

170 FERC ¶ 61,142  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP19-7-001

ORDER DENYING REHEARING AND STAY

(Issued February 21, 2020)

1. On December 19, 2019, the Commission issued an order under sections 7(b) and 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations,<sup>2</sup> authorizing Tennessee Gas Pipeline Company, L.L.C. (Tennessee) to construct a new 2.1-mile-long, 12-inch-diameter pipeline loop and replace two compressor units at Compressor Station 261 (CS 261) in Hampden County, Massachusetts (261 Upgrade Project).<sup>3</sup> Food and Water Watch and the Berkshire Environmental Action Team filed timely requests for rehearing of the Certificate Order. For the reasons discussed below, we deny rehearing and stay.

**I. Background**

2. The 261 Upgrade Project is designed to provide 72,400 dekatherms (Dth) per day of firm transportation service on Tennessee's pipeline system from existing interconnections with Maritimes & Northeast Pipeline, LLC (Maritimes) and Portland Natural Gas Transmission System's (Portland) Joint Facilities in Dracut, Massachusetts, and Iroquois Gas Transmission System's facilities in Wright, New York, to the discharge side of

---

<sup>1</sup> 15 U.S.C. § 717f(b), (c) (2018).

<sup>2</sup> 18 C.F.R. pt. 157 (2019).

<sup>3</sup> *Tenn. Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230 (2019) (Certificate Order).

CS 261.<sup>4</sup> The project includes a 2.1-mile-long, 12-inch-diameter pipeline loop located adjacent to Tennessee's existing 8-inch-diameter 261BP-100 pipeline and 10-inch-diameter 261B-100 pipeline in Hampden County, Massachusetts.<sup>5</sup> Tennessee proposed to remove a previously abandoned 6-inch-diameter pipeline where the pipeline loop will be installed adjacent to the 261B-100 pipeline (approximately 1.1 miles of the total pipeline loop length).<sup>6</sup> Tennessee also proposed to abandon two compressor units, one 5,490 horsepower (hp) unit and one 1,199 hp unit, at CS 261 in Hampden County, Massachusetts, and replace those units with a single new 11,107 hp natural gas-fired turbine compressor unit.<sup>7</sup>

3. Tennessee initially entered into 20-year binding precedent agreements with Bay State Gas Company d/b/a Columbia Gas of Massachusetts (CMA) for 40,400 Dth/day to be served by capacity created by the 261 Upgrade Project and Holyoke Gas and Electric Department (Holyoke) for 5,000 Dth/day.<sup>8</sup> We note that subsequent to the issuance of the Certificate order, on January 21, 2020, Tennessee filed a letter with the Commission stating Holyoke terminated its precedent agreement for the 261 Upgrade Project.<sup>9</sup> In that letter Tennessee requested a partial waiver of Ordering Paragraph (C) of the Certificate Order which requires Tennessee to file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in the precedent agreements supporting the application before Tennessee can begin construction of the

---

<sup>4</sup> Certificate Order, 169 FERC ¶ 61,230 at P 4. Tennessee has also reserved 45,400 Dth per day of existing mainline capacity on its system from the interconnect with Maritimes and Portland's Joint Facilities in Dracut, Massachusetts, to CS 261. Tennessee states that reservation of the existing capacity has enabled Tennessee to reduce the facilities that need to be constructed to meet project shippers' specific market needs.

<sup>5</sup> Certificate Order, 169 FERC ¶ 61,230 at P 5.

<sup>6</sup> *Id.* The 6-inch-diameter pipeline was abandoned in 1958. *Tenn. Gas Transmission Co.*, 20 FPC 441 (1958).

<sup>7</sup> Certificate Order, 169 FERC ¶ 61,230 at P 6.

<sup>8</sup> *Id.* P 7. Both CMA and Holyoke are local distribution companies. *Id.*

<sup>9</sup> Tennessee January 21, 2020 Request for Partial Waiver of Ordering Paragraph (C).

project.<sup>10</sup> The Commission is concurrently issuing an order approving this request as a separate proceeding.<sup>11</sup>

4. In the Certificate Order, the Commission agreed with the conclusions presented in the Environmental Assessment (EA) and adopted the EA's recommended mitigation measures, as modified in the order.<sup>12</sup> The Certificate Order determined that the 261 Upgrade Project, if constructed and operated as described in the EA, has no significant impacts and is required by the public convenience and necessity.<sup>13</sup>

## **II. Procedural Matters**

5. Berkshire Environmental Action Team's request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure. Rule 713 states that requests for rehearing must "[s]tate concisely the alleged error in the final decision" and "include a separate section entitled 'Statement of Issues,' listing each issue in a separately enumerated paragraph" that includes precedent relied upon.<sup>14</sup> Any issue not so listed will

---

<sup>10</sup> Certificate Order, 169 FERC ¶ 61,230 at ordering para. (C).

<sup>11</sup> *Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,141 (2020).

<sup>12</sup> *Id.* P 84.

<sup>13</sup> *Id.* PP 29, 84.

<sup>14</sup> 18 C.F.R. §§ 385.713(c)(1), (2) (2019). *See* Order No. 663, Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663, 70 Fed. Reg. 55,723 (Sept. 23, 2005), FERC Statutes and Regulations ¶ 31,193 (2005); Order No. 663-A, *Revision of Rules of Practice and Procedure Regarding Issue Identification*, 71 Fed. Reg. 14640-01 (Mar. 23, 2006), FERC Stats. & Regs. ¶ 31,211 (2006) (explaining that requiring the party seeking rehearing to specify each issue being raised in a separate paragraph benefits the Commission by clarifying the issues it needs to address on rehearing, and benefits the party by preventing its claims from being denied on appeal for failure to clearly raise the issue at the administrative level).

be deemed waived.<sup>15</sup> Accordingly, we dismiss Berkshire Environmental Action Team's rehearing request.<sup>16</sup> Nonetheless, we have addressed their concerns below.

