

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline, LLC

Docket No. CP19-14-001

(Issued September 17, 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, the Commission denies rehearing of its order authorizing Mountain Valley Pipeline, LLC's (Mountain Valley) proposed Southgate Project (Project),³ and continues to treat 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 Project's direct GHG emissions from construction and operation.⁴ That failure is 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 determine that the environmental impacts associated with the Project are "acceptable"⁵ and, as a result, conclude that the Project is required by the public

¹ 15 U.S.C. § 717f(c) (2018).

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

³ *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) (Certificate Order), *order on reh'g*, 172 FERC ¶ 61,261 (2020) (Rehearing Order).

⁴ Southgate Project Final Environmental Impact Statement at 4-184–4-185 & tbls. 4.11-4, 4.11-5 (EIS).

⁵ Certificate Order, 171 FERC ¶ 61,232 at P 144; EIS at 5-1 ("If the Project is constructed and operated in accordance with the mitigating measures discussed in this EIS, and our recommendations, adverse environmental impacts would be reduced to less than significant levels.").

convenience and necessity.⁶ Claiming that a project has no significant environmental impacts, while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time, is not reasoned decisionmaking.

3. The Commission's failure to meaningfully consider climate change is once again forcing me to dissent from a certificate order 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.⁷ Although need is an important consideration, it is just one piece of the puzzle and does not excuse the Commission's failure to consider the impact of the Project's GHG emissions. No matter what I might otherwise think of a project, I will not join an order that functionally excludes climate change from the Commission's analysis.

4. Finally, I also disagree with the Commission's decision to approve Mountain Valley's unwarranted and gratuitous 14% return on equity (ROE). Commission precedent provides that a 14% ROE is appropriate for a *new* pipeline, but not an expansion of an existing one.⁸ The Southgate Project is, for all intents and purposes, an expansion of the troubled Mountain Valley pipeline.⁹ Granting it a 14% ROE, rather than the 10.55% ROE approved in *El Paso Natural Gas Co.*¹⁰—the most recent NGA

⁶ Certificate Order, 171 FERC ¶ 61,232 at P 145.

⁷ See *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (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))).

⁸ In developing incremental rates for pipeline expansion projects, the Commission's general policy is to use the rate of return components approved in the pipeline's last NGA section 4 rate proceeding, or in the absence of a litigated ROE on file, the most recent ROE approved in a litigated NGA section 4 rate case. *Gulfstream Nat. Gas Sys., L.L.C.*, 170 FERC ¶ 61,199, at PP 18-19 (2020); *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at PP 51-52 (2019); *Corpus Christi Liquefaction Stage III, LLC*, 169 FERC ¶ 61,135, at PP 34-35 (2019).

⁹ Rehearing Order, 172 FERC ¶ 61,261 at P 14; Certificate Order, 171 FERC ¶ 61,232 at P 57.

¹⁰ 145 FERC ¶ 61,040, at PP 2, 642 (2013), *reh'g denied*, 154 FERC ¶ 61,120 (2016).

section 4 rate case litigated before the Commission—will only encourage the overbuilding of the pipeline system at customers' expense.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner