

174 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Northern Natural Gas Company

Docket No. CP20-487-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued March 22, 2021)

1. On June 29, 2020, Northern Natural Gas Company (Northern) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to abandon in-place a segment of its 14- and 16-inch-diameter M561 A-line (A-line) from Dakota County, Nebraska, to Lincoln County, South Dakota, and the associated Jackson and Ponca Branch Lines in Dakota and Dixon Counties, Nebraska. Northern also requests authorization to construct and operate approximately 87.3 miles of various diameter pipelines and modify existing and install new above-ground facilities in Nebraska and South Dakota to replace the capacity associated with the abandoned facilities (South Sioux City to Sioux Falls A-line Replacement Project). For the reasons discussed below, this order grants the requested certificate and abandonment authorizations, subject to conditions.

I. Background and Proposal

2. Northern, a corporation organized and existing under the laws of Delaware, is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. Northern's transmission system extends from the Permian Basin in Texas to Michigan's Upper Peninsula.

¹ 15 U.S.C. §§ 717f(b), (c).

² 18 C.F.R. pt. 157 (2020).

³ 15 U.S.C. § 717a(6).

3. Northern originally constructed the A-line and Ponca Branch Line in the 1940s⁴ and Jackson Branch Line in the 1950s.⁵ Northern explains that these facilities were constructed with mechanical joints⁶ and acetylene welds, which are more susceptible to leaks and hydrostatic pressure test failure.⁷ Additionally, Northern notes that the presence of mechanically-coupled end joints prevents passage of in-line inspection tools due to misalignment or internal protrusion of the welds.⁸ As a proactive measure, Northern reduced the operating pressures on all of its mechanically-jointed or acetylene-welded pipeline segments greater than or equal to 14 inches in diameter or operating at more than 30% of the specified minimum yield strength,⁹ including the A-line segment Northern seeks to abandon and replace in this proceeding.¹⁰

⁴ See *N. Nat. Gas Co.*, 3 FPC 967 (1943).

⁵ See *N. Nat. Gas Co.*, 22 FPC 164 (1959).

⁶ A mechanical joint is a pipe fitting used to connect two sections of pipe without use of threads. Sleeves on the coupling slide over the pipe ends to which they are to be connected, rather than attaching by threads.

⁷ Application at 4.

⁸ Application, Resource Report 1 at 1-2.

⁹ The specified minimum yield strength is an indication of the minimum stress a pipe can experience before causing plastic, or permanent, deformation of the steel pipe. Pipeline Safety: Class Location Change Requirements, 85 Fed. Reg. 65,142, 65,144 n.14 (October 14, 2020).

¹⁰ Northern has previously abandoned several segments of the A-line due to operational and integrity issues. See, e.g., *N. Nat. Gas Co.*, 174 FERC ¶ 62,042 (2021) (authorizing Northern to abandon approximately 31.8 miles of 4- and 6-inch-diameter pipeline on the A-branch line in Nebraska); *N. Nat. Gas Co.*, 173 FERC ¶ 62,084 (2020) (authorizing Northern to abandon approximately 115.0 miles of 20- and 24-inch-diameter pipeline on the A-line and J-line in Kansas and Nebraska); *N. Nat. Gas Co.*, 170 FERC ¶ 62,131 (2020) (authorizing Northern to abandon approximately 117.7 miles of 24-inch-diameter pipeline on the A-line in Nebraska); *N. Nat. Gas Co.*, 170 FERC ¶ 61,146 (2020) (authorizing Northern to abandon approximately 92.8 miles of 26-inch-diameter pipeline on the A-line and 15.7 miles of 24-inch-diameter J-line in Kansas); *N. Nat. Gas Co.*, 168 FERC ¶ 61,148 (2019) (authorizing Northern to abandon approximately 146.6 miles of 24-inch-diameter pipeline on the A-line between Nebraska and Iowa); *N. Nat. Gas Co.*, 142 FERC ¶ 61,120 (2013) (authorizing Northern to abandon approximately 126 miles of pipeline on the A-line in Texas, Oklahoma, and Kansas).

4. Northern proposes the following abandonment activities:

- abandon in-place a 79.21-mile-long segment of its 12- and 14-inch-diameter A-line pipeline in Dakota and Dixon Counties, Nebraska, and Lincoln and Union Counties, South Dakota, between milepost (MP) 0.41 in Dakota County, Nebraska, and a point inside Northern's existing M561A Valve 11.5 facility in Lincoln County, South Dakota;
- abandon in-place the 0.16-mile-long, 2-inch-diameter Ponca Branch Line in Dixon County, Nebraska;
- abandon in-place the 0.06-mile-long, 2-inch-diameter Jackson Branch Line in Dakota County, Nebraska;
- abandon in place a total of 0.19 miles of short segments of pipeline in various counties to accommodate installation of new or modified above-ground facilities in Nebraska and South Dakota; and
- abandon by removal the M561A Valve 11.5 facility located at the terminus of the new pipeline, including a regulator, a block valve, and a pig launcher.¹¹

5. Following abandonment and restoration of any disturbed land, the abandoned A-line pipeline will be purchased by a third-party salvage company, DKM Enterprises, LLC (DKM), which intends to reclaim most of the abandoned A-line facilities for salvage. The abandoned Ponca and Jackson Branch Lines will not be acquired by DKM.

