

170 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Northern Natural Gas Company

Docket No. CP19-479-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 21, 2020)

1. On June 6, 2019, Northern Natural Gas Company (Northern) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to abandon by sale to DKM Enterprises, LLC (DKM) approximately 92.76 miles of 26-inch-diameter pipeline and 15.74 miles of 24-inch-diameter pipeline on its A- and J-line systems (collectively A-line) in Kansas. Northern also requests authorization to construct and operate a new compressor unit at its existing Tescott Compressor Station in Ottawa County, Kansas, to replace on its remaining parallel lines the capacity associated with the abandoned facilities. For the reasons discussed below, we grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Northern, a corporation organized under Delaware law, is a natural gas company as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. Northern's interstate transmission system consists of approximately 14,700 miles of pipeline extending from the Permian Basin in Texas to the Upper Peninsula of Michigan.

3. Northern has previously abandoned several segments of the A-line due to operational and integrity issues.⁴ On September 1, 2016, the U.S. Department of

¹ 15 U.S.C. § 717f(b), (c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6).

⁴ See, e.g., *N. Nat. Gas Co.*, 168 FERC ¶ 61,148, at PP 1, 4 (2019) (authorizing Northern to abandon approximately 146.6 miles of 24-inch-diameter pipeline on the A-line between Nebraska and Iowa); see also *N. Nat. Gas Co.*, 142 FERC ¶ 61,120, at P 1 (2013) (authorizing Northern to abandon approximately 126 miles of pipeline on the A-

Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Corrective Action Order to Northern, following an incident on the A-line.⁵ As a proactive measure, Northern reduced the operating pressures on all coupled pipeline segments greater than or equal to 14 inches in diameter or operating at more than 30 percent of the specified minimum yield strength,⁶ including the segments Northern seeks to abandon in this proceeding. The portions of the A-line proposed for abandonment are operating at 200 to 350 pounds per square inch gauge (psig). In response to PHMSA's order, Northern also identified abandonment of the A-line as the remediation alternative in its Remedial Work Plan submitted to PHMSA on April 5, 2017.⁷

4. Northern proposes to abandon by sale to DKM the following A-line and J-line facilities in Kansas:⁸ (1) 45.64 miles of 26-inch-diameter M640A mainline from Northern's Bushton Compressor Station in Ellsworth County to the Tescott Compressor Station in Ottawa County; (2) 47.12 miles of 26-inch-diameter M630A mainline from the Tescott Compressor Station to the Clifton Compressor Station in Clay County; and (3) 15.74 miles of 24-inch-diameter M640J A-line loop from block valve JBJ40 in Ellsworth County to block valve JXA07 in Ottawa County.⁹

5. Northern proposes to replace the capacity associated with the abandoned facilities by constructing and operating a new 11,152-horsepower (HP) gas-fired turbine compressor unit at its existing Tescott Compressor Station in Ottawa County, Kansas, enabling Northern to meet its contractual commitments in its primary markets in Iowa, Minnesota, and Wisconsin through its remaining parallel pipelines. Northern estimates the cost of the unit to be approximately \$35.1 million. The unit will tie into station

line in Texas, Oklahoma, and Kansas).

⁵ *In the Matter of N. Nat. Gas Co.*, Corrective Action Order, CPF No. 4-2016-1010H, Dep't of Transp. (Sept. 2016).

⁶ The specified minimum yield strength is an indication of the minimum stress a pipe can experience before causing plastic, or permanent, deformation of the steel pipe. Pipeline Safety: Class Location Change Requirements, 83 Fed. Reg. 36,861, 36,862 n.6 (proposed July 31, 2019) (to be codified at 49 C.F.R. pt. 192).

⁷ Northern Application at 4.

⁸ Northern's A-line system was issued grandfathered certification on April 6, 1943. *N. Nat. Gas Co.*, 3 FPC 967 (1943).

