

170 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Natural Gas Pipeline Company of America LLC

Docket No. CP19-99-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued February 21, 2020)

1. On February 28, 2019, Natural Gas Pipeline Company of America LLC (Natural) 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 seeking authorization to construct, operate, and abandon compression facilities in Harrison, Victoria, and Wharton Counties, Texas (Gulf Coast Southbound Project). We will grant the requested authorizations, subject to conditions, as discussed below.

I. Background and Proposal

2. Natural is a limited liability company organized under the laws of Delaware and is a natural gas company as defined by section 2(6) of the NGA³ subject to the Commission's jurisdiction. Natural's transmission system comprises the Amarillo and Gulf Coast mainlines and the Amarillo and Gulf Coast interconnection (A/G Line). The Amarillo Line extends from gas producing areas in Texas, Oklahoma, and New Mexico, through Kansas, Nebraska, Iowa, and Illinois, to terminal points in the Chicago metropolitan area. The Gulf Coast Line extends from gas producing areas in Louisiana and Texas, through Arkansas, Missouri, and Illinois, to common terminal points with the Amarillo Line in the Chicago metropolitan area. The A/G Line connects the Amarillo and Gulf Coast mainlines and extends from Oklahoma to Texas. Natural serves customers along its entire system, and also delivers natural gas into Indiana and Wisconsin. Natural also owns and operates substantial underground storage facilities in Texas, Oklahoma, Iowa, and Illinois.

¹ 15 U.S.C. §§ 717f(b) and (c) (2018).

² 18 C.F.R. Part 157 (2019).

³ 15 U.S.C. § 717(a)(6) (2018).

3. Natural states that the Gulf Coast Southbound Project is designed to provide an additional 300,000 dekatherms per day (Dth/d) of incremental firm transportation service for the project shipper, Corpus Christi Liquefaction, LLC (Corpus Christi),⁴ to its liquefied natural gas (LNG) facility in San Patricio County, Texas (Corpus Christi LNG Terminal).⁵ Specifically, the project would enable Natural to provide southbound transportation service on its Gulf Coast Line from a primary receipt point at the existing interconnection with Alliance Pipeline L.P. in Grundy County, Illinois, to a primary delivery point at Natural's interconnection with Cheniere Corpus Christi Pipeline, LP in San Patricio County, Texas. To provide this service, Natural proposes to use a combination of existing and expansion capacity in two contiguous segments on its Gulf Coast Line. On Segment 22,⁶ Natural proposes to install additional compression at Compressor Stations 300 and 301 to enable the provision of 250,000 Dth/d of incremental firm transportation service. Natural has also reserved 50,000 Dth/d of existing transportation service for the project pursuant to Natural's tariff procedures.⁷ On Segment 26,⁸ Natural proposes to install additional compression at Compressor Station 304 that will enable the provision of 328,000 Dth/d of incremental firm transportation service. Natural states that the facilities it proposes on Segment 26 reflect the most efficient and cost-effective use and proper sizing of new compressor units within existing infrastructure, resulting in minimal environments impacts. Natural states that it anticipates marketing the unsubscribed 28,000 Dth/d of transportation service (above the 300,000 Dth/d subscribed by Corpus Christi) pursuant to Natural's tariff.⁹

4. Specifically, Natural proposes the following:

- Compressor Station 300 in Victoria County, Texas: installing one new 10,000 horsepower (HP) electric motor-driven compressor unit and auxiliary facilities. As further explained below, Natural proposes to

⁴ Corpus Christi is a subsidiary of Cheniere Energy, Inc.

⁵ Natural's February 28, 2018 Application (Application) at 10.

⁶ Segment 22 commences at Compressor Station 341 in Nueces County, Texas, and ends at Compressor Station 302 in Montgomery County, Texas.

⁷ Natural states that the reserved capacity has been posted on Natural's interactive website and was made available for shippers through Natural's Initial Open Season tariff procedures, on an interim basis, until December 31, 2020. Application at 9.

⁸ Segment 26 commences at Compressor Station 302 in Montgomery County, Texas and ends at the interconnection with the A/G Line in Cass County, Texas.

⁹ Application at 11; Natural's June 13, 2019 data response.

abandon in-place two existing 3,000 HP gas-fired reciprocating compressor units (Units 1 and 4) and replace this compression with 6,000 HP of new compression. The remaining 4,000 HP will be used to provide the incremental firm transportation service;

- Compressor Station 301 in Wharton County, Texas: installing one new 15,900 International Organization for Standardization (ISO) HP Solar Mars 100 gas-fired, turbine compressor unit and auxiliary facilities; and
- Compressor Station 304 in Harrison County, Texas: installing two new 23,470 ISO HP Solar Titan 130 gas-fired, turbine compressor units and auxiliary facilities. As further explained below, Natural proposes to abandon in-place all nine existing gas-fired reciprocating compressor units¹⁰ (totaling 30,850 HP) and replace this compression with the new compression.¹¹ The remaining 16,090 HP will be used to provide the incremental firm transportation service.

5. Additionally, Natural states it will construct and operate auxiliary facilities, including station piping, gas coolers, and filter separators at Compressor Stations 303 and 394 pursuant to section 2.55(a) of the Commission's regulations.¹²

6. As noted above, Natural is proposing to abandon and replace two existing compressor units at Compressor Station 300 and nine existing compressor units at Compressor Station 304. Natural explains that by replacing the older, less efficient compressor units with new, more efficient compressor units, the reliability and flexibility of its system will be enhanced. Natural proposes to allocate the costs associated with the new compression facilities between expansion and replacement facilities based on the ratio of expansion horsepower or replacement horsepower to the total horsepower at the stations, resulting in approximately \$64 million allocated to the replacement of the compressor units and approximately \$81 million to the expansion capacity.¹³

7. Natural held an open season on May 10, 2016, and as a result, executed a binding precedent agreement with Corpus Christi for 300,000 Dth/d of firm transportation service

¹⁰ The nine compressor units consist of seven 2,800 HP units, one 4,000 HP unit, and one 7,250 HP unit.

¹¹ As proposed, the total certificated horsepower at Compressor Station 304 will be 46,940 HP.

¹² 18 C.F.R. § 2.55(a) (2019).

¹³ Application, Exhibit K, at 2.

for a primary term of 20 years.¹⁴ Corpus Christi has elected to pay negotiated rates for firm transportation service on the project.¹⁵

8. Natural proposes to use its existing rates under Rate Schedule FTS as recourse rates for firm transportation service utilizing the capacity made available by the project. Natural requests a predetermination authorizing rolled-in rate treatment for the project costs associated with the expansion capacity.

II. Public Notice, Interventions, and Comments

9. Notice of Natural's application was published in the *Federal Register* on March 14, 2019, with comments due March 27, 2019.¹⁶ Antero Resources Corporation, CenterPoint Energy Resources Corporation, and Northern Illinois Gas Company d/b/a Nicor Gas Company filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁷

10. The Texas Parks and Wildlife Department filed comments addressing protected species that may be present in the affected area and providing recommendations on best management practices. These issues are addressed in the Environmental Assessment (EA) discussed below. The Quapaw Nation and the Choctaw Nation of Oklahoma also filed comments, which indicated that the project is outside their areas of interest.

III. Discussion

11. Because Natural's proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁸ Additionally, Natural's proposed abandonment is subject to subsection (b) of section 7 of the NGA.¹⁹

¹⁴ *Id.* at 10.

¹⁵ *Id.*

¹⁶ 84 Fed. Reg. 9,321 (2019).

¹⁷ 18 C.F.R. § 385.214(c) (2019).

¹⁸ 15 U.S.C. §§ 717f(c), and (e) (2018).

¹⁹ *Id.* § 717f(b) (2018).

A. Application of Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline 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.

13. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its 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, and landowners and communities affected by the 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.

