

172 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP

Docket No. CP20-37-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued July 16, 2020)

1. On January 10, 2020, Texas Eastern Transmission, LP (Texas Eastern) 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 for authorization to replace the four existing compressor units at the Lilly Compressor Station, located in Cambria County, Pennsylvania, with two new gas turbine compressor units (Lilly Compressor Units Replacement Project). For the reasons discussed below, we grant the requested authorizations, subject to conditions.

I. Background and Proposal

2. Texas Eastern, a limited partnership under Delaware law,³ is a natural gas company as defined by section 2(6) of the NGA⁴ engaged in the transportation of natural gas in interstate commerce. Texas Eastern's transmission system extends from Texas, Louisiana, and the Gulf of Mexico, through Mississippi, Alabama, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, West Virginia, Maryland, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.

¹ 15 U.S.C. § 717f(b), (c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ Texas Eastern is an indirect, wholly-owned subsidiary of Spectra Energy Partners, LP, which is an indirect subsidiary of Spectra Energy Corp., which is an indirect, wholly-owned subsidiary of Enbridge Inc.

⁴ 15 U.S.C. § 717a(6) (2018).

3. Texas Eastern proposes to replace the four existing compressor units,⁵ totaling 34,800 horsepower (hp), and related facilities at the Lilly Compressor Station with two new 18,100 hp gas turbine compressor units and associated facilities.⁶ Texas Eastern states that it will install software controls on the two new units to limit the total compression at the Lilly Compressor Station to the previously certificated 34,800 hp.⁷ Texas Eastern asserts that, following completion of the project, nitrogen oxide (NOx) emissions at the compressor station will be significantly lower and will comply with future air emission reduction requirements in Pennsylvania and the terms of its permit issued by the Pennsylvania Department of Environmental Protection (PADEP) pursuant to Title V of the Clean Air Act.⁸ Texas Eastern estimates that the cost for the Lilly Compressor Units Replacement Project is approximately \$106 million.

II. Notice and Interventions

4. Notice of Texas Eastern's application was published in the *Federal Register* on January 28, 2020.⁹ Timely, unopposed motions to intervene were filed by: Atmos Energy Corporation; Columbia Gas of Pennsylvania, Inc.; Duke Energy Indiana, LLC; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; National Fuel Gas Distribution Corporation; the National Grid Gas Delivery Companies;¹⁰ New Jersey Natural Gas

⁵ The replaced compressor units will be removed from service but remain in place at the compressor station site.

⁶ Texas Eastern proposes to construct a building to house the new compressors, four auxiliary buildings, and other related appurtenances. Texas Eastern Application at 5.

⁷ *Id.* at 1.

⁸ *See id.* at 2. Because the Lilly Compressor Station qualifies as a major source of air emissions, Texas Eastern was required to obtain a Title V permit. Texas Eastern states that, on April 23, 2016, PADEP published a final-form rulemaking amending Title 25 of the Pennsylvania Code to require emission reductions to existing major NOx emitting facilities such as the Lilly Compressor Station. *Id.*, Resource Report 1 at § 1.2 (stating that the terms of the existing Title V Permit for the Station "require[] that the existing compressor units be permanently shut down by January 1, 2024").

⁹ 85 Fed. Reg. 4968.

¹⁰ The National Grid Gas Delivery Companies are the Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company and Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

Company; NJR Energy Services Company; Philadelphia Gas Works; Piedmont Natural Gas Company, Inc.; Peoples Natural Gas Company, LLC, et al.; and PSEG Energy Resources & Trade LLC. Timely, unopposed motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.¹¹ No comments or protests were filed.

III. Discussion

5. Because the proposed project includes the abandonment of existing facilities¹² and the construction and operation of facilities to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹³

A. Certificate Policy Statement

6. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁴ 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 new pipeline 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.

7. 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

¹¹ 18 C.F.R. § 385.214(c) (2019).

¹² Texas Eastern did not specifically request authority to abandon the four existing compressor units at the Lilly Compressor Station. However, because the units will be removed from service and abandoned in place, Texas Eastern must have authority to abandon the compressor units, which we grant herein.

¹³ 15 U.S.C. § 717f(b), (c), (e).

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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 route of the new pipeline 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.

8. As stated, 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 Certificate Policy Statement provides that it is not a subsidy for existing customers to pay for projects designed to improve the reliability or flexibility of existing services.¹⁵ The project is designed to meet future air emission requirements and is necessary to maintain the continued safe and efficient operation of Texas Eastern's system.¹⁶ Thus, we find that there would be no subsidization of the project by existing shippers.¹⁷

9. Because the project is designed to maintain existing operations, there will be no adverse impacts to Texas Eastern's shippers. Nor is there any evidence that Texas Eastern's proposed project will adversely affect any other pipelines or their customers. The proposal is not intended to replace service on other pipelines, and no other pipelines or their captive customers have objected to Texas Eastern's proposal. Thus, we find that Texas Eastern's proposed project will not adversely affect its existing customers or other pipelines and their captive customers.