### III. Discussion

#### A. The Natural Gas Act: The Certificate Order Complied with the Certificate Policy Statement

6. Food and Water Watch alleges that the Commission erred by relying on the project's precedent agreements as evidence of project need.<sup>17</sup> According to Food and Water Watch, the project will not benefit end users, but will provide Marcellus Shale natural gas with access to out-of-state markets and export facilities.<sup>18</sup> Food and Water Watch claims the entire purpose of the project is to support the natural gas production industry in the Marcellus Shale, which, according to Food and Water Watch, is financially unstable due to rising interest rates and high well depletion rates.<sup>19</sup>

7. We disagree. As we explained in the Certificate Order, Tennessee entered into long-term precedent agreements for most of the project's capacity.<sup>20</sup> Although Food and Water Watch claims that the Commission cannot rely on precedent agreements,<sup>21</sup> our decision is consistent with Commission and court precedent. The Commission's Certificate Policy Statement indicates that the Commission allows an applicant to rely on a variety of relevant factors to demonstrate need and makes clear that precedent agreements are significant evidence of project need.<sup>22</sup> Although Food and Water Watch

---

<sup>15</sup> *Id.* § 385.713(c)(2).

<sup>16</sup> *See, e.g., Boott Hydropower, Inc.*, 143 FERC ¶ 61,159 (2013) (dismissing request for rehearing that did not include a Statement of Issues and did not identify the specific error alleged).

<sup>17</sup> Food and Water Watch Request for Rehearing and Stay at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Certificate Order, 169 FERC ¶ 61,230 at P 20.

<sup>21</sup> Food and Water Watch Request for Rehearing and Stay at 8.

<sup>22</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748 (explaining that "contracts or precedent agreements always will be important evidence of demand for a project").

fails to acknowledge this precedent, multiple courts have confirmed that nothing in the Certificate Policy Statement, nor any precedent construing it, indicates that the Commission must look beyond the market need reflected by the applicant's precedent agreements with shippers.<sup>23</sup>

8. Nonetheless, Food and Water Watch argues that the project will serve the natural gas production industry, not end users, and contends that there is already a glut of natural gas in the region without any evidence of any regional demand for natural gas.<sup>24</sup> Although the Commission need not look beyond the precedent agreements, we note that Food and Water Watch is mistaken. As the Commission explained in the Certificate Order, the project is designed to provide firm natural gas transportation service to CMA, a local distribution company, enabling it to provide reliable service to its existing customers.<sup>25</sup> The replacements at CS 261 will also allow Tennessee to improve reliability by meeting peak flow conditions and other operational needs.<sup>26</sup>

9. The Berkshire Environmental Action Team also argues that there is no need for the project because regional demand for energy is decreasing and, CMA, which will be the project's sole shipper, may not need the capacity contracted for in its precedent agreement.<sup>27</sup> Again, it is Commission policy to not look beyond precedent or service agreements to make judgments about the needs of individual shippers.<sup>28</sup> We note that

---

<sup>23</sup> See, e.g., *Twp. of Bordentown, N.J. v. FERC*, 903 F.3d 234, at 262-63 (3d Cir. 2018) ("A contract for a pipeline's capacity is a useful indicator of need because it reflects a 'business decision' that such a need exists. If there were no objective market demand for the additional gas, no rational company would spend money to secure the excess capacity."); *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (*Sierra Club*) (explaining that an applicant can make a showing of market need "by presenting evidence of preconstruction contracts for gas transportation service" (internal quotation marks omitted)); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) (rejecting the argument that precedent agreements are inadequate to demonstrate market need); *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 112 n.10 (D.C. Cir. 2014) (noting that FERC need not "look beyond the market need reflected by the applicant's existing contracts with shippers").

<sup>24</sup> Food and Water Watch Request for Rehearing and Stay at 7.

<sup>25</sup> Certificate Order, 169 FERC ¶ 61,230 at PP 24, 26.

<sup>26</sup> Application at 2.

<sup>27</sup> Berkshire Environmental Action Team Request for Rehearing at 2-3.

<sup>28</sup> Certificate Order, 169 FERC ¶ 61,230 at P 26.

approximately 56 percent of the project is subscribed,<sup>29</sup> which the Commission has previously found as persuasive evidence of market need for a project.<sup>30</sup>

10. As for Berkshire Environmental Action Team's claims that regional demand for natural gas is shrinking, we are unpersuaded by its submitted study. Projections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states.<sup>31</sup> Given the uncertainty associated with long-term demand projections, where, as here, an applicant has precedent agreements for long-term firm service, the Commission deems the precedent agreements, which represent actual, rather than theoretical evidence regarding demand, to be the better evidence of demand.

### **B. The National Environmental Policy Act**

11. Food and Water Watch and the Berkshire Environmental Action Team argue that the Commission failed to fully analyze climate change, air quality, and cumulative impacts. As discussed below, the Commission considered these impacts pursuant to NEPA, and while petitioners request additional analysis, an EA is meant to be a "concise public document ... that serves to ... [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact."<sup>32</sup> As discussed in more detail below, based on the EA, we affirm the Commission's

---

<sup>29</sup> The 261 Upgrade Project provides 72,400 Dth per day of firm transportation service on Tennessee's system, of which 40,400 Dth per day is subscribed by CMA. *See Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,141.

<sup>30</sup> *See, e.g., NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 41 (2017), *on reh'g*, 164 FERC ¶ 61,054 (2018), *aff'd in relevant part, City of Oberlin v. FERC*, 937 F.3d 599, 605 (2019) (finding need for a new pipeline system that was 59 percent subscribed); *Elba Express Co., L.L.C.*, 155 FERC ¶ 61,293, at P 8 (2016) (granting partial waiver where five of six shippers executed contracts, representing approximately 58 percent of the project's capacity); *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151, at P 32 (2009), *on reh'g*, 131 FERC ¶ 61,164 (2010) (issuing a certificate with transportation agreements representing 52 percent of the new project's capacity).

<sup>31</sup> *See, e.g., Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at P 54 (2018).

<sup>32</sup> 40 C.F.R. §§ 1501.3-1501.4 (2019).

determination in the Certificate Order that the project does not constitute a major federal action significantly affecting the quality of the human environment.<sup>33</sup>

**1. Climate Change**

**a. Consistency with IPCC Recommendations and Massachusetts Law**

12. The Berkshire Environmental Action Team argues that the project violates recommendations by the Intergovernmental Panel on Climate Change (IPCC) and Massachusetts state law.<sup>34</sup> The Berkshire Environmental Action Team explains that the IPCC recommends decarbonization within twelve years and argues that the project is a multi-decade commitment to increase fossil fuel use, which goes against that recommendation.<sup>35</sup>

13. The Berkshire Environmental Action Team has not provided specific IPCC recommendations or evidence that the project violates those recommendations. In any event, we note that the IPCC's recommendations are guidelines for governments to create climate policies. The Commission is not undertaking to establish climate policy, nor are the guidelines binding on the Commission.<sup>36</sup> As for the project's potential effect on state policy, the Berkshire Environmental Action Team has not provided evidence that the project would violate any specific state law. In prior comments, the Berkshire Environmental Action Team has summarily stated that the project violates Massachusetts's Global Warming Solutions Act, which sets goals to reduce state-wide greenhouse gas (GHG) emissions eighty percent below 1990 levels by 2050,<sup>37</sup> but there is no indication in the record that this is the case.

---

<sup>33</sup> Certificate Order, 169 FERC ¶ 61,230 at P 53.

<sup>34</sup> Berkshire Environmental Action Team Request for Rehearing at 4-5.

<sup>35</sup> *Id.*

<sup>36</sup> The IPCC was established by the United Nations to provide policymakers with scientific assessments concerning climate change and adaptation and mitigation strategies to help governments develop climate policies. *See About IPCC*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/about/> (last visited Feb. 13, 2020).

<sup>37</sup> *See* Berkshire Environmental Action Team April June 17, 2019 Comment at 4.

**b. Upstream and Downstream Greenhouse Gas Emissions**

14. Food and Water Watch alleges that the EA failed to account for the project's contribution to climate change from the indirect emissions associated with upstream gas production and downstream gas consumption.<sup>38</sup>

15. NEPA requires agencies to consider indirect effects or impacts that are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>39</sup> With respect to causation, “NEPA requires a ‘reasonably close causal relationship’ between the environmental effect and the alleged cause”<sup>40</sup> in order “to make an agency responsible for a particular effect under NEPA.”<sup>41</sup> As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”<sup>42</sup> Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation” will not fall within NEPA if the causal chain is too attenuated.”<sup>43</sup> Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>44</sup>

---

<sup>38</sup> Food and Water Watch Request for Rehearing and Stay at 8. Berkshire Environmental Action Team also argues that the Commission should account for downstream use by customers. Berkshire Environmental Action Team Request for Rehearing at 5.

<sup>39</sup> 40 C.F.R. § 1508.8 (2019).

<sup>40</sup> *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

<sup>41</sup> *Id.* at 767.

<sup>42</sup> *Id.*

<sup>43</sup> *Metro. Edison*, 460 U.S. at 774.

<sup>44</sup> *Pub. Citizen*, 541 U.S. at 770. See generally *Tennessee Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230 (2019) (McNamee, Comm’r, concurrence (elaborating on the purpose of the NGA)).



16. Food and Water Watch claims the Commission's refusal to consider these indirect emissions runs counter to court rulings in *Barnes v U.S. Department of Transportation*,<sup>45</sup> *Sierra Club v. FERC*,<sup>46</sup> and *Mid States Coalition for Progress v. Surface Transportation Board*,<sup>47</sup> which it claims support its assertion that pipeline projects have the unique potential to spur natural gas consumption and production, resulting in both upstream and downstream GHG emissions as indirect project effects.<sup>48</sup>

17. We disagree. None of the cases Food and Water Watch relies upon is determinative here. In *Barnes*, the Ninth Circuit Court of Appeals noted that the Federal Aviation Administration had acknowledged that runway expansion projects have the unique potential to spur demand, but the agency failed to explain and support with record evidence its conclusion that the proposed project, the addition of a third runway at a two-runway airport, was unlikely to attract more private aircraft.<sup>49</sup> The court thus held that it was reasonably foreseeable that the addition of third runway would have a growth-inducing effect on aviation demand because airport capacity is primarily a factor of runway capacity.<sup>50</sup> In contrast, the 261 Upgrade Project, which is adding a small amount of incremental capacity on Tennessee's existing 11,000-mile interstate pipeline system, there is no evidence that the project will spur additional production or downstream consumption. And reliance on *Mid States* in this context is "misplaced since the agency in *Mid States* stated that a particular outcome was reasonably foreseeable and that it would consider its impact, but then failed to do so," but here the Commission did neither of those things.<sup>51</sup>

---

<sup>45</sup> *Barnes v. U.S Dep't of Transp.*, 655 F.3d 1124, 1138 (9th Cir. 2011) (*Barnes*).

<sup>46</sup> *Sierra Club*, 867 F.3d 1357.

<sup>47</sup> *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003) (*Mid States*).

<sup>48</sup> Food and Water Watch Request for Rehearing and Stay at 9 ("The D.C. Circuit has made it excessively clear that GHG emissions from the downstream combustion of natural gas is 'an indirect effect of authorizing' a pipeline project, which the Commission can reasonably foresee, and which the agency has a legal authority to consider and mitigate."); *see also id.* at 13.

<sup>49</sup> *See Barnes*, 655 F.3d at 1137-38.

<sup>50</sup> *See id.* at 1138.

<sup>51</sup> *Ark. Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 431 F.3d 1096, 1102 (8th Cir. 2005).