14. Natural's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Natural's proposal to use its existing system rates as the initial recourse rates for services utilizing the incremental capacity created by the proposed facilities because those rates exceed illustrative incremental rates calculated to recover the costs of the project. We are also granting a predetermination of rolled-in rate treatment for the costs of the project because the expected revenues from the Gulf Coast Southbound Project are projected to exceed the project's costs. Therefore, we find that Natural's existing customers will not subsidize the Gulf Coast Southbound Project and that the threshold no-subsidy requirement is met.

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

15. Furthermore, under the Certificate Policy Statement, it is not a subsidy for existing customers to pay for projects designed to replace existing capacity or improve the reliability or flexibility of existing service.²¹ To the extent that the proposed project will serve to replace compression facilities at Compressor Stations 300 and 302 that are deteriorated due to age, enabling Natural to maintain existing levels of service and to improve reliability, increasing the rates of existing customers to cover associated costs does not constitute a subsidy under the Certificate Policy Statement. As discussed below, we will grant Natural a predetermination to roll-in the costs associated with the compressor upgrades in its next NGA section 4 rate case, absent a significant change in circumstances.

16. We find that the proposed project will have no adverse effect on service to Natural's existing customers because the proposed expansion facilities are designed to support incremental service to meet the needs of the project shipper while maintaining existing services for Natural's existing customers. The project will also replace older, inefficient compressor units with new, more efficient units, which will improve reliability and flexibility of service to existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers, and no other pipelines or their captive customers have protested Natural's proposal.

17. We also find that the Gulf Coast Southbound Project is designed to minimize adverse impacts on landowners and the surrounding communities. All construction activities for the project will take place within previously disturbed areas in the existing fenced operational areas of the subject compressor stations. No property owners have protested the application.

18. The Gulf Coast Southbound Project will enable Natural to provide an additional 300,000 Dth/d of firm transportation service for the project shipper. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Natural's proposal, subject to the conditions discussed in this order.

B. Abandonment

19. Section 7(b) of the NGA provides that a natural gas company may abandon jurisdictional facilities or services only if the Commission finds the abandonment is permitted by the present or future public convenience or necessity.²² The Commission

²¹ See Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12.

²² 15 U.S.C. § 717f(b) (2018).

has stated that continuity and stability of existing service are the primary considerations in assessing whether the public convenience or necessity permit the abandonment.²³ If the Commission finds that the proposed abandonment will not jeopardize continuity of existing gas transportation services, it will defer to the company's business judgment to abandon the facilities.²⁴

20. Natural's proposal to abandon compressor units at Compressor Stations 300 and 304 is appropriate. There will be no adverse effects on existing shippers' services because the compressor units proposed to be abandoned will be replaced by newer, more efficient units that will enable Natural to maintain existing levels of service. Thus, we find that Natural's proposed abandonment is permitted by the public convenience or necessity under section 7(b) of the NGA.

C. Rates

1. Initial Recourse Rates

21. Natural proposes to use its existing Rate Schedule FTS²⁵ reservation and usage charges as the initial maximum recourse rates for firm transportation service utilizing the capacity created by the project,²⁶ and its existing Rate Schedule ITS rate as the recourse rate for incremental interruptible transportation service provided by the project.

22. Natural calculated an illustrative incremental monthly reservation charge of \$4.1634 per Dth, based on first-year fixed costs of \$14,988,294, and annual reservation billing determinants of 3,600,000 Dth.²⁷ Natural calculated an incremental usage charge of \$0.0020 per Dth, based on first-year variable costs of \$216,611 and volumes of

²³ See, e.g., *WBI Energy Transmission, Inc.*, 163 FERC ¶ 61,033, at P 22 (2018); *Nat'l Fuel Gas Supply Corp.*, 160 FERC ¶ 61,050, at P 17 (2017).

²⁴ See, e.g., *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, at P 65 (2013) (citing *Northern Natural Gas Co.*, 142 FERC ¶ 61,120 (2013)).

²⁵ Natural's Rate Schedule FTS offers Peak rates, effective November through March, and Off-Peak rates, effective April through October.