6. Northern proposes to replace the capacity associated with the abandonment of the aforementioned facilities by constructing and operating the following facilities:

- an 82.23-mile-long, 12-inch-diameter pipeline extending from MP 0.41 of Northern's existing A-line in Dakota County, Nebraska, traversing Dakota and Dixon Counties, Nebraska, and Lincoln and Union Counties, South Dakota, and terminating inside Northern's existing site at M561A Valve 11.5, where it will tie back into Northern's existing A-line;
- twenty new or modified above-ground appurtenant facilities, including a pig launcher and receiver, a relocated pig launcher, metering facilities, regulators, block valve settings, an odorizer, and associated piping and

¹¹ A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes. A launcher and receiver are where pigs are inserted into or retrieved from the pipeline, respectively.

valve settings for the replacement A-line in various counties in Nebraska and South Dakota;¹²

- a 1.87-mile-long, 3-inch-diameter branch line extending from the replacement A-line to the existing Ponca #1 NE Town Border Station in Dixon County, Nebraska;¹³ and
- a 3.15-mile-long, 12-inch-diameter tie-over pipeline in Lincoln County, South Dakota, extending from the new M471B Tie-In Station at the interconnect with Northern's existing M471B B-line and terminating at the new Harrisburg Pooling Point, where it will tie into the replacement A-line.

7. Northern asserts that the project will not affect any of its firm obligations with existing shippers and will eliminate the safety risk from leaks, pipeline stress, hydrostatic pressure test failures, and impeded in-line inspection tools, as well as reduce inefficiencies associated with the continued operation and maintenance of the A-line.¹⁴ Northern estimates the cost of construction of proposed facilities to be \$173,837,303.¹⁵

II. Notice, Interventions, and Comments

8. Notice of Northern's application was published in the *Federal Register* on July 20, 2020,¹⁶ with comments and interventions due by August 4, 2020. Northern Illinois Gas Company d/b/a Nicor Gas Company and Xcel Energy Companies¹⁷ filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures.¹⁸ On

¹² See Application, Resource Report 1 at 1-1.

¹³ Northern notes that the extended length and larger diameter of the proposed Ponca Branch Line are necessary as the proposed A-line will no longer extend up to the Ponca #1, NE Town Border Station.

¹⁴ Application at 22, 25.

¹⁵ *Id.* at 22, Exhibit K.

¹⁶ 85 Fed. Reg. 43,828 (July 20, 2020).

¹⁷ Xcel Energy Companies are Northern States Power Company-Minnesota, Northern States Power-Wisconsin, and Southwestern Public Service Company.

¹⁸ 18 C.F.R. § 385.214(c) (2020).

August 11, 2020, Atmos Energy Corporation filed a late motion to intervene, which was denied by Secretary's notice on August 31, 2020.

III. Discussion

9. Because the facilities that Northern proposes to abandon have been used to transport natural gas in interstate commerce, and because the proposed facilities will be used for jurisdictional service, the proposal is subject to the requirements of sections (b), (c), and (e) of section 7 of the NGA.¹⁹

A. Abandonment

10. Section 7(b) of the NGA provides that an interstate pipeline company may abandon jurisdictional facilities or services only if the abandonment is permitted by the present or future public convenience or necessity.²⁰ In deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary with the circumstances of the particular proposal.²¹

11. When a pipeline company proposes to abandon jurisdictional facilities, continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity allow the abandonment.²² If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing natural gas transportation services, it will defer to the applicant's business judgment to abandon the facilities.²³

12. Here, Northern proposes to abandon pipeline facilities to eliminate safety risks from leaks and pipeline stress and will replace those facilities with new pipeline. Further, the proposed abandonment and replacement will allow Northern to maintain continuity of

¹⁹ 15 U.S.C. §§ 717f(b), (c), (e).

²⁰ *Id.* § 717f(b).

²¹ *El Paso Nat. Gas Co.*, 148 FERC ¶ 61,226, at P 11 (2014) (*El Paso*).

²² *Nat'l Fuel Gas Supply Corp.*, 160 FERC ¶ 61,050, at P 17 (2017) (citing *El Paso*, 148 FERC ¶ 61,226 at P 12).

²³ *Id.* (citing *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, at P 65 (2013)) (additional citation omitted).

service to the customers served by the abandoned facilities.²⁴ Because Northern's proposal will not jeopardize service to existing customers, will eliminate safety risks, and will remove operation and maintenance inefficiencies, we find that the proposed abandonment is permitted by the public convenience or necessity.

B. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

²⁴ Northern states that it will relocate 53 farm taps to the replacement A-line and abandon seven farm taps, whose owners are converting to an alternative fuel, pursuant to the automatic provision of its blanket certificate granted in Docket No. CP82-401-000. *See N. Nat. Gas Co.*, 20 FERC ¶ 62,410 (1982).

²⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

15. As stated, the threshold requirement is that the applicant must financially support the project without relying on subsidization from its existing customers. The Commission has determined that it is not a subsidy under the Certificate Policy Statement for existing customers to pay for projects to replace existing capacity in order to improve the reliability or flexibility of existing service.²⁶ Here, the project is designed to benefit the system as a whole by abandoning aging pipeline and replacing the capacity by constructing new facilities that will maintain the same level of service for existing customers. Accordingly, we find that there will be no subsidization of the project by existing customers.

16. We also find that because the project is designed to maintain existing services, there will be no adverse impacts on Northern's shippers or other pipelines and their customers. In addition, no other pipelines or their customers have protested Northern's proposal.

17. The proposed project will also have minimal adverse impacts on landowners and surrounding communities. Northern engaged in the Commission's pre-filing process and implemented two major route deviations to accommodate landowner and stakeholder concerns.²⁷ Additionally, the project facilities will be installed within the existing rights-of-way where practicable, and over 50% of the right-of-way for the greenfield tie-over branch line will be installed parallel to an existing road right-of-way. Thus, we find that Northern has taken sufficient steps to minimize adverse impacts on landowners and surrounding communities for the purposes of our consideration under the Certificate Policy Statement.

18. Accordingly, we find that there are demonstrated benefits of the South Sioux City to Sioux Falls A-line Replacement Project, and further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers and the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is

²⁶ *Id.* at 61,746 n.12; *see also Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125, at P 15 (2016) (citing *Kern River Gas Transmission Co.*, 153 FERC ¶ 61,302, at P 12 (2015)); *Nat'l. Fuel Gas Supply Corp.*, 150 FERC ¶ 61,162, at P 15 (2015) (finding that requiring existing customers who relied on facilities to pay for those replacement facilities would not result in a subsidy because the existing 86-year-old pipeline was deteriorated and needed to be replaced to ensure continued reliability of the existing services).

²⁷ Application at 5-6,8-9 (Additional minor route deviations were incorporated into the pipeline centerline following comments received from landowners).

consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.²⁸

C. Predetermination of Rolled-in Rate Treatment

19. Northern estimates that the cost to construct the proposed facilities will be approximately \$173.8 million. Although Northern does not request a pre-determination regarding future rate treatment of project costs, it is the Commission's practice to make such a finding.²⁹

20. To support a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA section 4 general rate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. The Certificate Policy Statement specifically provides that increasing the rates of existing customers to pay for projects designed to improve reliability or flexibility in providing a pipeline's existing services for its customers is not a subsidy.³⁰

21. As discussed above, the primary purpose of the proposed project is to replace aging pipeline for increased safety, reliability, and efficiency for the benefit of existing customers. The Certificate Policy Statement recognizes the appropriateness of rolled-in rate treatment for projects constructed to improve the reliability of service to existing customers or to improve service by replacing existing capacity.³¹ Accordingly, we find it will be appropriate to roll the costs of the project into Northern's system rates in a future NGA section 4 general rate proceeding, absent any significant change in circumstances.

D. Environmental Analysis

22. On July 23, 2019, Commission staff began its environmental review of the South Sioux City to Sioux Falls A-line Replacement Project by granting Northern's request to

²⁸ See Certificate Policy Statement, 88 FERC ¶ 61,227 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).

²⁹ See *Trunkline Gas Co., LLC*, 135 FERC ¶ 61,019, at P 27 (2011) (granting a pre-determination of rolled-in rates, even though the applicant did not request it, because a pre-determination better enables existing and potential shippers to make decisions to protect their interests).

³⁰ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746 n.12.

³¹ *Id.*

use the pre-filing process in Docket No. PF19-8-000.³² As part of the pre-filing review, staff participated in four open houses sponsored by Northern in Nebraska and South Dakota between October 14 and 17, 2019, to explain the Commission's environmental review process to interested stakeholders.

23. On November 22, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned South Sioux City to Sioux Falls A-line Replacement Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI). The NOI was published in the *Federal Register*³³ and mailed to interested parties, including federal, state, and local government representatives and agencies; elected officials; affected property owners; environmental and public interest groups; Native American tribes; other interested parties; and local libraries. We received written comments in response to the NOI from the National Park Service, the Nebraska Department of Natural Resources, and the Teamsters National Pipeline Labor Management Cooperation Trust (Teamsters).

