



STATEMENT

Dissent in Part of Commissioner Richard Glick on Northern Natural Gas' Rochester Project and Northern Lights 2019 Expansion

Date: February 21, 2019

Docket No.: CP18-534

Today's order authorizes Northern Natural Gas Company's (Northern) proposed Rochester Project and Northern Lights 2019 Expansion Project (Projects),¹ which will allow Northern to provide "additional natural gas for customers associated with increased energy needs in Minnesota," including delivery to a new electric generation facility.² I am dissenting in part from today's order because the Commission once again fails to adequately consider the Projects' impact on climate change in finding that the application before us is consistent with the public interest. Although the Commission quantifies the increase in greenhouse gas (GHG) emissions from the Projects' construction, operation, and certain downstream uses³, the Commission refuses to consider whether the contribution to climate change from these GHG emissions would be significant because, the Commission claims, it simply cannot do so.⁴ Today's order falls well short of our obligations under section 7 of the Natural Gas Act (NGA)⁵ and the National Environmental Policy Act (NEPA), leaving me no choice but to dissent in part.⁶

I have at length explained my concerns with the Commission's stubborn refusal to consider a project's potential impact on climate change in several recent proceedings⁷ and will not rehash them all here. Nevertheless, it is important to

¹ *Northern Natural Gas Company*, 166 FERC ¶ 61,136 (2019).

² Environmental Assessment (EA) at 2.

³ The EA acknowledges certain indirect downstream GHG emissions, assuming that "natural gas delivered by the Northern Lights 2019 Expansion Project would be used in quantities sufficient to power at year-round capacity the new 345 MW combustion turbine/heat recovery steam generator train," the Mankato Energy Center, resulting in GHG emissions of as much as 1,585,055 tons per year. EA at 163.

⁴ *Id.* at 163 (stating that "[t]here is no generally accepted significance criteria for GHG emissions. In addition, [the Commission] cannot determine the projects' incremental physical impacts on the environment caused by GHG emissions. Therefore we cannot determine whether the projects' contribution to climate change would be significant.").

⁵ 15 U.S.C. 717f (2012).

⁶ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852. NEPA requires the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. 40 C.F.R. § 1502.16 (a)-(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action" as well as a discussion of direct and indirect effects and their significance.). In so doing, the Commission must take a "hard look" at the environmental impacts of its decisions. *See, e.g., Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). A standard that can only be understood to require the Commission to evaluate whether the pipeline's contribution to climate change causes significant harm to the environment and affected communities.

⁷ *See Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting); *see also Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221 (2018) (Glick, Comm'r, dissenting in part); *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (Glick, Comm'r, dissenting in part).



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highlight the fact that the Commission continues to exclude climate change from playing any meaningful role in its decisionmaking process. In particular, the Commission here refuses to consider the Projects' indirect emissions or to make any effort to consider whether the reasonably foreseeable greenhouse gas emissions are significant, as the law requires.⁸ The failure to conduct that analysis prevents the Commission from seriously addressing the Projects' potential contribution to climate change, which is a necessary step in evaluating whether the Projects are consistent with the public interest.⁹ That is a far cry from what good government and the law demand.

The Commission's failure to meaningfully consider climate change forces me into dissenting from certificate orders that I might otherwise support. Prior to issuing a section 7 certificate, the Commission must find both that the proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.¹⁰ Although the record includes information regarding the Projects' need, which is an important consideration, need alone is not sufficient to find that the Projects are consistent with the public interest. Instead, the Commission must also determine that the Projects' benefits outweigh their adverse impacts, including their GHG emissions, which the Commission cannot do without meaningfully evaluating the impacts of those emissions. I cannot join an order that countenances such an incomplete assessment of a project's adverse impacts, regardless of what I might otherwise think of that project.

For these reasons, I respectfully dissent in part.

⁸ *Sierra Club v. FERC*, 867 F.3d 1373, 1374 (D.C. Circuit 2017) (*Sabal Trail*) ("The [environmental document] . . . needed to include a discussion of the 'significance' of this indirect effect"). Council on Environmental Quality (CEQ) regulations adopt a two-step framework for determining whether an environmental impact is significant. Agencies must consider both the "context" of the proposed action and the "intensity" of the environmental consequences. 40 C.F.R. § 1508.27 ("Significantly as used in NEPA requires considerations of both context and intensity."); *id.* ("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."); *id.* ("Intensity" . . . refers to the severity of the impact, . . . [including t]he degree to which" it affects considerations including "public health or safety" and the environment.).

⁹ Section 7 of the NGA "requires the Commission to evaluate all factors bearing on the public interest," *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959), which *Sabal Trail* authoritatively held includes a proposed pipeline's contribution to the harms caused by climate change, 867 F.3d at 1373. That conclusion was essential to the Court's holding because, without it, the Court would not have supplied a basis for distinguishing cases involving NGA section 3. See *Sabal Trail*, 867 F.3d at 1372-73.

¹⁰ See *id.* at 1373 (explaining that section 7 of the NGA requires the Commission to balance "'the public benefits [of a proposed pipeline] against the adverse effects of the project,' including adverse environmental effects" (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015))).