²⁶ Application, Exhibit P, Pt I, at 1. The contract path and effective Rate Schedule FTS maximum reservation and usage charges for the Iowa-Illinois Receipt Zone to South Texas Delivery Zone are \$9.0300 per Dth and \$0.0049 per Dth, respectively. Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff; Part 4.0, Currently Effective Rates-Rate Schedule FTS (Peak), 6.0.0.

²⁷ 300,000 Dth/d x 12 Months.

109,500,000 Dth.²⁸ The illustrative cost of service reflects the 2.10 percent transmission depreciation rate and 14.98 percent pre-tax rate of return underlying Natural's currently effective rates.²⁹

23. The Commission has reviewed Natural's proposed cost of service and initial rates and finds that they generally reflect current Commission policy, except for the billing determinants used to design the illustrative reservation charge. As explained above, the maximum design capacity of the project in Segment 26 is 328,000 Dth/d and that capacity should be used instead of 300,000 Dth/d to calculate the illustrative rates for the project. However, using 328,000 Dth/d to calculate Natural's illustrative incremental reservation charge would lower Natural's calculated charge and thus not change our approval of Natural's request to use its existing rates under Rate Schedule FTS, as discussed below.

24. Under the Commission's Certificate Policy Statement, incremental rates should be charged to recover the costs of proposed new services if the incremental rate exceeds the maximum system recourse rate.³⁰ Where the effective system recourse rate is greater than the estimated incremental cost-based recourse rate, the Commission has found it appropriate to establish the existing system rate as the initial recourse rate for the project.³¹ Because Natural's applicable maximum Rate Schedule FTS reservation and usage charges are greater than the illustrative incremental reservation and usage charges, we will approve Natural's request to use its existing rates under Rate Schedule FTS as the initial recourse rates for project services.

2. **Fuel**

25. Natural proposes to establish an incremental fuel gas rate of 2.90 percent for the expansion service. In support of its proposal, Natural provided a fuel study that computes a 2.90 percent weighted average fuel retention rate for the primary path under the precedent agreement using Natural's existing fuel percentages combined with anticipated seasonal system flows for the project.³² Natural's fuel study demonstrates that this

²⁸ Application, Exhibit P, Pt. I, at 2.

²⁹ *Id.* at 4.

³⁰ Certificate Policy Statement, 88 FERC at 61,746.

³¹ See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., LLC*, 145 FERC ¶ 61,007, at P 30 (2013).

³² Application, Exhibit P, Pt. II, at 2. The contract path and existing effective fuel percentage include: Iowa-Illinois Receipt Zone to South Texas Delivery Zone (0.47 percent). Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff,

annual weighted average rate of 2.90 percent for the project path exceeds the current tariff fuel gas rate of 0.47 percent. Accordingly, we will approve Natural's request to establish its proposed incremental fuel gas rate for the project.

3. Predetermination of Rolled-In Rates

a. Expansion Capacity

26. Natural requests a predetermination that it may roll the costs associated with the proposed project's expansion capacity into its rates in a future NGA section 4 general rate proceeding. To receive a pre-determination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling the costs of the construction and operation of new facilities into the pipeline's existing general rate base will not result in subsidization of the project by existing customers. Generally, this means that a pipeline must show that the revenues generated by a project will exceed the project's cost. To make this determination, the Commission compares the project cost to the revenues generated using actual contract volumes and either the maximum recourse rates or, if the negotiated rates are lower than the recourse rates, the actual negotiated rates.

27. In support of its request for rolled-in rate treatment, Natural calculated an estimated first-year cost of service of \$15,204,905 and projected revenues of \$36,649,050 which results in revenues exceeding the cost of service by \$21,444,145.³³ Natural's projected revenues are based on the maximum tariff rates for a shipper electing the System-Wide (SW) Option,³⁴ as the negotiated rate agreed to is greater than the maximum tariff rate.

28. Because there is no guarantee that a firm shipper will elect the SW Option and the negotiated rate is higher than the currently effective maximum recourse reservation rate, we find for the purposes of the roll-in analysis it is appropriate to use Natural's currently effective maximum recourse reservation rate to calculate the project's projected revenues. Using Natural's current maximum recourse reservation charge of \$9.0300 per Dth under Rate Schedule FTS and 300,000 Dth/d contracted capacity, we find that the project's first year revenues will still exceed the estimated first year cost of service. Because the

FERC Gas Tariff; [Part 4.17, Currently Effective Rates-Transportation Fuel Retention, 2.0.0.](#)

³³ Application, Exhibit P, Pt. V, at 1.

³⁴ The SW Option provides shippers with a right to all receipt and delivery points on Natural's system on a secondary out-of-path basis. The recourse rates for the SW Option under Rate Schedule FTS are higher than Natural's FTS recourse rates without this option.

projected revenues exceed the costs of the project, we grant a predetermination of rolled-in rate treatment for the costs associated with the Gulf Coast Southbound Project's expansion capacity in a future NGA section 4 rate case, absent any significant change.

b. Replacement Facilities

29. Natural does not request a predetermination that it may roll the approximately \$64 million in costs associated with the proposed project's replacement facilities into its rates in a future NGA section 4 rate proceeding. Nevertheless, we will evaluate whether to issue a predetermination of rolled-in rate treatment consistent with longstanding Commission policy.³⁵

30. The Commission's no-subsidy policy permits the roll-in of costs of projects designed to replace existing capacity or improve reliability or flexibility of service for existing customers.³⁶ The proposed new compressor units would replace the horsepower of older, less efficient compressor units. Because Natural's proposed new compressor units would maintain and improve service for existing customers by replacing older, less efficient compressor units, we grant a predetermination of rolled-in rate treatment for the costs related to the project's replacement facilities in a future NGA section 4 general rate case, absent any significant change in circumstances.

4. Reporting Incremental Costs

31. The Commission will require Natural to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.³⁷ The books should be maintained with applicable cross-references and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁸

³⁵ *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 31, n.41 (2013) (providing that the Certificate Policy Statement contemplates that, as a general matter, issues of future rate treatment will be addressed in advance).

³⁶ Certificate Policy Statement, 88 FERC at 61,746 n.12.

³⁷ 18 C.F.R. § 154.309 (2019).

³⁸ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262 (2008).

5. Negotiated Rates

32. Natural proposes to provide service on the Gulf Coast Southbound Project to Corpus Christi under a negotiated rate agreement. Natural must file either the negotiated rate agreement or a tariff record setting forth the essential elements of the agreement in accordance with the Alternative Rate Policy Statement³⁹ and the Commission's negotiated rate policies.⁴⁰ Natural must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.⁴¹

6. Request for Predetermination of Non-Conforming Creditworthiness Provisions

33. Natural states that the negotiated rate agreement with Corpus Christi contains provisions addressing credit support and assurance requirements to be provided by Corpus Christi that are different than the creditworthiness provisions in Natural's tariff. Specifically, Natural states these provisions require Corpus Christi to provide security in an amount equivalent to 12 months of reservation charges if it fails to demonstrate creditworthiness in accordance with the provisions of its tariff. Natural requests a predetermination from the Commission that the non-conforming creditworthiness provisions in the negotiated rate agreement with Corpus Christi are permissible.

³⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁰ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006), *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

⁴¹ Pipelines are required to file any service agreement containing nonconforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2019); *see, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

34. In *Columbia*,⁴² the Commission clarified that a material deviation is any provision in a service agreement that goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding pro forma service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.⁴³

35. We find that the incorporation of the non-conforming provisions described above constitutes a material deviation from Natural's pro forma service agreement. However, the Commission's policy with regards to creditworthiness, as stated in the Commission's 2005 Policy Statement, allows pipelines to enter into alternative credit arrangements for expansion projects.⁴⁴ Therefore, we find the non-conforming provisions related to creditworthiness identified by Natural are permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.⁴⁵

36. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming service agreement, Natural must file an executed copy of the non-conforming service agreement disclosing and reflecting all non-conforming language as part of Natural's tariff, and a tariff record identifying this agreement as a non-conforming agreement, consistent with section 154.112 of the Commission's regulations.⁴⁶ In addition, we emphasize that the above determination relates only to those items as described by Natural in its application and not to the

⁴² *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*); see also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001).