18. Regarding upstream emissions from natural gas production, there is no record evidence that would help the Commission determine the origin of the natural gas that will be transported on the project, let alone predict the number and location of any additional wells that will be drilled as a result. Food and Water Watch contends that NEPA compels the Commission to examine emissions from upstream production, noting that in *Mid States*, the U.S. Court of Appeals for the Eighth Circuit warned that even “if the nature of the effect is reasonably foreseeable but its extent is not . . . the agency may not simply ignore the effect.”<sup>52</sup> But here, the nature of the effect – increased natural gas production – is not reasonably foreseeable. Courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”<sup>53</sup> Although courts have held that NEPA requires “reasonable forecasting,” an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”<sup>54</sup> Because the project will receive natural gas from other interstate pipelines,<sup>55</sup> the specific source of natural gas to be transported via the project is currently unknown and will likely change throughout the project’s operation. Thus, the Commission was not required to address the effects of increased natural gas production because there is no evidence that the project will increase production.

19. As to downstream emissions from gas consumption, the U.S. Court of Appeals for the D.C. Circuit in *Sierra Club v. FERC* held that where it is known that the natural gas transported by a project will be used for a specific end-use combustion, the Commission should “estimate[] the amount of power-plant carbon emissions that the pipelines will make possible.”<sup>56</sup> However, outside the context of known specific end use, the D.C. Circuit held in *Birckhead v. FERC*, that “emissions from downstream gas combustions are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a

---

<sup>52</sup> *Mid States*, 345 F.3d at 549-50 (holding that that the Surface Transportation Board must examine increase in coal usage associated with the construction and rehabilitation of railroad lines for the transportation of coal from a mining area).

<sup>53</sup> *EarthReports, Inc. v. FERC*, 828 F.2d 949, 955 (D.C. Cir. 2016) (citations omitted); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

<sup>54</sup> *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

<sup>55</sup> Certificate Order, 169 FERC ¶ 61,230 at P 4 (explaining that the project will receive natural gas from an existing interconnection with Maritimes and Portland’s joint facilities).

<sup>56</sup> *Sierra Club*, 867 F.3d at 1371.

pipeline project.”<sup>57</sup> The court in *Birckhead* also noted that “NEPA . . . requires the Commission to at least attempt to obtain the information necessary to fulfill its statutory responsibilities,” but citing to *Delaware Riverkeeper Network*, the court acknowledged that NEPA does not “demand forecasting that is not meaningfully possible.”<sup>58</sup>

20. Here, Food and Water Watch fails to point to any evidence in the record to demonstrate that downstream emissions qualify as a reasonably foreseeable indirect effect, nor does it argue that the Commission failed to adequately develop the record. The project is expected to serve CMA’s existing customers, but Commission staff also specifically asked where the gas would be delivered<sup>59</sup> and Tennessee repeated what is in its application – that the project would enable gas deliveries between existing interconnects – without providing more detailed information on exactly how the gas would be used.<sup>60</sup> Such generalized statements contrast with *Sierra Club v. FERC*, where the court relied on record evidence that the gas would be used in two identified power plants.<sup>61</sup> Accordingly, we find these generalized statements insufficient to render the emissions associated with any consumption of the gas to be transported a reasonably foreseeable indirect effect of the project.

## 2. Air Quality Impacts

21. The Berkshire Environmental Action Team argues that the project should not have been approved due to costs associated with the project’s emissions. The Berkshire Environmental Action Team states that a study supports the assertion that health, agriculture, and environmental costs associated with carbon dioxide emissions are \$38 per ton and methane are \$2,900 per megaton.<sup>62</sup> The Berkshire Environmental Action

---

<sup>57</sup> *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (citing *Calvert Cliffs’ Coordinating Comm.*, 449 F.2d at 1122).

<sup>58</sup> *Id.* at 520 (quoting *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014)).

<sup>59</sup> Data Request to Tennessee from the Office of Energy Projects, FERC at 11, Question 44 (Dec. 19, 2018).

<sup>60</sup> Tennessee Response to Environmental Information Requests at 48 (Jan. 8, 2019).

<sup>61</sup> *Sierra Club*, 867 F.3d at 1372 (“What are the ‘reasonably foreseeable’ effects of authorizing a pipeline that will transport natural gas to Florida power plants? First, that gas will be burned in those power plants.”).

<sup>62</sup> Berkshire Environmental Action Team Request for Rehearing at 6.

Team fails to demonstrate why these cited costs should be determinative here. Even if the Commission quantified harm caused by the project using the Berkshire Environmental Action Team's analysis, we are unaware of an established framework or threshold for assessing those costs.<sup>63</sup> As discussed in the Certificate Order, consistent with our obligations under NEPA, the EA disclosed greenhouse gas emissions, including carbon dioxide and methane, associated with the construction and operation of the project.<sup>64</sup>

22. The Berkshire Environmental Action Team also argues that the project will adversely impact the health of the residents of Hampden County due to methane emissions, and those emissions will in turn result in an increased local catalyzation of ozone.<sup>65</sup> The Berkshire Environmental Action Team argues the methane emissions will increase Hampden County's high ozone levels and, as a result, exacerbate the county's already elevated child and adult asthma rates.<sup>66</sup> They argue that "adding 477,258 tons per year of emissions to a region already struggling with ozone pollution" is "unsafe and unreasonable."<sup>67</sup> With regard to increased catalyzation of ozone, emission of volatile organic chemicals (VOC) that can lead to the formation of ozone is regulated by the EPA under the Clean Air Act. In developing its regulations for VOC emissions, we note that the EPA excluded methane as a concern, citing its reactivity in forming ozone.<sup>68</sup>

---

<sup>63</sup> See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*2 (D.C. Cir. Feb. 19, 2019) ("[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.").