24. On December 11 and 12, 2019, Commission staff conducted public scoping sessions in Elk Point and Beresford, South Dakota, respectively, to provide the public with an opportunity to learn more about the project and comment on environmental issues that should be addressed in the Environmental Assessment (EA).³⁴ Four landowners provided comments on the project at the scoping sessions.³⁵

25. The primary issues raised during the public scoping and pre-filing review process were soil segregation and compaction; soil erosion and sediment control through post-construction; impacts on prime farmland, water wells, floodplains, livestock, irrigated lands and drain tiles; impacts on water quality and impaired water resources; the distance of construction from the Missouri River and hydrostatic test water concerns; impacts on the Lewis and Clark National Historic Trail and the Missouri National Recreational River; and Northern's spill response plan.

³² See 18 C.F.R. § 157.21(b) (2020).

³³ 84 Fed. Reg. 65,800 (November 29, 2019).

³⁴ The dates and locations of scoping sessions are stated incorrectly in the EA. The public scoping meetings were held on the dates and locations stated above.

³⁵ Transcripts of the scoping sessions were entered into the public record in Docket No. PF19-8-000.

26. To satisfy the requirements of the National Environmental Policy Act of 1969,³⁶ our staff, with the cooperation of the U.S. Army Corps of Engineers, prepared an EA for Northern'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. All substantive comments raised during the pre-filing review and scoping process were addressed in the EA.³⁷

27. The EA was issued for a 30-day comment period and placed into the public record on January 5, 2021. The Teamsters³⁸ and Banner Associates, Inc. (Banner Associates), on behalf of the Lewis & Clark Regional Water System (Lewis & Clark), filed comments on the EA.³⁹

28. Lewis & Clark states that Northern's proposed A-line pipeline replacement will cross a 24-inch-diameter polyvinyl chloride potable water pipeline operated by Lewis & Clark.⁴⁰ Banner Associates does not oppose the proposed project, but requests an opportunity to review the plans for construction in the vicinity of the water pipeline. Further, Banner Associates asks that Northern provide updates to Lewis & Clark as Northern's project progresses so it can provide input. Northern's current construction plans for the project are available on the Commission's eLibrary website.⁴¹ As stated in its application, Northern and its contractors will ensure the local One Call notification systems (Nebraska 811 and South Dakota One Call) are contacted to allow utilities with facilities in the project area to locate and mark utility lines to prevent accidental damage

³⁶ 42 U.S.C. §§ 4321 *et seq.*; *see also* 18 C.F.R. pt. 380 (2020) (Commission's regulations implementing the National Environmental Policy Act)

³⁷ Section A.4 and table A-1 of the EA provides a detailed and comprehensive list of issues raised during the public scoping process.

³⁸ The Teamsters comment consisted of attachments describing their expertise and procedures regarding pipeline construction.

³⁹ Banner Associates filed its comment on behalf of Lewis & Clark Regional Water System.

⁴⁰ Lewis & Clark was authorized by Congress in 2000 as a water supply project in South Dakota, northwest Iowa, and southwest Minnesota. *See* Lewis and Clark Rural Water System Act of 2000, Pub. L. No. 106-246, 114 Stat. 579, 579-582 (2000).

⁴¹ Northern Application at Resource Report 1, figures 1-4 and 1-5.

during pipeline construction.⁴² We believe that this should be sufficient to ensure that Lewis & Clark’s potable water pipeline will not be impacted by construction of the project.

E. Greenhouse Gas Emissions and Climate Change

29. The EA discloses that the project’s construction will emit a total of 19,655 metric tons of carbon dioxide equivalent (CO₂e) while its operation will emit 351 metric tons annually.⁴³ In previous orders, the Commission has concluded that it was unable to assess the significance of a project’s greenhouse gas (GHG) emissions or those emissions’ contribution to climate change.⁴⁴ Upon reconsideration, we no longer believe that to be the case. Accordingly, in the following paragraphs, we assess the significance of the project’s GHG emissions and their contribution to climate change. Based on the record in this proceeding, we conclude that those impacts are not significant.

30. The U.S. Court of Appeals for the District of Columbia Circuit has explained that a proposed interstate natural gas pipeline’s reasonably foreseeable GHG emissions are relevant to whether the pipeline is required by the public convenience and necessity.⁴⁵ A rigorous review of a project’s reasonably foreseeable GHG emissions is also an essential part of the Commission’s responsibility under NEPA to take a “hard look” at a project’s environmental impacts.⁴⁶ Determining the significance of the impacts from a proposed

⁴² See *id.*, at Resource Report 1.

⁴³ EA at 76 and 77. There is no new capacity associated with this pipeline replacement, thus no downstream greenhouse gas (GHG) emissions to consider.

⁴⁴ See, e.g., *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm’r, dissenting in part; Glick, Comm’r, dissenting in part).

⁴⁵ See, e.g., *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019); *Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*); see also *Sabal Trail*, 867 F.3d at 1374 (explaining that because the project’s indirect GHG emissions were reasonably foreseeable, the Commission needed to “needed to include a discussion of the “significance” of this indirect effect as well as the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” (internal citations and quotation marks omitted)).

