



STATEMENT

Dissent in Part of Commissioner Richard Glick on Transcontinental Gas Pipeline (Rivervale South to Market)

Date: August 10, 2018

Docket No.: [CP17-490-000](#)

In today's order, the Commission grants Transcontinental Gas Pipe Line Company's (Transco) request for authorization to construct and operate its Rivervale South to Market Project (Project), finding that the Project is required by the public convenience and necessity.¹ The Commission also concludes that the Project will not have a significant effect on the environment.² In reaching these conclusions, the Commission maintains that it need not consider the harm from the Project's contribution to climate change. I believe that the Commission's refusal to do so falls well short of our obligations under the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA).⁴ While the Commission quantifies the Project's downstream greenhouse gas (GHG) emissions, the Commission nonetheless determines that upstream and downstream GHG emissions are not reasonably foreseeable and that it is not obligated to determine whether the resulting harm from the Project's contribution to climate change is significant.⁵ I dissent in part from today's order because I disagree with these conclusions and 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.⁶

The Commission continues to avoid addressing the harm caused by the Project's contribution to climate change, claiming that 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."⁷ However, the EA for the Project includes a "full-burn" analysis that quantifies the potential downstream GHG emissions associated with combusting the amount of gas that the Project could

¹ *Transcontinental Gas Pipe Line Company, LLC*, 164 FERC ¶ 61,101 (2018). (Certificate Order).

² *Id.* P 36 n.50; see also Final Environmental Assessment at 65 (EA).

³ 15 U.S.C. § 717f (2012).

⁴ 42 U.S.C. § 4321 *et seq.* (2012).

⁵ Certificate Order, 164 FERC ¶ 61,101 at PP 50-51, 53, 72.

⁶ 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).

⁷ Certificate Order, 164 FERC ¶ 61,101 at P 74.

transport.⁸ Nevertheless, the Commission refuses to recognize the harm from these emissions as an indirect effect of the Project, surmising that only where the record shows definitive information about the end use of the gas transported can the Commission conclude that downstream emissions from the consumption indirect effects.⁹ Similarly, the Commission concludes that the incremental transportation capacity of the pipeline will not “cause or induce the effect of additional or further shale gas production” absent information regarding the exact location, scale, and timing of any future production facilities.¹⁰ Such definitions of upstream and downstream indirect effects are overly narrow and circular.¹¹ NEPA does not permit agencies to so easily shirk their responsibilities to consider environmental consequences. Instead, it requires that the Commission engage in reasonable forecasting and estimation where doing so would further the statute’s two-fold purpose of ensuring that the relevant agency will “have available, and will carefully consider, detailed information concerning significant environmental impacts” and that this information will be “available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”¹²

As the U.S. Court of Appeals for the District of Columbia Circuit explained in *Sierra Club v. FERC (Sabal Trail)*, in the face of indefinite variables, “agencies may sometimes need to make educated assumptions about an uncertain future.”¹³ The Commission cannot point to the mere presence of uncertainty over upstream and downstream GHG emissions to excuse it from considering the harm from the Project’s contribution to climate change. In the case of new natural gas pipelines, it is reasonable to assume that building incremental transportation capacity will result in some level of combustion of natural gas and spur additional production, even if the exact details are not available. As the United States Court of Appeals for the Eighth Circuit explained in *Mid States*—a case that also involved downstream GHG emissions from new infrastructure for transporting fossil fuels—when the “nature of the effect” (end-use emissions) is reasonably foreseeable, but “its extent is not” (specific consumption activity producing emissions), an agency may not simply ignore the effect.¹⁴

⁸ EA at 59 (Calculating downstream GHG emissions based on the full design capacity of the Project). This calculation was made prior to the policy change, announced in *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 38-42, 59-63 (2018) (*New Market*), to exclude downstream GHG emissions calculations in cases where the exact end use location for consumption is not known.

⁹ Certificate Order, 164 FERC ¶ 61,101 at P 72 (“[W]here the record does not show a specific end use of the gas transported by the project, as is the case here, downstream emissions from the consumption of that natural gas are not indirect effects.”).

¹⁰ *Id.* at PP 50-51, 53.

¹¹ See *San Juan Citizens All. et al. v. United States Bureau of Land Mgmt.*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10 (D.N.M. June 14, 2018) (holding that it was arbitrary for the Bureau of Land Management to conclude “that consumption is not ‘an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption’” as “this statement is circular and worded as though it is a legal conclusion”). In adopting this narrow and circular definition, the Commission disregards the Project’s central purpose—to facilitate natural gas consumption by providing new supplies.

¹² *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

¹³ 867 F.3d 1357, 1374 (D.C. Cir. 2017).

¹⁴ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

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Based on the record here, it is entirely foreseeable that some portion of the natural gas transported through the Project will be combusted, emitting GHGs that contribute to climate change.¹⁵ While the applicant states generally that the project will support growing markets serving commercial, industrial and residential consumers, it also identifies the the potential beneficial impacts of the Project “on air quality by virtue of the fact that natural gas is a clean burning fuel in comparison to other fossil fuels.”¹⁶ It is equally foreseeable that the “nature of effect” will be GHG emissions resulting from end-use combustion, and the Commission can produce comparably useful information based on reasonable forecasts of the GHG emissions.¹⁷ This is the case here, where the Commission did estimate and disclose the potential GHG emissions resulting from downstream consumption, utilizing information provided in the record and publicly available analytical tools.¹⁸ Under these circumstances, the Commission must consider the harm caused by the Project’s contribution to climate change resulting from this likely end use.¹⁹

As I have said previously, quantifying a project’s GHG emissions, including reasonably foreseeable upstream and downstream emissions, is a necessary—but not sufficient—step in meeting the Commission’s obligations to consider a project’s environmental effects associated with climate change.²⁰ NEPA and the NGA’s public interest standard

¹⁵ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004). In order to evaluate circumstances in which downstream impacts of a pipeline facility are reasonably foreseeable results of constructing and operating the proposed facility, I am relying on precisely the sort of “reasonably close causal relationship” that the Supreme Court has required in the NEPA context and analogized to proximate cause. See *id.* at 767 (“NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause. The Court [has] analogized this requirement to the ‘familiar doctrine of proximate cause from tort law.’”) (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)); see also *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) (“Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct.”); *Staelens v. Dobert*, 318 F.3d 77, 79 (1st Cir. 2003) (“[I]n addition to being the cause in fact of the injury [the but for cause], the plaintiff must show that the negligent conduct was a proximate or legal cause of the injury as well. To establish proximate cause, a plaintiff must show that his or her injuries were within the reasonably foreseeable risks of harm created by the defendant’s negligent conduct.”) (internal quotation marks and citations omitted).

¹⁶ Transco Application at 15, 17.

¹⁷ In comments recently submitted in the Commission’s pending review of the natural gas certification process, the Environmental Protection Agency recommended a number of tools the Commission can use to quantify the reasonably foreseeable “upstream and downstream GHG emissions associated with a proposed natural gas pipeline.” These include “economic modeling tools” that can aid in determining the “reasonably foreseeable energy market impacts of a proposed project.” United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 3-4 (filed June 21, 2018) (explaining that the “EPA has emission factors and methods” available to estimate GHG emissions—from activities upstream and downstream of a proposed natural gas pipeline—through the U.S. Greenhouse Gas Inventory and the Greenhouse Gas Reporting Program); see *Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

¹⁸ EA at 59.

¹⁹ *Sabal Trail*, 867 F.3d at 1371-72; *id.* at 1374.

²⁰ See *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at 7 (2018) (Glick, Comm’r, dissenting); *Tennessee Gas Pipeline Company, L.L.C.*, 163 FERC ¶ 61,190, at 2 (2018) (Glick, Comm’r, dissenting in part); *Fla. Se. Connection, LLC*, 163 FERC ¶ 61,158, at 1-2 (Glick, Comm’r, dissenting in part); *Gulf South Pipeline Company, LP.*, 163 FERC ¶ 61,124, at 1-2 (Glick, Comm’r, dissenting in part); *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,223, at 6 (2018) (Glick, Comm’r, dissenting).



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require the Commission to consider not the GHG emissions themselves but the resulting environmental impact. The Commission not only refuses to consider the significance of the Project's climate-change impact, but also maintains that it lacks the means to do this.²¹

The Commission is incorrect insofar as it concludes that there is no "no standard methodology exists for ascribing significance to a given volume of GHG emissions."²² That is precisely what the Social Cost of Carbon provides. It 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. The U.S. Environmental Protection Agency recommended this approach in its comments on the Commission's pending review of the natural gas certification process, explaining that 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."²³ Furthermore, the U.S. Council on Environmental Quality regulations themselves outline a framework for determining whether a project's impacts on the environment will be considered significant.²⁴

* * *

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.²⁵ 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.

²¹ Certificate Order, 164 FERC ¶ 61,101 at P 74; *see also* EA at 59.

²² Certificate Order, 164 FERC ¶ 61,101 at P 74.

²³ United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4-5 (filed June 21, 2018).

²⁴ 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").

²⁵ 15 U.S.C. 717f(c)(1)(A).