10. We are further satisfied that Texas Eastern has taken appropriate steps to minimize adverse impacts on landowners and communities. Texas Eastern will construct the project entirely on property owned by Texas Eastern¹⁸ and almost all construction would occur within the existing fenced-in Lilly Compressor Station, except for limited areas where Texas Eastern will require the use of additional temporary workspace beyond

¹⁵ Certificate Policy Statement, 88 FERC at 61,746 n.12.

¹⁶ Texas Eastern Application at 7-8, 13.

¹⁷ See *Texas Eastern Transmission, LP*, 169 FERC ¶ 61,235, at P 16 (2019) (authorizing replacement where the primary purpose of the proposed project was to "reduce emissions at the compressor station and ensure system reliability").

¹⁸ Texas Eastern Application at 9.

previously disturbed areas. Thus, we conclude that the project would not have a significant adverse economic effect on landowners and surrounding communities.

11. Accordingly, we find that Texas Eastern has demonstrated that the project's benefits will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.¹⁹

B. Rates

12. There will be no new service provided in association with the proposed project and, thus, no new initial rate. Texas Eastern requests a predetermination that rolled-in rate treatment will be appropriate for all the costs associated with the Lilly Compressor Units Replacement Project.²⁰

13. As discussed above, the primary purpose of the proposed project is to reduce emissions at the compressor station to comply with future air emission requirements and ensure system reliability. The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for projects constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity.²¹ Accordingly, we grant Texas Eastern's request for a predetermination that it may roll the costs of the Lilly Compressor Units Replacement Project into its system rates in a future NGA section 4 general rate proceeding, absent a significant change in circumstances.

C. Environmental Analysis

14. On February 25, 2020, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Lily Expansion Project²² and Request for

¹⁹ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

²⁰ Texas Eastern Application at 13 (citing Certificate Policy Statement, 88 FERC at 61,746 n.12).

²¹ Certificate Policy Statement, 88 FERC at 61,746 n.12.

²² The project name was corrected to "Lilly Compressor Units Replacement Project" in a subsequent notice. 85 Fed. Reg. 15,165.

Comments on Environmental Issue (NOI). The NOI was published in the Federal Register²³ 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 no comments in response to the NOI.

15. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an Environmental Assessment (EA) for Texas Eastern's proposal. 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, cumulative impacts, and alternatives. The EA was placed into the public record on June 5, 2020.

Updated Greenhouse Gas Analysis

16. The EA estimates the maximum potential for greenhouse gas (GHG) emissions from operation of the project to be 194,486 metric tons per year of carbon dioxide equivalent (CO₂e).²⁴ To provide context to the EA's GHG estimate, 5.903 billion metric tons of CO₂e were emitted at a national level in 2018 (inclusive of CO₂e sources and sinks).²⁵ The operational emissions of the project could potentially increase CO₂e

²³ 85 Fed. Reg. 12,280.

²⁴ EA at 29 (Table 8). We note that the EA states that "the [p]roject would result in an overall reduction of potential emissions for all criteria pollutants, HAPs, and CO₂e . . ." EA at 30. However, with regard to potential CO₂e emissions, the project's maximum potential for GHG emissions from operations (which presumes the unlikely operation of the compressors on a 24 hour per day, 365 day per year basis) would exceed the actual average emissions from normal operation of the existing compressor units during the 2017 and 2018 period. As the proposed replacement is designed to maintain existing services, it can reasonably be expected that Texas Eastern will operate the replacement compressors in the same manner as in 2017 and 2018.

²⁵ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018* at ES6-8 (Table ES-2) (2020), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2018> (accessed May 2020).

emissions based on the 2018 levels by 0.0003 percent at the national level.²⁶ Currently, there are no national targets to use as a benchmark for comparison.²⁷

17. GHG emissions, such as those emitted from the project's operations, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Northeast region of the United States.²⁸ However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.²⁹ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.³⁰ That situation has not changed.

18. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Texas Eastern's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal

²⁶ This calculation does not include the total estimated construction-related emissions of 2,405.41 metric tons of CO₂e, as such emissions are temporary and would occur only during construction of the project. *See* EA at 28 (Table 7).

²⁷ The national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, EPA, *Repeal of the Clean Power Plan; Emission Guidelines for 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.