⁴⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 (1989); see *Sabal Trail*, 867 F.3d at 1373; *WildEarth Guardians v. Jewell*, 738 F.3d 298, 302 (D.C. Cir. 2013) (“NEPA . . . places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action.”) (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983)).

project's GHG emissions informs the Commission's review in a number of important respects, including its decision whether to prepare an environmental impact statement.

31. As an initial matter, the Supreme Court has explained that NEPA's purpose is to "ensure[] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts" and to "guarantee[] that the 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."⁴⁷ As with other environmental impacts, determining whether a project's reasonably foreseeable GHG emissions and contribution to climate change are significant furthers that purpose by disclosing to the public and the relevant decisionmakers the extent of a project's adverse environmental impacts.⁴⁸

32. In evaluating whether an impact is significant, the Commission determines whether "it would result in a substantial adverse change in the physical environment."⁴⁹ In making that determination for different environmental impacts, the Commission necessarily considers different types of evidence, giving that evidence such weight as it deems appropriate using its experience, judgment, and expertise.⁵⁰ We find that there is

⁴⁷ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

⁴⁸ *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349 (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.").

⁴⁹ *See Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197, at P 114 (2011) ("an impact was considered to be significant if it would result in a substantial adverse change in the physical environment or natural condition and could not be mitigated to less-than-significant level").

⁵⁰ For impacts where there are no established federal standards, the Commission makes qualitative assessments to determine whether a proposed project would have a significant impact on a particular resource. *See, e.g., Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at P 56 (2019), *order on reh'g*, 170 FERC ¶ 61,139, at P 32 (2020) (stating that "[d]ue to the relatively undeveloped nature of the project area, the visual sensitivity of nearby recreation areas, and the lack of feasible visual screening measures, the Final EIS concluded that the project would result in a significant impact on visual resources when viewed from the adjacent Laguna Atascosa National Wildlife Refuge");

nothing about GHG emissions or their resulting contribution to climate change that prevents us from making that same type of significance determination.

33. NEPA does not require that the studies, metrics, and models—scientific and otherwise—on which an agency relies be universally accepted or otherwise uncontested. Instead, NEPA permits agencies to rely on the best available evidence, quantitative and qualitative, even where that evidence has certain limitations. In the following paragraphs, we assess the significance of this project’s GHG emissions and their contribution to climate change. In future proceedings, the evidence on which the Commission relies to assess significance may evolve as the Commission becomes more familiar with the exercise and in response to the particular record before us in those proceedings. In addition, on February 18, 2021, the Commission issued a Notice of Inquiry (NOI) seeking new information and additional stakeholder perspectives to help the Commission explore whether it should revise its approach under the currently effective policy statement on certification of new natural gas transportation facilities.⁵¹ The NOI seeks information concerning options for assessing the significance of the impacts of GHG emissions and will help inform our approach going forward. However the Commission’s approach to the significance analysis evolves, the reasonably foreseeable GHG emissions associated with this project would not be considered significant.

34. Here, we compare the project’s reasonably foreseeable GHG emissions to the total GHG emissions of the United States as a whole. That comparison allows us to assess the project’s share of contribution to GHG emissions at the national level, which provides us with a reasoned basis to consider the significance of the project’s GHG emissions and their potential impact on climate change. The total GHGs from construction and operation are 20,006 metric tons.⁵² 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

Final Environmental Impact Statement for the Alaska LNG Project. Docket No. CP17-178-000, at ES-4 (Mar. 2020) (finding that “[t]he Project would result in significant long-term to permanent impacts on thaw sensitive permafrost (about 6,218 acres), thaw stable permafrost (about 3,499 acres), forest (about 12,440 acres); and wetlands (about 8,225 acres).”).

⁵¹ *Certificate of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (2021).

⁵² EA at 76 and 77.

sources and sinks).⁵³ This project could potentially increase CO_{2e} emissions based on the 2018 levels by 0.0003%, in subsequent years, the operations only would be 0.000006%.⁵⁴

35. For additional context, when states have GHG emissions reduction targets we will endeavor to consider the GHG emissions of a project on those state goals. Nebraska and South Dakota do not have state emissions targets, in lieu of, we compare the operation-related emissions to the 2017 state inventories, finding an increase in Nebraska's GHG emissions by 0.000078% and South Dakota's GHG emissions by 0.0002%.⁵⁵

36. Based on this record, we find that the project's contribution to climate change would not be significant. In future proceedings, we will continue to consider all appropriate evidence regarding the significance of a project's reasonably foreseeable GHG emissions and those emissions' contribution to climate change.⁵⁶ In addition, we note that should we determine that a project's reasonably foreseeable GHG emissions are significant, those GHG related impacts would be considered along with many other factors when determining whether a project is required by the public convenience and necessity.

⁵³ 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/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf> (accessed March, 2021).