⁹ Pursuant to the terms and conditions of a May 14, 2019 Purchase and Sale Agreement between Northern and DKM, upon acquisition, DKM intends to reclaim most of the subject facilities for salvage within two years, with the exception of several segments where sensitive resources are present. Those facilities will be abandoned in place. Northern Application at Ex. U.

pipng that is connected to Northern's existing mainlines. In addition to the compressor unit, Northern proposes to install a compressor building, control building, and other ancillary facilities at the existing compressor station and remove station piping to accommodate the tie-ins for the new compressor unit. The additional unit will not create new capacity on Northern's system.

6. Northern states that the proposed abandonment and replacement will not affect any of Northern's firm obligations with existing shippers. Northern only has two receipt points on the portion of the A-line proposed for abandonment, where it receives gas on an interruptible basis.¹⁰ Affected shippers will be able to transfer service to Northern's parallel C-line and will be served by the replacement capacity created by the proposed compressor unit.

II. Notice, Interventions, and Comments

7. Notice of Northern's application was published in the *Federal Register* on June 26, 2019.¹¹ The notice established July 11, 2019, as the deadline for filing comments and motions to intervene. Northern Illinois Gas Company; Trailblazer Pipeline Company, LLC; and Tallgrass Interstate Gas Transmission, LLC (Tallgrass) filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.¹²

8. Tallgrass submitted comments concerning the proposed abandonment's effect on Tallgrass's receipt points on Northern's A-line. Additionally, the Kansas Department of Wildlife, Parks, and Tourism (KDWPT) and landowner Dean Larson filed comments relating to environmental impacts of the proposed abandonment. These comments are addressed in the Environmental Assessment (EA) issued for the proposed project and below.¹³

III. Discussion

9. Because the facilities that Northern proposes to abandon have been used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, and because the proposed new facilities will be for jurisdictional service, Northern's

¹⁰ *Id.* at 8.

¹¹ 84 Fed. Reg. 30,103 (2019).

¹² 18 C.F.R. § 385.214(c) (2019).

¹³ Environmental Assessment at 7.

proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹⁴

A. Abandonment

10. Section 7(b) of the NGA provides that an interstate pipeline company may abandon jurisdictional facilities or services only if the abandonment is permitted by the present or future public convenience or necessity.¹⁵ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary with the circumstances of the particular proposal.¹⁶

11. When a pipeline company proposes to abandon jurisdictional facilities, continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity allow the abandonment.¹⁷ If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing natural gas transportation services, it will defer to the applicant's business judgment to abandon the facilities.¹⁸

12. Here, Northern will continue to operate other pipelines parallel to the A-line which, with the construction of the proposed new compressor unit, will be capable of supporting the services to existing customers currently being served by the A-line. The portion of the A-line proposed for abandonment currently has two receipt points at which Northern receives gas on an interruptible basis. Northern states that it has contacted both shippers to notify them of the abandonment, including the estimated costs to relocate the two receipt points to Northern's existing C-line, which runs parallel to the A-line. Therefore, Northern's proposed abandonment of the A-line facilities will not result in the abandonment of firm service to existing customers.

13. Additionally, the proposed abandonment will eliminate safety risks from leaks and pipeline stress. The portion of the A-line to be abandoned was built in the 1940s and has been operating at a lower pressure to protect pipeline integrity, helping to prevent safety risks following the PHMSA-issued corrective order in 2016. While operating the A-line at a lower pressure has helped reduce safety risks, abandoning the aging A-line would

¹⁴ 15 U.S.C. § 717f(b), (c), (e).

¹⁵ *Id.* § 717f(b); *see also El Paso Nat. Gas Co.*, 135 FERC ¶ 61,079, at P 17 (2011).

¹⁶ *El Paso Nat. Gas Co.*, 148 FERC ¶ 61,226, at P 11 (2014) (*El Paso*).

¹⁷ *Nat'l. Fuel Gas Supply Corp.*, 160 FERC ¶ 61,050, at P 17 (2017) (citing *El Paso*, 148 FERC ¶ 61,226 at P 12).