⁴³ *Columbia*, 97 FERC at 62,002; *ANR Pipeline Co.*, 97 FERC at 62,022.

⁴⁴ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005).

⁴⁵ See, e.g., *Natural Gas Pipeline Co. of America LLC*, 154 FERC ¶ 61,220 (2016) (permitting a company to similarly require shippers to provide 12 months' worth of collateral).

⁴⁶ 18 C.F.R. § 154.112 (2019).

entirety of the precedent agreement or FTS Agreement or the language contained in the precedent agreement or FTS Agreement.⁴⁷

7. Temporary Capacity Release Tariff Provisions

37. Natural proposes to incorporate a new tariff provision related to the temporary release of the capacity associated with Corpus Christi's 300,000 Dth/d of firm transportation service.⁴⁸ Specifically, Natural proposes that any replacement shippers acquiring released capacity from Corpus Christi shall be subject to the same negotiated fuel rate provisions as Corpus Christi, unless Natural and the replacement shipper agree otherwise.⁴⁹ Natural states that if there is a temporary release of Corpus Christi's capacity, the replacement shipper should "step into the shoes" of Corpus Christi, which has agreed to negotiated usage and fuel charges.⁵⁰ Natural states that Corpus Christi has agreed to a fuel gas provision with the fuel gas percentage based on a formula that more accurately reflects the fuel cost of the project. Under this provision, Corpus Christi will pay a negotiated fuel gas rate that recognizes that portions of Natural's Gulf Coast Line are anticipated to be reversed from the traditional northbound flow, resulting in a higher fuel gas retention factor than what is currently reflected in Natural's rates. Natural states that the provision will allow Natural to retain the negotiated rate agreement it has reached with Corpus Christi, supporting the construction of the proposed project. Natural asserts it is a middleman and facilitator under the capacity release mechanism and should remain neutral from a fuel collection standpoint.

38. Additionally, Natural states that the Commission has approved similar negotiated fuel rate provisions⁵¹ and that its proposal is consistent with Commission precedent

⁴⁷ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

⁴⁸ Application at 21.

⁴⁹ Application at 21. *See Also* Application, Exhibit P, Part III.

⁵⁰ The negotiated usage charges under the FTS Agreement are equal to the applicable maximum tariff usage charges, and thus any temporary releases of expansion capacity will be at the same usage rates.

⁵¹ *Natural Gas Pipeline Co. of America LLC*, 161 FERC ¶ 61,149, at P 28-31 (2017). (See footnote 3 on Part 4.30 (Version 9.0) of Natural's FERC Gas Tariff).

providing that replacement shippers be subject to the same negotiated usage or fuel rate as the releasing shipper.⁵² Accordingly, Natural states that the capacity release provision related to the release of Corpus Christi's capacity is just and reasonable and should be approved.

39. The Commission has found that pipelines may, on a case by case basis, require that a replacement shipper pay the same negotiated usage and fuel charge as the releasing shipper, especially where the replacement shipper is expected to use the capacity in a similar manner as the releasing shipper.⁵³ Accordingly, we find that the proposed capacity release provision is necessary to reflect the unique circumstances involved with the construction of new infrastructure and to ensure the viability of the project.⁵⁴ Thus, we approve the language contained in the pro forma tariff record. To implement Natural's proposed capacity release provisions, Natural must file actual tariff records.

D. Environmental Analysis

40. On April 9, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Gulf Coast Southbound Project and Request for Comments on Environmental Issues* (Notice of Intent). The Notice of Intent was published in the *Federal Register*⁵⁵ 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. We received comments in response to the Notice of Intent from the Texas Parks and Wildlife Department, the Quapaw Nation, and the Choctaw Nation of Oklahoma.

41. The Texas Parks and Wildlife Department recommended measures to protect bird species under the Migratory Bird Treaty Act, and best management practices including: measures to exclude wildlife from construction areas; reducing night-time lighting to reduce effects on migrating birds; and minimizing vegetation clearing and using native

⁵² *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,031 (2009) (finding that pipelines may, on a case by case basis, give a replacement shipper the same negotiated usage and fuel charge as the releasing shipper, especially where the replacement shipper is expected to use the capacity in a similar manner as the releasing shipper).