⁵⁴ Although the national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, *EPA, Repeal of the Clean Power Plan; 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), the Paris Climate Accord has been rejoined, *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg. 7619 (January 27, 2021). It is not yet clear if the U.S. will retain or modify its former goals.

⁵⁵ The operational emissions occur from fugitive methane emissions and are divided for each state where those emissions occur. Two of the aboveground facilities were in Nebraska, and fifteen were located in South Dakota, for 41 and 310 metric tons per year of CO_{2e} respectively.

⁵⁶ *See Robertson*, 490 U.S. at 350 ("If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.").

IV. Conclusion

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

38. 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 the South Sioux City to Sioux Falls A-line Replacement Project, subject to the conditions in this order.

39. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction 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.

40. 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.⁵⁷

⁵⁷ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline 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).

41. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Northern to construct and operate the South Sioux City to Sioux Falls A-line Replacement Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

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

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

(C) We find it will be appropriate to roll project costs into Northern's system rates in a future NGA section 4 general rate proceeding, absent a significant change in circumstances.

(D) Northern is granted permission and approval to abandon the facilities described in this order, and as more fully described in the application, subject to Northern's compliance with environmental conditions listed in the appendix to this order.

(E) Northern shall notify the Commission within 10 days of the abandonment of the facilities.

(F) Northern shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Northern. Northern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Danly is concurring in part and dissenting in part with a separate statement attached.

Commissioner Christie concurring in part and dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

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

1. Northern Natural Gas Company (Northern) shall follow the abandonment and construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Northern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), 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 and activities associated with abandonment 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, operation, and abandonment activities.

3. **Prior to any construction or abandonment activities**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized abandonment activities and facility locations shall be as shown in

the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Northern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities and abandonment activities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Northern's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Northern's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Northern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all workspace rearrangements, 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/sheets/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 Order and before construction or abandonment begins,** Northern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Northern must file revisions to the plan as schedules change. The plan shall identify:
- a. how Northern will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Northern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, 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 Northern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Northern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Northern will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (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. Northern shall employ at least one EI per construction spread. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental

- d. conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Northern shall file updated status reports with the Secretary on a **weekly** basis until all abandonment, construction, and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Northern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered, and each instance of noncompliance observed by the EIs 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 Northern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Northern's response.
9. Northern must receive written authorization from the Director of OEP, or the Director's designee, **before commencing abandonment activities or construction of any project facilities**. To obtain such authorization, Northern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Northern must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 5 days of receipt of a water quality certification** issued by the Nebraska Department of Environment and Energy and the South Dakota Department of Environment and Natural Resources, Northern shall file the complete certification, including all conditions, for review by the Director of OEP, or the Director's designee, under 40 CFR 121.9. All conditions attached to the water quality certification except those that the Director of OEP, or the Director's designee, may identify as waived pursuant to 40 CFR. 121.9, constitute mandatory conditions of this Certificate Order. **Prior to construction**, Northern shall file, for review and written approval by the Director of OEP, or the Director's designee, any revisions to its project design necessary to comply with the water quality certification conditions.

12. **Within 30 days of placing the authorized facilities in service and completing project abandonment**, Northern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Northern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

13. Northern **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. Northern files with the Secretary:
 - (1) remaining cultural resources survey report for the one parcel between Mileposts 23.43 and 24.09;
 - (2) site-specific evaluation reports, avoidance plans, and/or treatment plan(s), as required; and
 - (3) comments on the cultural resources report and plans from the South Dakota State Historic Preservation Officer and/or tribes, as applicable;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties will be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP, or the Director's designee, approves the cultural resources reports and plans and notifies Northern in writing that avoidance and/or treatment measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “**CUI//PRIV – DO NOT RELEASE.**”

14. **Prior to horizontal direction drilling (HDD) at P4-11, P4-12, P4-13, P4-24, P4-26, P4-54, P4-56, P4-71, P4-75, P4-95, P4-96, P4-103, P4-105, P4-111, and P4-119**, Northern shall file with the Secretary, for the review and written approval by the Director of OEP, or the Director’s designee, a HDD noise mitigation plan to reduce the projected noise level attributable to the HDD construction at nearby noise sensitive areas. During drilling operations, Northern shall implement the approved plan, monitor noise levels, report the noise levels in its weekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an average day-night ambient sound level of 55 decibels on the A-weighted scale at noise sensitive areas.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. CP20-487-000

(Issued March 22, 2021)

DANLY, Commissioner, *concurring in part and dissenting in part*:

1. I concur in part because I agree that the Commission should grant the requested Natural Gas Act (NGA) sections 7(b) and 7(c) authorizations. I dissent in part because the Commission violates the Administrative Procedure Act (APA) by reversing its longstanding determination that it is unable to assess the significance of a project's greenhouse gas (GHG) emissions or those emissions' contribution to climate change without sufficient reasoning. The Commission decides here that we will compare raw project emissions numbers to the national total and determine significance on that basis alone. In so doing, we disregard a pending Notice of Inquiry (NOI) (that sought directly relevant additional comments) and announce our own fragmentary standard that provides no clarity because it fails to establish either a replacement framework or a threshold for when emissions will be deemed "significant."