¹⁸ *Id.* (citing *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, at P 65 (2013)) (additional citation omitted).

further eliminate these safety concerns. Northern also specified abandonment of the A-line as the remediation alternative in its Remedial Work Plan submitted to PHMSA after the 2016 corrective order.¹⁹ Further, the proposed abandonment will remove inefficiencies associated with the operation and maintenance of the aging A-line, allowing Northern to serve its shipper's needs more effectively.

14. Because the proposed abandonment will not jeopardize service to existing customers, will eliminate safety risks, and will remove operation and maintenance inefficiencies, we find that the proposed abandonment is permitted by the public convenience or necessity.

B. Certificate Policy Statement

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁰ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

16. Under this policy, the threshold requirement for applicants proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction of the new natural gas facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

¹⁹ Northern Application at 4.

²⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

17. As stated, the threshold requirement is that the applicant must financially support the project without relying on subsidization from its existing customers. The Commission has determined that it is not a subsidy under the Certificate Policy Statement for existing customers to pay for projects to replace existing capacity in order to improve the reliability or flexibility of existing services.²¹ Here, the project is designed to benefit the system as a whole by abandoning aging pipeline and replacing the capacity by constructing additional compression that will maintain the same level of service for existing customers. Accordingly, we find that there will be no subsidization of the project by existing customers.

18. We also find that because the project is a replacement project designed to maintain existing services, there will be no adverse impacts on Northern's shippers. Current shippers will be able to transfer service to Northern's parallel C-line and will be served by the replacement capacity created by the proposed compressor unit.

19. On July 11, 2019, Tallgrass filed comments stating that Northern's application fails to address whether the proposed project will have impacts on other interconnecting pipelines and their shippers.²² Specifically, Tallgrass is concerned that the proposed A-line abandonment might have operational effects on its bi-directional interconnect with Northern in Nebraska (Milligan Point) and that the proposed Tescott Compressor Station expansion might have operational effects on Tallgrass's bi-directional interconnect in Ottawa County, Kansas (Ottawa Point).²³

20. We find that Northern has demonstrated that its proposed project will not adversely impact service on any pipeline system. As Northern explains, the Milligan Point is located significantly downstream of the proposed project and will, therefore, not experience any operational changes.²⁴ Northern further explains that the slight decrease in operating pressure at the Ottawa Point, from 706 psig to 673 psig, will not inhibit

²¹ Certificate Policy Statement, 88 FERC at 61,746 n.12; *see also Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125, at P 15 (2016) (citing *Kern River Gas Transmission Co.*, 153 FERC ¶ 61,302, at P 12 (2015)); *Nat'l. Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at P 15 (2015) (finding that requiring existing customers who relied on facilities to pay for those replacement facilities would not result in a subsidy because the existing 86-year-old pipeline was deteriorated and needed to be replaced to ensure continued reliability of the existing services); *Nw. Pipeline Corp.*, 104 FERC ¶ 61,176, at PP 5–7, 23 (2003) (finding that it was not a subsidy to require existing customers to pay for the costs of a project that was necessary for safety reasons and to maintain reliable service).

²² Tallgrass Comments at 4.

²³ *Id.*

²⁴ Northern Aug. 20, 2019 Response to Data Request at 2.

Northern's ability to meet the mandatory minimum delivery pressure of 525 psig.²⁵ Thus, Northern's proposed project will not negatively affect Tallgrass's ability to receive gas from, or make deliveries to, the Ottawa Point.

21. The proposed project will also have minimal adverse effects on landowners and communities. The abandonment of the A-line and construction of the replacement compressor unit will take place entirely on property already owned by Northern and within Northern's existing easements and right-of-way; therefore, Northern will not need to acquire any additional land or easements.

22. Based on the benefits the project will provide and the minimal adverse impacts on Northern's existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find that the proposed project is consistent with the Certificate Policy Statement and is required by the public convenience or necessity.