<sup>64</sup> Certificate Order at P 65 (citing EA at 53-55).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> 40 C.F.R. § 51.100(s)(1) (2019). See *Murray Energy Corp. v. FERC*, 629 F.3d 231, 240 (D.C. Cir. 2011) (explaining that the Commission properly relied on consultation with the Pipeline and Hazardous Materials Safety Administration and compliance with PHMSA requirements in evaluating the need for post-construction mitigation measures); *City of Pittsburgh v. FPC*, 237 F.2d 741, 754 (D.C. Cir. 1956)

23. Berkshire Environmental Action Team claims that the project will add 477,258 tons of operational emissions to an area “already struggling with ozone pollution issues,”<sup>69</sup> but it is unclear what type of emissions are being referred to and, regardless, this estimate does not accurately reflect project emissions. As disclosed in the EA, all quantified operational emissions amount to 113,284 tons per year.<sup>70</sup> With regard to ozone precursors, the project is expected to result in 20.27 tons per year of VOCs and 67.33 tons per year of NO<sub>x</sub>.<sup>71</sup> Although Hampden County is in moderate ozone nonattainment, the project is not expected to impede the state’s ability to attain required National Ambient Air Quality Standards or negatively impact human health.<sup>72</sup> Accordingly, we find that the Berkshire Environmental Action Team’s arguments about the project’s impact on ozone does not affect the EA’s finding that the project will have no significant impact on the human environment or our finding that the project is in the public convenience and necessity.

### 3. Cumulative Impacts

24. Food and Water Watch alleges that the Commission failed to take a hard look at the cumulative impacts of the project along with other past, present, and reasonably foreseeable natural gas pipeline infrastructure projects in the Northeast United States and in the Marcellus Shale development.<sup>73</sup> Specifically, Food and Water Watch claims the Commission failed to consider impacts associated with the Longmeadow Meter Station, a new meter station that Tennessee is constructing on its 200 Line under the automatic provisions of its blanket certificate, because the station is a delivery point for the 261 Upgrade Project.<sup>74</sup> Food and Water Watch also contends that the Commission failed to

---

(explaining that the Commission “would ... do well to respect the views of ... other agencies as to those problems” for which those other agencies “are more directly responsible and more competent than this Commission”).

<sup>69</sup> Berkshire Environmental Action Team Request for Rehearing at 6.

<sup>70</sup> EA at 54.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 53, 66.

<sup>73</sup> Food and Water Watch Request for Rehearing and Stay at 14.

<sup>74</sup> *Id.*

review Tennessee's Connecticut Expansion Project and four projects publicly announced in the Springfield area.<sup>75</sup>

25. CEQ defines cumulative impacts as "the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."<sup>76</sup> A cumulative environmental impact results from the effect of the current project along with any other actions "*in the same geographic area* as the project under review."<sup>77</sup>

26. The EA disclosed impacts associated with the 261 Upgrade Project and identified the geographic scope of the cumulative impacts based on the resources affected by project construction. Specifically, Commission staff defined the geographic scope for its analysis of cumulative impacts to include projects or actions within 0.25 mile of construction activities for impacts to air quality and noise; projects or actions within a 30.1 mile radius for impacts to operational air quality; and within same HUC-12 subwatershed area for water resources and wetlands.<sup>78</sup> The EA examined the Longmeadow Meter Station and found that the station would not be within the geographic or temporal scope for any resources analyzed.<sup>79</sup> In addition, as explained in the Certificate Order, although the Longmeadow Meter Station will support future deliveries to CMA, the capacity associated with these deliveries was not created by the 261 Upgrade Project.<sup>80</sup> Rather, deliveries to the new Longmeadow Meter Station will be supported through reserved capacity on Tennessee's existing facilities. The 261 Upgrade Project will ultimately deliver gas to the existing Agawam delivery point. The EA also examined the Springfield infrastructure projects but there was not enough information to consider those projects as none had been

---

<sup>75</sup> *Id.*

<sup>76</sup> 40 C.F.R. § 1508.7 (2019).

<sup>77</sup> *Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) (*Freeport LNG*) (alteration in the original) (citations omitted); *see also* 40 C.F.R. § 1508.7 (2019).

<sup>78</sup> EA at 63.

<sup>79</sup> *Id.* ("Based on the location, construction timelines, and operational nature of the facility, the Longmeadow Meter Station would not be within the geographic scope for any resources analyzed in our cumulative impacts analysis with the exception of construction air quality. As the construction timeline for the Longmeadow meter station indicates completion by November 2019, there would be no overlap of construction timelines, and is therefore not addressed further.").

<sup>80</sup> Certificate Order, 169 FERC ¶ 61,230 at P 7 n.7.

proposed to the Commission.<sup>81</sup> Finally, the EA also examined the Connecticut Loop of the Connecticut Expansion Project for cumulative surface water impacts, but because the loop has already been constructed, it is not expected to contribute to cumulative impacts.<sup>82</sup> Food and Water Watch does not allege any specific errors with this analysis.

27. Food and Water Watch next claims that the Commission must consider these projects on a regional basis because they will deplete the natural and scenic resources of the region.<sup>83</sup> But, again, Food and Water Watch does not identify any information that was overlooked in the Commission's analysis of cumulative impacts or point to any concerns with specific environmental resources. As discussed, the cumulative impacts analysis in the EA was appropriate and we affirm that the project will not result in any significant environmental impacts.

**C. Motion for Stay**

28. Food and Water Watch requests that the Commission stay the Certificate Order.<sup>84</sup> However, Food and Water Watch provides no discussion, support, or reasons for granting stay. Accordingly, we deny Food and Water Watch's request for stay.

The Commission orders:

(A) Food and Water Watch's request for rehearing and stay are hereby denied, as discussed in the body of this order.

(B) Berkshire Environmental Action Team's request for rehearing is hereby dismissed, as discussed in the body of this order.

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

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>81</sup> EA at 64.

<sup>82</sup> *Id.*

<sup>83</sup> Food and Water Watch Rehearing and Stay Request at 15.

<sup>84</sup> *Id.* at 16.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP19-7-001

(Issued February 21, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order on rehearing because I continue to believe that the Commission's action violates both the Natural Gas Act<sup>1</sup> (NGA) and the National Environmental Policy Act<sup>2</sup> (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 assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order affirming the decision to authorize Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee Gas) proposed Compressor Station 261 upgrade project (Project),<sup>3</sup> the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. 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.<sup>4</sup> 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"<sup>5</sup> and, as a result, conclude that the Project is in the public interest and required by the public convenience and

---

<sup>1</sup> 15 U.S.C. § 717f (2018).

