearing at 25 n.32. The EA described in detail the federal and state regulatory regimes that will control the project's direct emission sources. *See* EA § 8.1. The EA also discussed mitigation measures for construction emissions, operational emissions, and measures addressing the full spectrum of environmental resources. *See* EA at § 8.1.4 (construction), 8.1.5 (operational), § 80-83 (summarizing recommended mitigation measures); *see also* Certificate Order, 162 FERC ¶ 61,056 at PP 102-116 (discussion of air quality impacts and mitigation measures, including existing regulatory regimes). As we have explained elsewhere, "[w]e do not believe there are any additional mitigation measures the Commission could impose with respect to the GHG emissions analyzed in the [EA]. The Commission lacks jurisdiction to impose mitigation measures on downstream end-use consumers, be they power plants, manufacturers, or others." *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 at P 57.

[54] Certificate Order at P 140 (citing EA at 54-57, 76-80). This combustion will result in about a 3.5 percent increase of GHG emissions in Maryland and Virginia and a 0.11 percent increase of national GHG emissions, based upon 2015 U.S. Energy Information Administration state inventories and U.S. Environmental Protection Agency national inventories.

[55] Accokeek Request for Rehearing at 22 n.17. Accokeek does not identify a specific error with respect to the scope of the Commission's qualitative discussion of potential cumulative climate change impacts in the Northeast region, or explain how expanding the qualitative discussion of climate impacts would alter the Commission's analysis or outcome. *See* 18 C.F.R. § 385.713(c)(1) (2017) (requiring a request for rehearing to "[s]tate concisely the alleged error in the final decision or final order").

health and welfare by causing human induced global climate change."[56] Accokeek ignores the fact that the EA's observed that "[g]lobally, GHGs have been accumulating in the atmosphere since the beginning of the industrial era (circa 1750); [c]ombustion of fossil fuels (coal, petroleum, and natural gas), combined with agriculture and clearing of forests, is primarily responsible for the accumulation of GHG; [a]nthropogenic GHG emissions are the primary contributing factor to climate change; and [i]mpacts extend beyond atmospheric climate change alone and include changes to water resources, transportation, agriculture, ecosystems, and human health."[57] The EA also included a discussion of climate impacts from a regional perspective of the Northeast (heat waves, coastal flooding, and river flooding; infrastructure; and agriculture and ecosystems).[58] Accokeek fails to explain how the Commission's focus on potential climate impacts in the Northeast region falls short of CEQ standards applicable to the preparation of environmental assessments.[59]

3. Impacts to Wildlife

20. Accokeek inaccurately claims that the Commission's determination that project impacts on wildlife are "minor" violates the "hard look" requirement.[60] At the outset, Accokeek erroneously states that the "EA makes clear that the Project's impacts on local wildlife from the construction of Charles Station will be substantial."[61] This is not correct. Nowhere does the EA say that impacts on wildlife from construction of Charles Station "will be substantial."

21. To the contrary, the Commission's environmental review determined that impacts on wildlife from Charles Station construction "are minor rather than substantial because a limited amount of land, 6.4 acres, would be permanently converted to developed land,

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[56] *See e.g. Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 273, n.748 (2018).

[57] EA at 79.

[58] *Id.*

[59] *See* 40 C.F.R. § 1508.9(b) (2017) (requiring agency to "briefly provide sufficient evidence and analysis for determining whether to prepare" an EIS).

[60] Accokeek Request for Rehearing at 26.

[61] *Id.*

which would result in minor impacts given the mobile nature of most wildlife in the area and the availability of similar habitat adjacent to and near the facility boundaries."[62]

22. The Commission also adequately considered the specific wildlife impacts Accokeek raises on rehearing, including potential impacts from loss of vegetation and habitat, temporary species displacement, mortality of less mobile animals such as small rodents, as well as noise and lighting impacts on migratory birds.[63] These impacts are not additional to the impacts that are the basis for the EA conclusion that wildlife impacts are minor. Instead, they are incorporated into the finding that wildlife impacts are minor. We note that most impacts will be temporary, and that mitigation measures are in place to further minimize impacts on wildlife, including noise and lighting impacts.[64] Further, that a given impact, such as the conversion of upland forest to developed land, may be permanent, does not necessarily render that impact significant. We note in particular that the Commission fully addressed comments concerning potential impacts to Piscataway National Park, explaining that the land at the proposed Charles Station site immediately adjacent to the Park would not be developed or impacted during construction or operation of the Station.[65] Moreover, the fact that a wide range of potential impacts from construction and operation were thoroughly considered in the EA shows that the Commission engaged in the requisite "hard look" as required by NEPA.

4. Charles County BOA Zoning Action

23. Accokeek also asserts that because the Commission "has not paid any attention to the exhaustive fact finding exercise" of the Charles County BOA, the NEPA hard look standard has not been met.[66] Accokeek claims that to comply with the hard look standard, the Commission should have waited for the Charles County BOA to act on the Charles Station local zoning "special exception" permit before issuing the Certificate Order.[67] Accokeek's argument is without merit. Instead, the EA fully complies with the hard look standard.

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[62] EA at 25.

[63] Accokeek Request for Rehearing at 26-29.

[64] EA at 72.

[65] *Id.* at 35.

[66] Accokeek Request for Rehearing at 5-6.

[67] *Id.*

24. While the Commission encourages cooperation between interstate pipelines and local authorities, state and local agencies may not prohibit or unreasonably delay, through application of state or local laws, the construction or operation of facilities approved by this Commission.[68] The Commission cannot be required, pursuant to NEPA, to delay action on a certificate application until a local zoning proceeding concludes, as Accokeek suggests. That turns federal preemption on its head with local zoning authorities determining when the Commission may act. Under Maryland state law the Charles County BOA has jurisdiction over land use appeals, special exceptions and variances.[69] Consequently, the Charles County BOA is subject to federal preemption to the extent it acts in "conflict with federal regulation, or would delay construction and operation of facilities approved by this Commission."[70] It would be both unlawful and counter to the purpose of the NGA for the Commission to delay action on the Cove Point LNG certificate application until the Charles County BOA completed its review.[71]

5. Need for an Environmental Impact Statement

25. Accokeek faults the Commission for relying on an EA, instead of an EIS. In particular, Accokeek claims that climate change impacts arising from GHG emissions associated with the project, as well as wildlife impacts, are significant, and therefore required the Commission to prepare an EIS, instead of an EA.[72] Accokeek is incorrect.

26. Under Commission regulations "if the Commission believes that a proposed action . . . may not be a major Federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared."[73] Accordingly, Commission staff prepared an EA and found that approval of the project

[68] Certificate Order, 163 FERC ¶ 61,197 at P 34.

[69] MD Code § 4-305 (2012).

[70] *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,346-47 (1992); *see also* U.S. Constitution, art. V cl. 2*; Schneidewind v. ANR Pipeline Co.* 485 U.S. 300 (1988); *National Fuel Gas Supply Corp. v. Public Service Comm'n of the State of New York*, 894 F.2d 571 (1990).

[71] Accokeek Request for Rehearing at 5-6.

[72] *Id.* at 3, 5, 20-30.

[73] *See* 18 C.F.R. § 380.6(b).

would not constitute a major federal action significantly affecting the quality of the human environment.[74]

27. NEPA and the CEQ's implementing regulations offer no direct guidance for circumstances where, as discussed above, there is no established standard that would assist the Commission to ascribe significance to an impact on a particular resource, here GHG emissions. If the Commission were to prepare an EIS here, as Accokeek urges,[75] the EIS would simply reiterate the discussion of GHG emissions and climate change set forth in the EA.[76] This would neither enhance agency decisionmaking nor result in more meaningful public comment, and Accokeek does not demonstrate otherwise.[77] Accordingly, we find that preparation of an EIS in these circumstances is not consistent with NEPA's rule of reason.[78] In any event, and as further addressed above, the

[74] EA at 9.

[75] Accokeek Request for Rehearing at 21 (claiming that the "EA's recommended finding of no significant impact . . . is contradicted by record evidence of the Project's likely contribution to climate change and by the Commission's finding that it cannot determine whether the Project's impact on climate change would be significant"); *see also id.* at 24.

[76] On the other hand, we note that CEQ regulations governing environmental impact statements address how to analyze incomplete or unavailable information about reasonably foreseeable significant impacts. *See* 40 C.F.R. § 1502.22(b)(1) (2017). These requirements are not applicable here, but we note that the Commission's discussion of GHG emissions and climate change in the EA, Certificate Order and this order includes all of the information required by the regulation.

[77] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) ("The NEPA EIS requirement serves two purposes. First, '[i]t ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.' Second, it 'guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.'") (quoting *Robertson*, 490 U.S. at 349).

[78] *See id.* at 767 ("Also, inherent in NEPA and its implementing regulations is a rule of reason, which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process. Where the preparation of an EIS would serve no purpose in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare an EIS.") (internal citations omitted); *see also*

Commission's quantitative and qualitative discussion of GHG emissions satisfies NEPA requirements,[79] and Accokeek's arguments that the Commission's discussion of GHG emissions, climate change impacts and wildlife impacts erroneously resulted in a finding of no significant impact lack merit.

B. Public Participation

28. Accokeek also contends, inaccurately, that the Commission's approach to state and local concerns in this proceeding violates CEQ public participation requirements.[80] CEQ regulations require agencies "to make diligent efforts to involve the public in preparing and implementing their NEPA procedures including, among other things, providing proper notice, holding public meetings, soliciting appropriate information from the public, and making EISs and the related comments available to the public."[81]

29. The Commission has fully complied with the relevant CEQ public participation regulations.[82] On February 15, 2017, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Eastern Market Access Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session (NOI).[83]

30. The NOI was published in the Federal Register and mailed to 542 entities, including federal, state, and local government representatives and agencies; elected officials; Native American tribes; environmental and public interest groups; newspapers and libraries in the Project area; and affected landowners and interested parties. On March 2, 2017, we conducted a public scoping session to provide an opportunity for stakeholders to learn more about the Project and identify issues to be addressed in

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40 C.F.R. § 1500.1 (2017) ("NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.").

[79] *See* 40 C.F.R. § 1508.9(b) (requiring agency to "briefly provide sufficient evidence and analysis for determining whether to prepare" an EIS).

[80] *Id.* at 7.

[81] 40 C.F.R. § 1506.6 (2017).

[82] Commission regulations, 18 C.F.R. § 380.9, specifically provide that the Commission "will comply with the requirements of 40 C.F.R. § 1506.6 of the regulations of the Council [CEQ] for public involvement in NEPA."

[83] EA at 7-8.

the EA. The transcripts of the public scoping session and all written scoping comments are part of the public record for the Project and are available for viewing on the FERC website.[84]

31. Accokeek also claims that the Commission has erred by not complying with CEQ procedures for identifying and mitigating land use and environmental conflicts between the agency and state and local governments, engaging in inadequate outreach[85]and insufficient "intergovernmental cooperation."[86] We agree that it is preferable to work cooperatively with local and state authorities on these matters when reasonable and feasible to do so. As discussed above, the record confirms that the Commission engaged in substantial outreach and intergovernmental cooperation.[87]

32. Moreover, the identification and mitigation of environmental conflicts is addressed extensively throughout the EA. The Certificate Order "Appendix- Environmental Conditions for the Eastern Market Access Project" includes extensive mitigation measures that must be implemented by Cove Point LNG and monitored by FERC staff.