⁵³ *Id.*, at P 19.

⁵⁴ *See, e.g., Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 32 (2013); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008).

⁵⁵ *Notice of Intent*, 84 Fed. Reg. 15,207 (April 15, 2019).

vegetation in restoration. The Quapaw Nation and the Choctaw Nation of Oklahoma indicated that the project is outside their areas of interest and that they had no comments.

42. To satisfy the requirements of the National Environmental Policy Act of 1969,⁵⁶ our staff prepared an EA for Natural's proposal. The EA was placed into the public record on October 23, 2019. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. The EA also addresses the Texas Parks and Wildlife Department's recommendations, most of which, we note, Natural agreed to adopt.

Updated Greenhouse Gas Analysis

43. The EA estimates maximum potential greenhouse gas (GHG) emissions from operation of the project to be 210,300 metric tons per year of carbon dioxide equivalent (CO₂e).⁵⁷ 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).⁵⁸ The direct and indirect operational emissions of the project could potentially increase CO₂e emissions based on the 2017 levels by 0.004_percent at the national level. Currently, there are no national targets to use as a benchmark for comparison.⁵⁹

44. GHG emissions, such as those emitted from the construction and operation of the project, will contribute incrementally to climate change, and as previously discussed with respect to other pipeline projects in Texas, there are observed environmental impacts

⁵⁶ 42 U.S.C. §§ 4321 *et seq.* (2018); *see also* 18 C.F.R. pt. 380 (2019) (Commission's regulations implementing the National Environmental Policy Act).

⁵⁷ EA at 47-48 (Tables 8-12).

⁵⁸ 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).

⁵⁹ *See* EA at 41. 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.

attributable to climate change in Texas.⁶⁰ However, the Commission has previously concluded it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.⁶¹ We have also previously concluded we cannot determine whether an individual project's contribution to climate change would be significant.⁶² That situation has not changed.

45. Based on the analysis in the EA, we conclude that if constructed, abandoned, and operated in accordance with Natural's application and supplements, 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. 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, abandonment, and operation 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, abandonment, and operation.

46. 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 or operation of facilities approved by this Commission.⁶³

⁶⁰ See *Corpus Christi Liquefaction Stage III, LLC*, Stage 3 Project Environmental Assessment at 234-35, Docket Nos. CP18-512-000 & CP18-513-000 (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).

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

⁶² *Id.*

⁶³ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline*

47. 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:

(A) A certificate of public convenience and necessity is issued to Natural 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 Natural's:

- 1) Completion of construction of the proposed 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, including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- 3) Compliance with the environmental conditions listed in the appendix to this order; and
- 4) Filing of a written statement affirming that it has executed a firm service agreement(s) for the capacity levels and terms of service represented in its signed precedent agreement, prior to commencing construction.

(C) Natural is granted permission and approval under NGA section 7(b) to abandon the compression facilities described in this order and the application within two years of the date of this order.

(D) Natural shall notify the Commission within ten (10) days of the date of the abandonment.

Co., 485 U.S. 293, 310 (1988) (state regulation that interferes with the Commission's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(E) Natural's proposal to use its existing system Rate Schedules FTS and ITS rates as the initial recourse rates for the project is approved.

(F) Natural's proposal to establish an incremental fuel gas rate for the project capacity is approved.

(G) Natural shall file actual tariff records setting forth the incremental fuel gas rate and the capacity release provision for service on the project at least 30 days but not more than 60 days prior to the project facilities going into service.

(H) Natural's request for a predetermination for its non-conforming creditworthiness provisions is approved.

(I) Natural's proposed capacity release provision is approved.

(J) Natural's request for a predetermination of rolled-in rate treatment for the expansion costs of the Gulf Coast Southbound Project in a future NGA section 4 rate case is granted, absent any significant change in circumstances.