C. Pre-Determination of Rolled-In Rates

23. Northern estimates that the cost for the compressor unit will be approximately \$35.1 million. While Northern does not request a pre-determination regarding rolled-in rate treatment, it is the Commission's policy to make such a finding, where appropriate.²⁶

24. To support a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA section 4 general rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion.²⁷ The Certificate Policy Statement specifically provides that increasing the rates of existing customers to pay for projects designed to improve reliability or flexibility in providing a pipeline's existing services for its customers is not a subsidy.²⁸

25. As discussed above, the primary purpose of the proposed project is to replace aging pipeline for increased safety, reliability, and efficiency for the benefit of existing customers. The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for projects constructed to improve the reliability of service to existing

²⁵ *Id.* at 1, 2.

²⁶ *See Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 27 (2011) (granting a pre-determination of rolled-in rates, even though the applicant did not request it, because a pre-determination better enables existing and potential shippers to make decisions to protect their interests).

²⁷ *Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,037, at P 30 (2019).

²⁸ Certificate Policy Statement, 88 FERC at 61,746 n.12.

customers or to improve service by replacing existing capacity.²⁹ Accordingly, we will grant Northern a pre-determination favoring rolled-in rate treatment in a future NGA section 4 general rate proceeding, absent any significant change in circumstances.

D. Environmental Analysis

26. On July 16, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Bushton to Clifton A-Line Abandonment Project and Request for Comments on Environmental Issues* (NOI). Because some landowners were inadvertently excluded from the original mailing list, the Commission issued a supplemental NOI on November 6, 2019. The NOIs were published in the *Federal Register*³⁰ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

27. In response to the NOIs, we received two comments. The first comment from KDWPT provided mitigation measures to minimize impacts on vegetation, wetlands, and waterbodies. Landowner Dean Larson also filed a comment, stating no objection to the pipeline being abandoned in place but questioning whether and how his land would be restored if the pipeline was salvaged and whether he would be compensated for any crop or land damage. These comments are addressed in the EA for the project.³¹

28. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an EA for Northern's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, reliability and safety, cumulative impacts, non-jurisdictional activities, and alternatives. All substantive comments received in response to the NOI and supplemental NOI were addressed in the EA. The EA was placed into the public record on December 17, 2019. We received one comment on the EA from the KDWPT, providing general recommendations to minimize environmental impacts. This comment is identical to KDWPT's earlier comment and is addressed in the EA.³²

²⁹ *Id.*

³⁰ 84 Fed. Reg. 35,111 (July 22, 2019); 84 Fed. Reg. 61,611 (Nov. 13, 2019).

³¹ The EA addressed the comments referenced above regarding the environmental impacts of DKM's salvage operation and mitigation measures to minimize impacts on vegetation, wetlands, and waterbodies. Environmental Assessment at 7. These issues were not reiterated following issuance of the EA, so we deem them resolved.

³² KDWPT's proposed mitigation measures are consistent with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* and Northern's abandonment and

Updated Greenhouse Gas Analysis

29. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operation of the project to be 42,851 metric tons per year of carbon dioxide equivalent (CO₂e).³³ To provide context to the EA's GHG estimate, 5.743 billion metric tons of CO₂e were emitted at a national level in 2017 (inclusive of CO₂e sources and sinks).³⁴ The direct and indirect operational emissions of the project could potentially increase CO₂e emissions based on the 2017 levels by 0.0008 percent at the national level. Currently, there are no national targets to use as a benchmark for comparison.³⁵

30. The EA acknowledges that the GHG emissions, such as those emitted from the construction and operation of the project will contribute incrementally to climate change,³⁶ and we have previously disclosed various effects of climate change on the Southern Great Plains region of the United States.³⁷ However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.³⁸ We have also previously concluded the

construction procedures. *See id.*

³³ EA at 34 (Table 8).

³⁴ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2017* at ES6-8 (Table ES-2) (2019), available at <https://www.epa.gov/sites/production/files/2019-04/documents/us-ghg-inventory-2019-main-text.pdf> (accessed November 2019).