33. Accokeek also asserts that in the Certificate Order the Commission unlawfully sought to preempt state environmental permitting pursuant to the Clean Air Act (CAA).[88] Accokeek is incorrect. Rather than seeking to preempt Maryland's CAA authority, the Commission included in the Certificate Order a clause that provided that the Commission's approval of the Certificate Order was conditioned on the issuance of air quality permits by the Maryland Department of the Environment (MDE) the agency responsible for air quality regulation pursuant to the CAA in Maryland. [89] The Commission has held that "it is entirely appropriate for the Commission to issue an NGA certificate conditioned on the certificate authority subsequently obtaining permits under

[84] *Id.*

[85] EA at 4.

[86] *Id.* at 4, 7, 9

[87] Certificate Order, 162 FERC ¶ 61,056 at PP 29-32.

[88] Accokeek Request for Rehearing at 6-11; 42 U.S.C. § 7401 *et seq.* (2012).

[89] *Id.* at 5.

other federal laws."[90] This has been affirmed by the U.S. Court of Appeals.[91] Cove Point LNG's "minor source" air quality permit application is currently pending, and MDE has made a "tentative determination" to grant the permit.[92]

C. Reliance on Incorrect and Incomplete Information

34. Accokeek also argues that the Commission acted in an "arbitrary and capricious" manner because of its "reliance on incorrect and incomplete information supplied by the Applicant."[93] Accokeek does not specifically identify the alleged "incorrect and incomplete information" it is referring to. However, elsewhere in their request for rehearing Accokeek states that "[t]hat the Commission's hasty action is having a mischievous impact on all deliberations, and will result in a record before appellate courts that is confused and incomplete. FERC should rescind its order and await the outcomes on the local and state level."[94]

35. This proceeding was far from hasty. The NGA and NEPA processes took approximately two years from the time Cove Point LNG filed its application for a certificate on November 15, 2016, until the Certificate Order was issued on January 23, 2018.[95] It strains credulity for Accokeek to claim that it was arbitrary and capricious for the Commission to issue the Certificate Order after a thorough and deliberative two-year process subject to the NGA, NEPA and other applicable law.

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[90] *Dominion Transmission, Inc.* 143 FERC ¶ 61,148, at P 20 (2013).

[91] *Myersville Citizens For a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1319-22 (D.C. Cir. 2015).

[92] *See* MDE, *Air And Radiation Administration, Fact Sheet and Tentative Determination, Dominion Energy Cove Point LNG, LP – Charles Station*, http://mde.maryland.gov/programs/Permits/AirManagementPermits/Documents/Dominion%20Charles%20Station%20tentative%20determination%202018.pdf. MDE held a public hearing on the draft permit on March 28, 2018. A comment period scheduled to end on April 13, 2018 has been extended through June 12, 2018. *See* http://mde.maryland.gov/programs/Permits/AirManagementPermits/Pages/index.aspx.

[93] Accokeek Request for Rehearing at 5.

[94] *Id.* at 10.

[95] Certificate Order, 162 FERC ¶ 61,056 at P 1.

36. The Commission does not wait for the issuance of federal, state and local permits to assess project impacts in order to make conclusions under NEPA or the NGA. The issuance of federal, state, and local permits and approvals proceed on a parallel, but separate, review process under the purview of the respective agencies with jurisdiction. It is not practical, nor required, for the Commission to withhold its analysis and decisions until all permits are issued. In spite of the best efforts of those involved, it may be impossible for an applicant to obtain all approvals necessary to construct and operate a project in advance of the Commission's EA or order without unduly delaying the project.[96] The Commission takes this approach in order to make timely decisions on matters related to our NGA jurisdiction that will inform project sponsors and other permitting agencies, as well as the public. This approach is consistent with the Commission's broad conditioning powers under section 7 of the NGA.