(K) A predetermination of rolled-in rate treatment for the replacement costs of the Gulf Coast Southbound Project in a future NGA section 4 rate case is granted, absent any significant change in circumstances.

(L) Natural shall keep separate books and accounts of costs attributable to the proposed project, as described above.

(M) Natural 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 Natural. Natural shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

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

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A – Environmental Conditions

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

1. Natural shall follow the construction and abandonment procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Natural 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 construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of 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 impact resulting from project construction and operation.
3. **Prior to any construction**, Natural 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 facility locations shall be as shown in the EA, supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Natural 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 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. Natural shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and 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 which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all 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 construction and abandonment begins**, Natural shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Natural must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Natural 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 Natural 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 the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Natural 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 Natural's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Natural shall employ at least one EI for the project. The EI(s) 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. 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
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Natural shall file updated status reports with the Secretary on a **monthly** basis until all 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 Natural's efforts to obtain the 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 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 resident complaints which 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 Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. Natural must receive written authorization from the Director of OEP **before commencing construction or abandonment of any project facilities**. To obtain such authorization, Natural must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been 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 Natural 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. Natural shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit(s) at the modified Compressor Stations 300, 301, and 304 into service. If a full power load condition noise survey is not possible, Natural shall file an interim survey at the maximum possible power load **within 60 days** of placing each modified station into service and file the full power load survey **within 6 months**. If the noise attributable to operation of all equipment at each station under interim or full power load conditions exceeds a day-night sound level of 55 A-weighted decibels at any nearby noise-sensitive area, Natural shall:
- a. file a report with the Secretary, for review and written approval by the Director of OEP, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. confirm compliance with this requirement by filing a second full power load noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Natural Gas Pipeline of America LLC

Docket No. CP19-99-000

(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 Natural Gas Pipeline Company of America LLC (Natural) to construct, operate, and abandon compression facilities in Harrison, Victoria, and Wharton Counties, Texas (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 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

¹ 15 U.S.C. § 717f (2018).

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

³ *Natural Gas Pipeline of America LLC*, 170 FERC ¶ 61,147 (2020) (Certificate Order).

⁴ Certificate Order, 170 FERC ¶ 61,147 at P 43; Environmental Assessment at 47-48 Tables 8-12 (EA). The Commission quantified some of the Project's direct and indirect GHG emissions from construction and operation but not from the reasonably foreseeable downstream emissions resulting from the Project's incremental expansion capacity that is not subscribed by Corpus Christi for service to its LNG terminal in San Patricio County, Texas. *See Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (Comm'r, Glick, dissenting in part at 8-11) (2020).

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 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

⁵ Certificate Order, 170 FERC ¶ 61,147 at P 45; EA at 68.

⁶ Certificate Order, 170 FERC ¶ 61,147 at P 18.

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

Natural Gas Pipeline Company of America LLC

Docket No. CP19-99-000

(Issued February 21, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order authorizes Natural Gas Pipeline Company of America LLC's (Natural) Gulf Coast Southbound Project (Project) in Harrison, Victoria, and Wharton Counties, Texas, to provide 300,000 dekatherms per day of firm transportation service for Corpus Christi Liquefaction, LLC.¹ The Project will involve the abandonment of existing compressor units, installation of new compressor units to replace the abandoned capacity and provide incremental service, and construction and operation of auxiliary facilities.

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 facilities is in the public convenience and necessity, finding that the facilities will not adversely affect Natural's existing customers or competitor pipelines and their captive customers, and that Natural 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 Natural'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

¹ 170 FERC ¶ 61,147 (2020).

² *Id.* PP 14-18. The order also finds that the abandonment of the existing compressor units is in the public convenience and necessity. *Id.* 20.

³ *Id.* P 45.

⁴ 867 F.3d 1357 (D.C. Cir. 2017).

⁵ 170 FERC ¶ 61,147 at 43; EA at 45, 47-48.

3. I write separately to respond to my colleague's argument that the Commission should have determined whether the incremental GHG emissions directly emitted by the new compressor units 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 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.* PP 52-73.