2. This order represents regulatory malfeasance at its most arbitrary and capricious. We leave the public and the regulated community—including investors upon whom we rely to provide billions of dollars for critical infrastructure—with no discernible principles by which the Commission intends to consider proposed projects. We announce this dramatic change of direction without notice, in an obscure docket that is likely not to be appealed. And it marks the second such surprise issuance in as many months.¹

3. The majority, in reversing course, fails to engage in reasoned decision making and ignores the Commission's obligations under the APA and the Commission's role under the NGA. The order is legally infirm.

I. Background and the New "Standard"

4. The Commission has repeatedly found that it is unable to assess the significance of a project's GHG emissions or those emissions' contribution to climate change.² This

¹ See *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126 (2021) (reopening the Atlantic Bridge Project certificate order) (Algonquin).

² See, e.g., *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018).

finding is based on an acknowledgement that there exists no accepted methodology by which to make such assessments. “Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.”³

5. In part to address this precise issue, the Commission has a pending NOI in Docket No. PL18-1-000 concerning whether the Commission should revise its Certificate Policy Statement.⁴ Just last month, the Commission issued a unanimous order to add questions to this NOI,⁵ including, “[i]n conducting an analysis of the impact of a project’s GHG emissions, *how could* the Commission determine the significance of these emissions’ contribution to climate change?”⁶

6. Rather than wait for answers and compile record evidence in response to the questions we put forth last month, the Commission now answers the question itself.⁷ In today’s order, the majority explains that in making its significance determination “for different environmental impacts, the Commission necessarily considers different types of evidence, giving that evidence such weight as it deems appropriate using its experience, judgment, and expertise.”⁸ The majority then concludes that “there is nothing about GHG emissions or their resulting contribution to climate change that prevents us from making that same type of significance determination”⁹ and that “NEPA does not require that the studies, metrics, and models . . . on which an agency relies be universally

³ *Id.* P 67.

⁴ See *Certification of New Interstate Nat. Gas Facilities*, 163 FERC ¶ 61,042 (2018) (Initial NOI).

⁵ See *Certification of New Interstate Nat. Gas Facilities*, 174 FERC ¶ 61,125 (2021) (Renewed NOI).

⁶ *Id.* P 17 (emphasis added).

⁷ See *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 (Glick, Comm’r, dissenting) (“I find it particularly disappointing that the Commission is adopting this new policy just as it embarks on a broad review of the Commission’s process for certifying new natural gas pipelines, which will include how greenhouse gas emissions are assessed.”).

⁸ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 32 (2021).

⁹ *Id.*

accepted or otherwise uncontested.”¹⁰ The majority thus compares the proposed project’s total GHG emissions from construction and operation of the project to the total GHG emissions of the United States through a bare recitation of the respective numbers. No further analysis is offered. The majority simply asserts that comparison enables the Commission to assess the project’s contribution to GHG emissions at the national level and to assess the significance of the project’s GHG emissions and their potential impact on climate change.

7. Not only does the majority decline to institute an analytical framework, it does not even establish a threshold above which it will consider emissions to be “significant” under the standard it adopts. It is no standard at all, merely a black box comparison of numbers the Commission can apparently apply however it sees fit on a case-by-case basis. In this case, Northern Natural Gas Company (Northern Natural) luckily passes. Other applicants, including in numerous cases currently pending before the Commission, must now guess whether their own significant investments in critical infrastructure will also pass the Commission’s *ad hoc* review.

II. The Commission’s Action is Unlawful

8. The Commission’s order today fails every applicable legal standard: it is arbitrary and capricious, fails reasoned decision making, and is not based on substantial evidence. It also exceeds our authority under the NGA.

9. To briefly recap these standards,

an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.¹¹

While the Commission “need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate[,] [s]ometimes it must—when, for

¹⁰ *Id.* P 33. The majority forgets that the APA requires reasoned decision making and that the Commission’s findings of significance for other environmental resources is based on an examination of specific anticipated project effects, not speculative project effects (air emissions) that may occur locally or across the globe.

¹¹ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*).

example, its new policy rests upon factual findings that contradict those which underlay its prior policy It would be arbitrary or capricious to ignore such matters.”¹²

10. In order not to be arbitrary and capricious, the Commission’s decisions must be based on reasoned decision making. The Commission “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”¹³ The Commission must also base its decisions on substantial evidence in the record. Substantial evidence means “more than a mere scintilla,” that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁴ Finally, the Commission “is a ‘creature of statute,’ having ‘no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress.’”¹⁵ The applicable statute is the NGA, and, as I discuss below, the NGA does not grant the Commission the authority to be an environmental regulator.