²⁸ *See, e.g., Columbia Gas Transmission, LLC*, Notice of Availability of the Environmental Assessment for the Proposed Buckeye Xpress Project at B-233 – B-235, Docket No. CP18-137-000 (May 20, 2019) (detailing the environmental impacts attributed to climate change in the Northeast and Midwest regions from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

²⁹ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

³⁰ *Id.* *See generally Transcontinental Gas Pipe Line Co., LLC*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at PP 63-74) (explaining that the Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborating on why the Social Cost of Carbon is not a useful tool for determining whether GHG emissions are significant, and explaining that the Commission has no authority or reasoned basis to establish its own framework).

would not constitute a major federal action significantly affecting the quality of the human environment.

D. Conclusion

19. Based on our Certificate Policy Statement determination and our environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of Texas Eastern's Lilly Compressor Units Replacement Project, subject to the conditions in this order.

20. 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 analysis. 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 abandonment, construction, 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 and operation.

21. 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.³¹

22. At a hearing held on July 16, 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,

³¹ See 15 U.S.C. § 717r(d) (2018) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *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).

The Commission orders:

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

(B) Texas Eastern is granted permission and approval to abandon the compressor units, as more fully described in this order and the application. Texas Eastern shall notify the Commission of the date of the abandonment of facilities within 10 days.

(C) A predetermination is granted for Texas Eastern to roll the costs associated with the Lilly Compressor Units Replacement Project into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances, as discussed above.

(D) The certificate authority granted in Ordering Paragraph (A) is conditioned on Texas Eastern's:

- (1) completion of construction of the proposed facilities and making them available for service within three years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations under the NGA 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; and
- (3) compliance with the environmental conditions listed in the appendix to this order.

(E) Texas Eastern 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 Texas Eastern. Texas

Eastern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Glick in 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

Environmental Conditions for the Lilly Compressor Units Replacement Project

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

1. Texas Eastern 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. Texas Eastern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Commission Secretary (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), or the Director's designee, **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**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), 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, as supplemented by filed Project figures. **As soon as they are available, and before the start of construction**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/figures 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 Project figures.
5. Texas Eastern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or 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/figures/aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **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 route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction and abandonment begins**, Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the

Director's designee. Texas Eastern must file revisions to their plan as schedules change. The plan shall identify:

- a. how Texas Eastern 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 Texas Eastern 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 Texas Eastern 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 Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern 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. Texas Eastern shall employ at least one EI for the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. 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, Texas Eastern shall file updated status reports for the Project with the Secretary on a **biweekly 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 Texas Eastern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period and any scheduled 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 landowner/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 Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.

9. Texas Eastern must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction or abandonment of any Project facilities**. To obtain such authorization, Texas Eastern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Eastern must receive written authorization from the Director of OEP, or the Director's designee, **before placing the modified facilities 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**, Texas Eastern 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 Texas Eastern 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. Texas Eastern shall file noise surveys with the Secretary **no later than 60 days** after placing the modified Lilly Compressor Station into service. If a full power load condition noise survey is not possible, Texas Eastern shall file an interim survey at the maximum possible load **within 60 days** of placing the modified station into service and file the full load survey **within 6 months**. If the noise from all the equipment operated at the Lilly Compressor Station under interim or full power load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive area, Texas Eastern shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, 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 the day-night sound level of 55 decibels on the A-weighted scale requirement by filing a second 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

Texas Eastern Transmission, LP

Docket No. CP20-37-000

(Issued July 16, 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 Texas Eastern Transmission, LP (Texas Eastern) to replace the four existing compressor units at the Lilly Compressor Station, located in Cambria County, Pennsylvania, with two new gas turbine compressor units (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 Project's direct GHG emissions from construction and operation.⁴ That failure forms an integral part of the Commission's decisionmaking: The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁵ and, as a result, conclude that the Project is required by the public convenience and necessity.⁶ Claiming that a project has no significant

¹ 15 U.S.C. § 717f(c) (2018).

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

³ *Texas Eastern Transmission, LP*, 172 FERC ¶ 61,040, at P 17 (2020) (Certificate Order).

⁴ *Id.* P 16; Lilly Compressor Units Replacement Project Environmental Assessment at 27-30 Tables 7 & 8 (EA).

⁵ Certificate Order, 172 FERC ¶ 61,040 at P 18; *see also* EA at 41.

⁶ Certificate Order, 172 FERC ¶ 61,040 at P 19.