The Commission orders:

The request for rehearing and motion to reopen the record are denied, and the motions to lodge are rejected, as discussed in the body of this order.[97]

By the Commission. Commissioner LaFleur is dissenting with a separate statement attached.
Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[96] *See, e.g., Crown Landing LLC*, 117 FERC ¶ 61,209, at P 26 (2006); *Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,277, at PP 225-231 (2002).

[97] The Commission is aware of the recent understanding reached between Dominion Resources and advocates for President George Washington's Mount Vernon, Virginia estate to work to reach agreement to relocate the Charles Station compressor in Charles County, Maryland, to preserve the view from Mount Vernon across the Potomac River to Maryland. If an agreement is reached on a new location for the Charles Station, it will be subject to review and approval by the Commission. However, the Commission clarifies that the decision to deny rehearing to Accokeek Intervenors in this proceeding is entirely without prejudice to any future proposal to relocate the Charles Station.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy Cove Point LNG, LP Docket No. CP17-15-001

(Issued August 10, 2018)

LaFLEUR, Commissioner, *dissenting*:

In today's order, the Commission denies rehearing of its January 23, 2018 order authorizing Dominion Energy Cove Point LNG/ LP (Cove Point LNG) to construct, install, operate, and maintain natural gas compression facilities in Charles County, Maryland, and Loudoun and Fairfax Counties, Virginia (Eastern Market Access Project), to provide up to 294,000 dekatherms per day (Dth/d) of firm transportation service.[1] Upon consideration of the rehearing request, I believe the fact pattern presented in this case, the expansion of pipeline throughput that will serve clearly-identified downstream power plants, falls squarely within the precedent of *Sierra Club v. FERC*.[2] Given that the majority's analysis here suffers from the same flaws as its decision on remand in *Sabal Trail*,[3] I respectfully dissent.

One of the two stated purposes of the Eastern Market Access Project is to serve Mattawoman Energy Center, a planned 990-megawatt natural gas-fired generation facility in Maryland.[4] Under *Sabal Trail*, the downstream greenhouse gas (GHG) emissions associated with the combustion of transported gas at that facility are indirect impacts that must be quantified and considered as part of our National Environmental Policy Act (NEPA) review. However, the Commission failed to identify those emissions as indirect impacts, let alone sufficiently quantify and consider those emissions as required by NEPA. Among other arguments raised on rehearing, the Accokeek Intervenors[5] claim that the Commission inadequately or incorrectly considered GHG

[1] *Dominion Energy Cove Point LNG, LP*, 162 FERC ¶ 61,056 (2018) (Certificate Order).

[2] 867 F.3d 1357 (D.C. Cir. 2017) (*Sierra Club*).

[3] *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*) *(Sabal Trail*).

[4] Environmental Assessment (EA) at 1.

[5] Accokeek Intervenors (also referred to as "Accokeek") are comprised of Accokeek, Mattawoman, Piscataway Creeks Community Council, Kelly Canavan, Joshua Kaufman, Osman Kivrak, Dr. Theresa Lazar, Paul Livingston, Jasmine Waring and the

emissions associated with the downstream combustion of the transported gas. In this case, the EA quantified and disclosed the upper-bound estimate of downstream GHG emissions from the Project.[6] The Rehearing Order also concluded that, assuming the upper-bound estimate, the combustion would increase GHG emissions by about 3.5 percent in Maryland and Virginia, and increase GHG emissions by 0.11 percent, nationally.[7] While acknowledging that analysis in the Rehearing Order, the majority fails to make a determination regarding the significance of those emissions. Instead, the majority again relies on its conclusion that there is no "standard established by international or federal policy, or by a recognized scientific body that would assist us to ascribe significance to a given rate or volume of GHG emissions."[8]

I disagree with this conclusion and believe that the majority's failure to make a significance determination does not comply with *Sierra Club*. Under NEPA, when evaluating the significance of a particular impact, the Commission must consider both context[9] and intensity.[10] While it appears that the EA included qualitative discussion as a means to provide context regarding the impact, the majority makes no finding regarding the intensity of the identified environmental impact. I recognize that determining the severity of a particular impact would require thoughtful and complex analysis, and I am confident that the Commission could perform that analysis if it chose to do so; indeed, we routinely grapple with complex issues in many other areas of our work.[11] But in order to

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[6] The EA includes an estimate that if all 294,000 Dth/d of natural gas were transported to combustion end uses, downstream end-use would result in the emissions of about 5.9 metric tpy of CO_{2e}. EA at 79-80. The Commission should have sought more precise information to develop the record in this proceeding, to allow the Commission to more accurately assess the indirect impacts of downstream GHG emissions by calculating gross and net GHG emissions.

[7] Rehearing Order at n.56.

[8] *Id.* P 18.

[9] 40 C.F.R. § 1508.27(a) (2017) (Context means "that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests and the locality.").

[10] 40 C.F.R. § 1508.27(b) (2017) (Intensity refers to "the severity of the impact.").

[11] Many of the core areas of the Commission's work have required the development of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad

comply with NEPA, the Commission cannot simply inventory GHG emissions for the individual project – it must go an additional step and determine whether a particular level of emissions is significant.[12] I further note that, as I have repeatedly argued, the Social Cost of Carbon is a readily-available tool for translating the GHG emissions from a particular project into monetized climate damages, which could assist the Commission in assessing the significance of those emissions.

Given the majority's failure to comply with *Sierra Club*, I cannot support denying rehearing in this case. Accordingly, I respectfully dissent.

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Cheryl A. LaFleur
Commissioner

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authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, NGA, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a discounted cash flow method to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. *See also*, *e.g.*, *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System).

[12] *See, e.g.*, *Sierra Club v. U.S. Dept. of the Interior*, Opinion No. 18-1082 at *17 (4th Cir. Aug. 6, 2018) (finding that an agency "cannot escape its statutory and regulatory obligations by not obtaining accurate scientific information").

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy Cove Point LNG, LP Docket No. CP17-15-001

(Issued August 10, 2018)

GLICK, Commissioner, *dissenting in part*:

Today's order denies rehearing of the Commission's decision to certificate Dominion Energy Cove Point LNG's Eastern Market Access Project (Project). I dissent from the order because it falls short of our obligations under the Natural Gas Act (NGA)[1] and the National Environmental Policy Act (NEPA).[2] The Commission maintains that it is not required to consider the harm from the Project's contribution to climate change. Even though the Commission quantified the Project's downstream greenhouse gas (GHG) emissions, the Commission nonetheless fails to determine whether the resulting harm from climate change is significant.[3] I dissent in part from today's order because I believe the Commission cannot find that the Project is in the public interest without first considering the significance of the Project's contribution to climate change.[4]

As today's order explains, the Project will add compression to the Cove Point LNG pipeline to provide incremental transportation capacity, delivering a portion of the natural gas to the Mattawoman Energy Center power plant, along with other

[1] 15 U.S.C. § 717f (2012).

[2] 42 U.S.C. § 4321 *et seq.* (2012).

[3] *Dominion Energy Cove Point LNG/LP*, 164 FERC ¶ 61,102, at P 18 (2018) (Rehearing Order).

[4] Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

destinations.[5] Therefore, there is no question that downstream GHG emissions as a result of end-use combustion are a reasonably foreseeable indirect impact of the Project. While the order provides a "full-burn" analysis of the transportation capacity of the Project,[6] the Commission ends its analysis there. In doing so, it fails to determine whether the Project's downstream GHG emissions will result in a significant environmental impact.[7]

Quantifying and disclosing downstream GHG emissions are necessary steps in evaluating the Project's indirect impact on climate change, but cataloguing these pollutants and acknowledging GHG emission contribute to climate change is not enough to satisfy our statutory obligations.[8] The NGA and NEPA require more.[9] In *Sierra Club v. FERC* (*Sabal Trail)*, the D.C. Circuit held that the Commission is required to "discuss the significance" of GHG emissions caused by the pipeline and to "quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so."[10] Yet, the Commission claims here it is unable to consider the identified downstream GHG by stating "[w]e are aware of no standard established by international or federal policy, or by a recognized scientific body that would assist us to ascribe significance to a given rate of volume of GHG emissions."[11]

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[5] Environmental Assessment at 1 (EA).

[6] *Id.* at 79–80. The EA includes an estimate that if all natural gas transported by the Project were combusted, downstream end-use would result in the emissions of about 5.9 million tons of carbon dioxide equivalents per year.

[7] *See* Accokeek Request for Rehearing at 24–25.

[8] While I supported the Commission's original decision to authorize this certificate, in the following months, the Commission has announced a new policy that fails to adequately consider the environmental harm caused by a pipeline's contribution to climate change. Accordingly, I must dissent from today's order.

[9] *See also Pub. Utils. Comm'n of Cal. v. FERC*, 900 F.2d 269, 281 (D.C. Cir. 1990) (The public interest standard under the NGA includes factors such as the environment and conservation, particularly as decisions concerning the construction, operation, and transportation of natural gas in interstate commerce "necessarily and typically have dramatic natural resource impacts.").

[10] *Sabal Trail*, 867 F.3d at 1375.

[11] Rehearing Order, 164 FERC ¶ 61,102 at P 18.

As I have previously explained,[12] the Commission has available tools to ascribe significance to a Project's GHG emissions. The Social Cost of Carbon 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. Furthermore, the U.S. Environmental Protection Agency (EPA) recommended an approach for considering the significance of the harm from a project's contribution to climate change in its comments on the Commission's pending review of the natural gas certification process. EPA explains that "even absent a full [cost-benefit analysis]," estimates of the Social Cost of Carbon "may be used for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in GHG emissions provides useful information in its environmental review or public interest determination."[13] The lack of an external threshold to evaluate significance does not prevent the Commission from using available tools to develop one. The CEQ regulations expressly outline a framework for determining whether the Project's impacts on the environment should be considered significant.[14]

Finally, the Commission suggests that it has satisfied its obligation to consider the harm caused by the Project's contribution to climate change with a summary acknowledgment that GHG emissions contribute to climate change, while still avoiding making a determination of whether the harm caused specifically by the Project's contribution to climate change is significant. But in refusing to actually consider the Project's potential impact, the Commission has failed to take the "hard look" that NEPA demands and that *Sabal Trail* explicitly required.[15]

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[12] *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233 at 7–8 (2018) (Glick, Comm'r, dissenting).

[13] U.S. Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018).

[14] 40 C.F.R. § 1508.27 (2017) (setting forth a list of factors agencies should rely on when determining whether a project's environmental impacts are "significant" considering both "context" and "intensity").

[15] *See Sabal Trail*, 867 F.3d at 1375; s*ee also Mont. Envtl. Info. Ctr. v. U.S. Off. of Surface Mining*, 274 F. Supp. 3d 1074, 1098 (D. Mont. 2017) (*Montana*), *amended in part, adhered to in part sub nom. Mont. Envtl. Info. Ctr. v. U.S. Off. of Surface Mining*, CV 15-106-M-DWM, 2017 WL 5047901 (D. Mont. Nov. 3, 2017) (explaining that even assuming an agency "conducted a full and thorough analysis of greenhouse gas emissions

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Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest.[16] This requires the Commission to find, on balance, that a project's benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to the existential threat of climate change.

For these reasons, I respectfully dissent in part.

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Richard Glick
Commissioner

from [a project]," such analysis alone does not constitute the required "hard look that ensured both the agency and the public were well-informed").

[16] 15 U.S.C. § 717f(c)(1)(A) (2012).