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

<sup>3</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 169 FERC ¶ 61,230, at P 29 (2019) (Certificate Order), *order on reh'g*, 170 FERC ¶ 61,142 (2020) (Rehearing Order).

<sup>4</sup> 261 Upgrade Project Environmental Assessment at Tables 17–18 (EA); Food and Water Watch Rehearing Request at 8 ("In the Project EA, FERC provided a blatantly inadequate review of the emissions released by this facility.").

<sup>5</sup> Certificate Order, 169 FERC ¶ 61,230 at P 84; EA at 74.



necessity.<sup>6</sup> 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. Making matters worse, the Commission again refuses to make a serious effort to assess the indirect effects of the Project—despite the fact that the record plainly provides that the Project's only remaining shipper, Bay State Gas Company d/b/a Columbia Gas of Massachusetts (CMA), plans to use the expansion capacity to serve its residential, commercial, and industrial customers in Massachusetts.<sup>7</sup> The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has repeatedly criticized the Commission for its stubborn refusal to identify and consider the reasonably foreseeable GHG emissions caused by the downstream combustion of natural gas transported through an interstate pipeline. But even so, today's order doubles down on approaches that the D.C. Circuit has already rejected. So long as the Commission refuses to heed the court's unambiguous directives, I have no choice but to dissent.

**I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking**

4. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and consumption of fossil fuels, including natural gas. The Commission recognizes this relationship, finding, as it must, that "(GHGs) occur . . . as a result of human activities, such as the burning of fossil fuels"<sup>8</sup> and that GHG emissions from the Project's construction and operation, in combination with emissions from other sources, would "contribute incrementally to future climate change impacts."<sup>9</sup> In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project's contribution to climate change,

---

<sup>6</sup> Certificate Order, 169 FERC ¶ 61,230 at P 29; *see also* Rehearing Order, 170 FERC ¶ 61,142 at P 4.

<sup>7</sup> CMA November 8, 2018 Comments at 2-3; *see infra* note 23 and accompanying discussion.

<sup>8</sup> EA at 53.

<sup>9</sup> *Id.* at 68.

both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest and required by the public convenience and necessity.<sup>10</sup>

5. Today's order on rehearing falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the facility's impact on climate change.<sup>11</sup> That is now clearly established D.C. Circuit precedent.<sup>12</sup> The Commission, however, insists that it need not consider whether the Project's contribution to climate change is significant because there is no "universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to the Project's incremental contribution to GHGs."<sup>13</sup> However, the most troubling part of the Commission's rationale is what

---

<sup>10</sup> Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f. Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("The [FEIS] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action," as well as a discussion of direct and indirect effects *and their significance*. (emphasis added)).

<sup>11</sup> *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *see also Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

<sup>12</sup> *See Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019), *reh'g en banc granted, judgment vacated*, 2019 WL 6605464 (D.C. Cir. Dec. 5, 2019); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019); *Sabal Trail*, 867 F.3d at 1371-72. The history of these cases is discussed further below. *See infra* P 9.

<sup>13</sup> *See* EA at 68–69 ("Currently, there is no universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to the Project's

comes next. Based on this alleged inability to assess significance, the Commission concludes that the Project will have no significant environmental impact.<sup>14</sup> Think about that. The Commission is saying out of one side of its mouth that it need not assess the significance of the Project's impact on climate change while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant. That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the "hard look" that the law demands.<sup>15</sup>

6. It also means that the volume of emissions caused by the Project does not play a meaningful role in the Commission's public interest determination, no matter how many times the Commission assures us otherwise. Using the approach in today's order, the Commission will always be able to conclude that a project will not have any significant environmental impact irrespective of the project's actual GHG emissions or those emissions' impact on climate change. So long as that is the case, a project's impact on climate change cannot, as a logical matter, play a meaningful role in the Commission's public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

## **II. The Commission's NEPA Analysis of the Project's Contribution to Climate Change Is Deficient**

7. The Commission's NEPA analysis is similarly flawed. When conducting a NEPA review, an agency must consider both the direct and the indirect effects of the project

---

incremental contribution to GHGs . . . . Without the ability to determine discrete resource impacts, we are unable to determine the significance of the Project's contribution to climate change."); *see also* Certificate Order, 169 FERC ¶ 61,230 at P 68.

<sup>14</sup> *See* Certificate Order, 169 FERC ¶ 61,230 at P 84 ("[A]pproval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment."); Rehearing Order, 170 FERC ¶ 61,142 at P 11; *see also* EA at 74.

<sup>15</sup> *E.g., Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (Agencies cannot overlook a single environmental consequence if it is even "arguably significant."); *see Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) ("Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." (internal quotation marks omitted)); *see also Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that agency action is "arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency").

under consideration.<sup>16</sup> The D.C. Circuit has repeatedly instructed the Commission that the GHG emissions caused by the reasonably foreseeable combustion of natural gas transported through a pipeline are an indirect effect and must, therefore, be included within the Commission's NEPA analysis.<sup>17</sup> While the Commission does quantify the direct GHG emissions related to Project's construction and operation,<sup>18</sup> it fails to consider the indirect GHG emissions resulting from the incremental natural gas capacity facilitated by the Project. Once again the Commission takes the position that if it does not know the specific volume and end-use of the natural gas, any associated GHG emissions are categorically not reasonably foreseeable.<sup>19</sup>

8. I remain baffled by the Commission's continued refusal to take any step towards considering indirect downstream emissions and their impact on climate change unless specifically and expressly directed to do so by the courts (and even that does not always seem to be the case<sup>20</sup>). Here there are plenty of steps that the Commission could take to consider the GHGs associated with the Project's incremental capacity if the Commission were actually inclined to take a 'hard look' at climate change. At a minimum, we know that the vast majority, 97 percent, of all natural gas consumed in the United States is combusted<sup>21</sup>—a fact that, on its own might be sufficient to make downstream emissions

---

<sup>16</sup> 40 C.F.R. §§ 1502.16(b), 1508.8(b); *Sabal Trail*, 867 F.3d at 1371.