³⁵ *See* EA at 32. The national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations, 84 Fed. Reg. 32,520, 32,522-32 (July 8, 2019), and the targets in the Paris Climate Accord are pending withdrawal.

³⁶ EA at 32.

³⁷ *Corpus Christi Liquefaction Stage III, LLC*, Stage 3 Project Environmental Assessment at 234-35, Docket Nos. CP18-512-000 & CP18 -513-00 (March 2019) (detailing the environmental impacts attributed to climate change in the Southern Great Plains and South Texas regions from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

³⁸ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

Commission cannot determine whether an individual project's contribution to climate change would be significant.³⁹ That situation has not changed.

31. Based on the analysis in the EA, we conclude that if abandoned, constructed, and operated in accordance with Northern's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

32. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction, operation, and abandonment of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction, operation, and abandonment.

33. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.⁴⁰

34. At a hearing held on February 20, 2020, the Commission, on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

³⁹ *Id.*

⁴⁰ See 15 U.S.C. § 717r(d) (considering a state or federal agency's failure to act on a permit to be inconsistent with federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (preempting state regulation that interferes with the Commission's regulatory authority over the transportation of natural gas); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that the NGA preempts state and local regulation to the extent it conflicts with federal regulation or would delay the construction and operation of Commission-approved facilities).

(A) A certificate of public convenience and necessity is issued to Northern authorizing it to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) completion of construction of the authorized facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions listed in the appendix to this order.

(C) Northern is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order and as more fully described in the application, subject to Northern's compliance with the environmental conditions listed in the appendix to this order.

(D) Northern must notify the Commission within 10 days of the abandonment of the facilities discussed in Ordering Paragraph (C).

(E) Northern is granted a pre-determination of rolled-in rate treatment for project costs, as discussed above.

(F) Northern shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local

agencies on the same day that such agency notifies Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

Commissioner McNamee is concurring in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix – Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Northern Natural Gas Company (Northern) shall follow the abandonment and construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the Order. Northern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order and take whatever steps are necessary to ensure the protection of environmental resources during abandonment, construction, and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project abandonment and construction.
3. **Prior to any abandonment or construction activities**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized abandonment activities and facility locations shall be as shown in the EA. **As soon as they are available, and before the start of abandonment or construction**, Northern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities and abandonment activities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment

maps/sheets.

5. Northern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all workspace rearrangements or facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the Order and before abandonment and construction activities begin**, Northern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Northern must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Northern will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Northern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned and how Northern will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies

- e. of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change),
 - f. the company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northern will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Northern shall employ at least one EI. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern shall file updated status reports with the Secretary on a **biweekly** basis until all abandonment, construction, and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Northern's efforts to obtain any necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance

- observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.
9. Northern must receive written authorization from the Director of OEP **before commencing abandonment or construction of any project facilities**. To obtain such authorization, Northern must file documentation with the Secretary that it has received all authorizations required under federal law (or evidence of waiver thereof).
 10. Northern must receive written authorization from the Director of OEP **before placing the new compressor unit at the Tescott Compressor Station into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
 11. **Within 30 days of completing project abandonment and construction**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been abandoned and constructed in compliance with all applicable conditions and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Northern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 12. Northern shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit at the Tescott Compressor Station in service. If a full load condition noise survey is not possible, Northern shall file an interim survey at the maximum possible horsepower load and file the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the station under interim or full power load conditions exceeds a day-night sound level (Ldn) of 55 A-weighted decibels (dBA) at any nearby noise sensitive area, Northern shall:

- a. file a report with the Secretary on what changes are needed, for review and written approval by the Director of OEP;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
13. **Prior to any abandonment activities**, Northern shall file the following information with the Secretary, for review and written approval by the Director of OEP:
- a. identify any known facilities to be disturbed having asbestos-containing materials (ACM);
 - b. develop protocols to comply with the appropriate requirements to identify ACMs that might be encountered;
 - c. if facilities with ACMs are disturbed, identify how any abandoned ACM-contaminated material will be properly disposed of; and
 - d. develop worker protection protocols for handling ACM-contaminated materials.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. CP19-479-000

(Issued February 21, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because it violates both the Natural Gas Act¹ (NGA) and the National Environmental Policy Act² (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to ignore the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order authorizing Northern Natural Gas Company to abandon a portion of its A-line pipeline and replace the abandoned capacity with a new compressor station (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts.³ The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions from the Project's construction and operation.⁴ That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁵ and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity.⁶ Claiming that a project has no significant environmental impacts while at the

¹ 15 U.S.C. § 717f (2018).