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.⁷

3. The Commission's failure to meaningfully consider climate change forces me into dissenting from certificate orders that I might otherwise support. Prior to issuing a section 7 certificate, the Commission must find both that the proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.⁸ The record here shows that the Project is needed and will provide important benefits, such as reducing air emissions including a potential net reduction in operational GHG emissions.⁹ Although need for the Project is an important consideration, need alone is not sufficient to find that the Project is consistent with the public interest. Instead, the Commission must also determine that the Project's benefits outweigh its adverse impacts, which the Commission cannot do without meaningfully evaluating the impact of the Project's GHG emissions. I cannot join an order that countenances such an incomplete assessment of a project's impacts, regardless of what I might otherwise think of that project.

⁷ Commissioner McNamee argues that the Commission can consider a project's direct GHG emissions under NEPA and in its public convenience and necessity determination without actually determining whether the GHG emissions are significant. Certificate Order, 172 FERC ¶ 61,040 (McNamee, Comm'r, concurring at PP 2-3). This defies both logic and reason. If you refuse to consider how the project's greenhouse gas emissions will impact the environment you aren't actually examining those emissions for purposes of NEPA and the NGA. The argument is particularly problematic in this proceeding given the conclusion that the Project will not have any significant impact on the environment. Certificate Order, 172 FERC ¶ 61,040 at P 18. How the Commission can rationally conclude that a project has no significant impacts, refuse to assess the significance of what might be the project's most significant impact, and then claim to have adequately considered that impact is beyond me.

⁸ See *Sabal Trail*, 867 F.3d at 1373 (explaining that section 7 of the NGA requires the Commission to balance "the public benefits [of a proposed pipeline] against the adverse effects of the project," including adverse environmental effects" (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015)).

⁹ Certificate Order, 172 FERC ¶ 61,040 at PP 3, 16 & n.24; EA at 29-30.

4. For all these reasons, and those articulated previously,¹⁰ I respectfully dissent in part.

Richard Glick
Commissioner

¹⁰ See, e.g., *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,032 (2020) (Glick, Comm’r, dissenting in part); *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,031 (2020) (Glick, Comm’r, dissenting in part); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (2020) (Glick, Comm’r, dissenting in part); *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).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

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(Issued July 16, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Texas Eastern Transmission, LP (Texas Eastern) a certificate for public convenience and necessity for authorization to construct and operate its Lilly Compressor Unit Replacement Project.¹ The project is designed to replace four existing compressor units at the Lilly Compressor Station, in Cambria County, Pennsylvania, with two new gas turbine compressor units.²

2. I fully support the order as it complies with the Commission's statutory responsibilities under the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA). The order determines that the Project is in the public convenience and necessity, finding that the Project will not adversely affect Texas Eastern's existing customers or competitor pipelines and their captive customers, and that the Project's benefits will outweigh any adverse economic effects on landowners and surrounding communities.³ The order also finds that the Project will not significantly affect the quality of the human environment.⁴ Further, the Commission has quantified and considered the greenhouse gases (GHG) emitted by the operation of the Project,⁵ consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*.⁶

¹ *Texas Eastern Transmission, LP*, 172 FERC ¶ 61,040 (2020) (Certificate Order).

² *Id.* P 1.

³ *Id.* P 11.

⁴ *Id.* P 18.

⁵ *Id.* PP 16-17.

⁶ 867 F.3d 1357 (D.C. Cir. 2017). I note that my concurrence in *Transcontinental Gas Pipe Line Company, LLC (Transco)* in which I incorporate herein, states that “[t]hough the D.C. Circuit’s holding in *Sabal Trail* is binding on the Commission, it is not appropriate to expand that holding through the dicta in *Birckhead* so as to establish new authorities under the NGA and NEPA. The Commission is still bound by the NGA and

3. I write separately today to respond to my colleague's arguments that the Commission should have determined whether the GHG emissions related to the Project are "significant." In *Transco*, I explain that the Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborate on why the Social Cost of Carbon is not a useful tool for determining whether GHG emissions are significant, and explain that the Commission has no authority or reasoned basis to establish its own framework.⁷ 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 address GHG emissions over the last 15 years.⁸ As I explain in *Transco*, Congress delegated the Administrator of the U.S. Environmental Protection Agency the exclusive authority to establish standards of performance for air pollutants, including GHGs.⁹ For logistical reasons and administrative efficiency, I hereby incorporate my analysis in *Transco* by reference and am not reprinting the full text of my analysis here.¹⁰

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

Bernard L. McNamee
Commissioner

NEPA as enacted by Congress, and interpreted by the U.S. Supreme Court and the D.C. Circuit. Our obligation is to read the statutes and case law in harmony." *Transco*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at P 13 n.31) (McNamee *Transco* Concurrence).

⁷ McNamee *Transco* Concurrence PP 63-74.

⁸ *Id.* PP 53-62.

⁹ *Id.* PP 54-58.

¹⁰ *Id.* PP 53-74.