<sup>17</sup> See *Allegheny Def. Project*, 932 F.3d at 945-46; *Birckhead*, 925 F.3d at 518-19; *Sabal Trail*, 867 F.3d at 1371-72.

<sup>18</sup> EA at Tables 17-18.

<sup>19</sup> Certificate Order, 169 FERC ¶ 61,230 at P 64 (stating that “[b]ecause the specific volume and end-use of the gas which will transported under those contracts, as well as the gas which may ultimately be transported using the uncontracted for capacity, is unknown, any potential greenhouse gas emissions associated with the ultimate combustion of the transported gas are not reasonably foreseeable”); Rehearing Order, 170 FERC ¶ 61,142 at P 20.

<sup>20</sup> *El Paso Natural Gas Co., L.L.C.*, 169 FERC ¶ 61,133 (2019) (Glick, Comm’r, dissenting in part at PP 10-11) (criticizing the Commission for failing to follow the D.C.’s guidance in *Birckhead* and consider GHG emissions associated with natural gas transportation capacity that it was told would be used to serve electricity generation).

<sup>21</sup> U.S. Energy Info. Admin., *September 2019 Monthly Energy Review* 22, 97 (2019) (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption),

reasonably foreseeable, at least absent contrary evidence. After all, the D.C. Circuit has recognized that NEPA does not require absolute certainty and that “some educated assumptions are inevitable in the NEPA process.”<sup>22</sup> Moreover, the record here makes this a relatively easy case: In comments in support of the project application, CMA states that it needs the additional transportation capacity to provide natural gas to its approximately 321,000 residential, commercial, and industrial customers in Massachusetts.<sup>23</sup> That would seem to be more-than-sufficient to confirm that the gas is highly likely to be combusted, making the resulting GHG emissions reasonably foreseeable.

9. In any case, even where the Commission quantifies the Project’s construction and operational GHG emissions, it still fails to “evaluate the ‘incremental impact’ that [those emissions] will have on climate change or the environment more generally.”<sup>24</sup> In *Sabal Trail*, the court explained that the Commission was required “to include a discussion of the ‘significance’ of” the indirect effects of the Project, including its GHG emissions.<sup>25</sup> That makes sense. Identifying and evaluating the consequences that the Project’s GHG

---

<https://www.eia.gov/totalenergy/data/monthly/archive/00351908.pdf>.

<sup>22</sup> *Sabal Trail*, 867 F.3d at 1374; *see id.* (stating that “the effects of assumptions on estimates can be checked by disclosing those assumptions so that readers can take the resulting estimates with the appropriate amount of salt”).

<sup>23</sup> CMA November 8, 2018 Comments at 2-3 (“The service contemplated by [CMA’s precedent] agreement is needed in order for CMA to continue providing safe, dependable natural gas service to its customers in Massachusetts.”); EA at 71 (describing the Project’s purpose and need as securing long-term firm transportation service for Project shippers, “alleviat[ing] capacity-strain in the New England gas markets,” and “provid[ing] necessary natural gas capacity to meet existing customer demand in the northeast”); Food and Water Watch Rehearing Request at 8, 13 (“The Commission adopts an overly narrow and circular definition of indirect effects and disregards the Project’s central purpose—to *facilitate additional natural gas consumption*.” (emphasis in original)).

<sup>24</sup> *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *see also WildEarth Guardians v. Zinke*, No. CV 16-1724 (RC), 2019 WL 1273181, at \*1 (D.D.C. Mar. 19, 2019) (explaining that the agency was required to “provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute” to the “impacts of climate change in the state, the region, and across the country”).

<sup>25</sup> *Sabal Trail*, 867 F.3d at 1374.

emissions may have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed.<sup>26</sup> But neither the Commission's orders in this proceeding nor the accompanying EA provide that discussion or even attempt to assess the significance of the Project's GHG emissions.

10. Instead, the Commission insists that it need not assess the significance of the Project's GHG emissions because it lacks a "universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to the Project's incremental contribution to GHGs."<sup>27</sup> But that does not excuse the Commission's failure to evaluate these emissions let alone to determine the significance of the Project's environmental impact from these emissions. As an initial matter, the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. One possible methodology endorsed by the courts is comparing a project's GHG emissions against a known benchmark, such as a state emission reduction requirement, an approach the Commission has relied on in the

---

<sup>26</sup> See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA's purposes is to ensure that "relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision"); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) ("The idea behind NEPA is that if the agency's eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.").

<sup>27</sup> EA at 68.

past<sup>28</sup> but inexplicably fails to undertake here. As rehearing parties point out,<sup>29</sup> and the Commission acknowledges, the State of Massachusetts “has set GHG emission reduction requirements” to achieve GHG reduction of up to 25 percent below 1990 levels by 2020, and 80 percent below 1990 levels by 2050, and created a framework for reducing such emissions.<sup>30</sup> Armed with a known target, the Commission has all the information necessary to “compare the emissions from this project to emissions from other projects, to total emissions from the state” and make a determination about significance.<sup>31</sup> As the D.C. Circuit stated in *Sabal Trail*, “[w]ithout such comparisons, it is difficult to see how [the Commission] could engage in ‘informed decision making’ with respect to the greenhouse-gas effects of this project, or how ‘informed public comment’ could be possible.”<sup>32</sup> Instead of doing so here, the Commission disregards its prior position and asserts that “[w]ithout the ability to determine discrete resource impacts, we are unable to determine the significance of the Project’s contribution to climate change.”<sup>33</sup> This defies logic. The Commission cannot simultaneously argue an established benchmark is necessary to determine significance and, then, when a benchmark is provided, argue the relevant comparison is not useful. Moreover, the Commission often relies on percentage

---

<sup>28</sup> *Fl. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 19-21 (2018) (Glick, Comm’r, dissenting) (arguing that the Commission’s refusal to assess the significance of a project’s GHG emissions, despite having compared project emissions to state and national emission inventories, is not reasoned decisionmaking); *PennEast Pipeline Co.*, 164 FERC ¶ 61,098, at PP 118-121 (2018) (Glick, Comm’r, dissenting) (same); *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019) (Glick, Comm’r, dissenting) (same). In each of the orders cited above, the Commission offered reasoning, similar to that advanced in today’s order, in an attempt to justify the Commission’s refusal to determine the significance of the projects’ respective contributions to climate change. And, yet, in each of these cases the Commission compared the project emissions to national, and in some cases state, emission inventories. The Commission offers nothing in today’s order to explain its refusal to similarly disclose and compare project emissions in this case.