² National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

³ *Northern Natural Gas Company*, 170 FERC ¶ 61,146 (2020) (Certificate Order).

⁴ Certificate Order, 170 FERC ¶ 61,146 at P 29; Bushton to Clifton A-Line Abandonment Project Environmental Assessment at Table 7 and 8 (EA).

⁵ Certificate Order, 170 FERC ¶ 61,146 at P 31; EA at 56.

⁶ Certificate Order, 170 FERC ¶ 61,146 at P 14.

same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. For all the reasons I have articulated previously,⁷ I respectfully dissent in part.

Richard Glick
Commissioner

⁷ *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (2020) (Certificate Order) (Glick, Comm'r, dissenting in part).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. CP19-479-000

(Issued February 21, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Northern Natural Gas Company (Northern) a certificate to construct and operate a new compressor unit at its existing Tescott Compressor Station in Ottawa County, Kansas. Northern will operate the new compressor unit to replace capacity associated with abandoned pipeline facilities on its A-line.¹

2. I fully support the order as it complies with the Commission's statutory responsibilities under the Natural Gas Act and the National Environmental Policy Act. The order determines that the construction and operation of the new compressor unit is in the public convenience and necessity, finding that the unit will not adversely affect Northern's existing customers or competitor pipelines and their captive customers, and that Northern has taken appropriate steps to minimize adverse impacts on landowners.² The order also finds that the project will not significantly affect the quality of the human environment.³ Further, the Commission adopted the Environmental Assessment (EA) for Northern's proposal in which, consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*,⁴ quantified and considered greenhouse gases (GHGs) directly emitted by the construction and operation of the new compressor unit.⁵

3. I write separately to respond to my colleague's argument that the Commission should have determined whether the GHG emissions directly emitted by the new compressor unit are "significant" using the Social Cost of Carbon or by establishing its own framework. In my concurrence in *Adelphia*, I explain why the Social Cost of Carbon is not a useful tool to determine whether the GHG emissions are "significant" and the Commission has no authority or reasoned basis to make a determination of

¹ 170 FERC ¶ 61,146 (2020). Northern's proposal is titled "Bushton to Clifton A-Line Abandonment Project."

² *Id.* PP 17-21.

³ *Id.* P 31.

⁴ 867 F.3d 1357 (D.C. Cir. 2017).

⁵ 170 FERC ¶ 61,146 at P 29; EA at 33-34.

significance using its own expertise.⁶ Further, it is not appropriate for the Commission to establish out of whole cloth a GHG emission mitigation program, particularly when Congress has introduced and failed to pass 70 legislative bills to reduce GHG emissions over the last 15 years.⁷ As I explain in *Adelphia*, Congress delegated the Administrator of the U.S. Environmental Protection Agency the exclusive authority to establish standards of performance for air pollutants, including GHGs.⁸ For logistical reasons and administrative efficiency, I hereby incorporate my analysis in *Adelphia* by reference and am not reprinting the full text of my analysis here.⁹

For the reasons discussed above and incorporated by reference herein, I respectfully concur.

Bernard L. McNamee
Commissioner

⁶ See paragraphs 62-73 of my concurring statement in *Adelphia Gateway, LLC*. *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 (2019) (McNamee, Comm'r, concurrence) (McNamee Adelphia Concurrence).

⁷ McNamee Adelphia Concurrence PP 52-61.

⁸ *Id.*

⁹ *Id.* 52-73.