<sup>29</sup> Berkshire Environmental Action Team Rehearing Request at 4, 7.

<sup>30</sup> EA at 69; see Global Warming Solutions Act, 2009 Mass. Legis. Serv. Ch. 298 (S.B. 2540) (WEST) (setting GHG emission reduction requirements and establishing a framework for reducing such emissions, including a state GHG emissions inventory).

<sup>31</sup> *Sabal Trail*, 867 F.3d at 1374.

<sup>32</sup> *Id.*

<sup>33</sup> EA at 69.

comparisons when it comes to other environmental impacts as the basis for determining significance.<sup>34</sup> Refusing to apply the same consideration when it comes to GHG emissions and climate change is arbitrary and capricious.

11. Independent of whether there are established GHG reduction targets, the Commission has several tools to assess the harm from the Project's contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary "hard look" at the Project's environmental impacts that NEPA requires.

12. Especially when it comes to a global problem like climate change, a measure for translating a single project's climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harms from climate change in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.<sup>35</sup>

13. Regardless of the tools, methodologies, or targets available, the Commission can use its expertise to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a

---

<sup>34</sup> See, for example, the Commission's environmental analysis of Columbia Gas Transmission's Buckeye XPress Project, where the Commission finds that impacts amounting to one percent of the overall prime farmland affected would be "permanent, but not significant." Buckeye Xpress Project Environmental Assessment, Docket No. CP18-137-000, at B-33; *see also Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045, at P 138 (2020). Notwithstanding the fact that there are no universally accepted or objective standards or targets to compare this impact to, the Commission was able to determine that the project's environmental impact was not significant based on this proportionate effect. It is clear that it is only when it comes to climate change that the Commission suddenly gets cold feet about using percentages to determine significance.

<sup>35</sup> See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).



significant effect on issues as diverse as “geologic resources”<sup>36</sup>, “soils,”<sup>37</sup> and “migratory birds.”<sup>38</sup> Notwithstanding the lack of any “universally accepted methods” to assess these impacts, the Commission managed to use its judgment to conduct a qualitative review and assess the significance of the Project’s effect on those considerations.<sup>39</sup> The Commission’s refusal to, at the very least, exercise similar qualitative judgment to assess the significance of GHG emissions here is arbitrary and capricious.<sup>40</sup>

14. That refusal is even more mystifying because NEPA “does not dictate particular decisional outcomes.”<sup>41</sup> NEPA “‘merely prohibits uninformed—rather than unwise—agency action.’”<sup>42</sup> In other words, taking the matter seriously—and rigorously examining a project’s impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

15. Even if the Commission were to determine that a project’s GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project is not in the public interest or required by the public convenience and necessity. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that, when a project may cause potentially significant environmental impacts, the relevant environmental impact statement must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.<sup>43</sup> The Court explained that, “[w]ithout such a discussion,

---

<sup>36</sup> EA at 12.

<sup>37</sup> *Id.* at 16.

<sup>38</sup> *Id.* at 36–37.

<sup>39</sup> See also *supra* note 34 and accompanying discussion describing the Commission’s use of just such a technique regarding impacts to farmland.

<sup>40</sup> After all, the standard the Commission typically uses for evaluating significance is whether the adverse impact would result in a substantial adverse change in the physical environment. See EA at 10. Surely that standard is open to some subjective interpretation by each Commissioner. What today’s order does not explain is why it is appropriate to exercise subjective interpretation and judgment when it comes to impacts such as geologic resources and soils, but not climate change.

<sup>41</sup> *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

<sup>42</sup> *Id.* (quoting *Robertson*, 490 U.S. at 351).

<sup>43</sup> *Robertson*, 490 U.S. at 351.

neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.<sup>44</sup> The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA,<sup>45</sup> which could encompass measures to mitigate a project’s GHG emissions.

16. Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against adverse effects. By refusing to assess significance, however, the Commission short circuits any discussion of mitigation measures for the Project’s GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

\* \* \*

---

<sup>44</sup> *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures). The discussion of mitigation is especially critical under today’s circumstances where the Commission prepared an EA instead of an Environmental Impact Statement to satisfy its NEPA obligations. The EA relies on the fact that certain environmental impacts will be mitigated in order to ultimately find that the Project “would not . . . significantly affect[] the quality of the human environment.” *See e.g.* EA at 12 (geologic resources). Absent these mitigation requirements, the Project’s environmental impacts would require the Commission to develop an Environmental Impact Statement—a much more extensive undertaking. *See Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (“If any ‘significant’ environmental impacts might result from the proposed agency action then an [Environmental Impact Statement] must be prepared before the action is taken.”).

<sup>45</sup> 15 U.S.C. § 717f(e); Certificate Order, 169 FERC ¶ 61,230 at P 85 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , 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 and operation.”).

17. The Commission's orders in this proceeding are not the product of reasoned decisionmaking. Its analysis of the Project's contribution to climate change is shoddy and evasive and its conclusion that the Project will not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges that the Project will contribute to climate change, but refuses to consider whether that contribution might be significant before proclaiming that the Project will have no significant environmental impacts. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the Project's consequences for climate change does not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

---

Richard Glick  
Commissioner