11. With that reminder of the Commission’s obligations, let us briefly examine the infirmities of the order.

A. The Commission Fails to Explain its Departure from Precedent

12. The first problem with the Commission’s order is that it departs from current precedent without explanation. The Commission has long acknowledged that there is no accepted methodology by which to determine the significance of GHG emissions. The majority, however, “find[s] that the project’s contribution to climate change would not be significant.”¹⁶ There remains no accepted “significance” methodology, but now the Commission announces that it can “[i]n future proceedings . . . consider all appropriate

¹² *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted).

¹³ *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); see also *id.* at 56 (“failed to offer the rational connection between facts and judgment required to pass muster under the arbitrary and capricious standard”).

¹⁴ *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938).

¹⁵ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)) (emphasis in original).

¹⁶ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 at P 36.

evidence regarding the significance of a project's . . . contribution to climate change.”¹⁷ The majority further announces that no matter how “the Commission’s approach to the significance analysis evolves,” and presumably it must “evolve” since as of today no “approach” can be said to exist, Northern Natural’s emissions “would not be considered significant.”¹⁸

13. The majority fails to offer any reason as to *why* it has changed its position and further fails to supply any explanation for *how* it arrives at its new conclusion.¹⁹ The section covering this sweeping reversal of policy covers paragraphs 29 to 36.²⁰ That is eight paragraphs of citations to case law, descriptions of NEPA obligations and recitations of facts which were themselves recited (also sans analysis) in the Environmental Assessment. The order makes no attempt whatsoever to explain what is and what is not significant, why the metrics it applies are legitimate, and how the facts in this case should be considered within that rubric. It merely states the numbers,²¹ offers

¹⁷ *Id.*

¹⁸ *Id.* P 33.

¹⁹ The majority states that “nothing about GHG emissions . . . prevents us from making that . . . type of significance determination.” *Id.* P 32. While that may be true, a declaration of the fact that it is *entitled* to make such a determination (which I do not concede) cannot take the place of *actually explaining* its reasoning. Nothing in the Commission’s determination relies upon its expertise or experience; it merely states that on the record before it, it can declare the emissions not significant. That is insufficient.

²⁰ *See id.* PP 29-36.

²¹ I acknowledge that the numbers presented are small and may be legitimately deemed *de minimis*, provided an explanation and reasoned basis are offered. However, here, the majority does neither. Nor does the Commission likely have any explanation, given that it just asked, “[i]s there any level of GHG emissions that would constitute a *de minimis* impact?” Renewed NOI, 174 FERC ¶ 61,125 at P 17. Black letter administrative law demands more. The APA affords great flexibility for agencies to carry out their assigned roles, but they must conduct their business logically, explain their choices, and base them on the evidence. The majority’s analytical framework amounts to little more than “I know it when I see it.” And while this may be good enough for Potter Stewart, it is not good enough for an administrative agency.

what it calls “context,”²² and then concludes that “[b]ased on this record, we find that the project’s contribution to climate change would not be significant.”²³

14. This is textbook arbitrary and capricious agency action. The Commission cannot reverse its own precedent, purport to create a new methodology, fail to articulate that methodology, and then decree that the project in question has emissions so low that its new methodology, whatever it is, does not matter. Such outcome-oriented decision making—to achieve a particular end without a means—is manifestly arbitrary and capricious and falls far short of satisfying the Commission’s obligations under the APA.²⁴

B. The Commission Creates a Test with No Standards

15. Aside from being assured that it will “evolve,” the regulated community learns nothing from the majority’s “significance analysis” regarding what standards the Commission will apply when determining significance. The Commission merely states that it may continue to offer bare comparisons of a project’s emissions to the national total, or it may not, and then it will consider whether the project’s emissions are significant. That is it.

16. That is insufficient. The Commission establishes no threshold. It also offers no guidance as to how it will interpret the evidence before it. The majority’s action is like posting a speed limit sign with a question mark instead of a number, leaving it to the police officer to decide arbitrarily whether you were speeding. Although the Commission is authorized to make a “rational legislative-type judgment,” the Commission may not “pluck a number out of thin air when it promulgates rules.”²⁵ Rather, the Commission’s decision must “reflect[] its informed discretion, and is neither

²² *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 at PP 34-35.

²³ *Id.* P 36.

²⁴ It also fails the requirement that agencies base their decisions on substantial evidence. While there may be substantial evidence to support a holding, properly explained, that there will be no significant effect from the project’s emissions, there is *no evidence* cited or offered to support the decision to change the Commission’s position regarding the feasibility of assessing significance.

²⁵ *WJG Tel. Co., Inc. v. FCC*, 675 F.2d 386, 388-89 (D.C. Cir. 1982) (quoting *FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775, 814 (1978)); see also *LeMoyne-Owen Coll. v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004) (“In the absence of an explanation, the ‘totality of the circumstances’ can become simply a cloak for agency whim—or worse.”).

patently unreasonable nor ‘a dictate of unbridled whim,’” in order for the decision to constitute reasoned decision making.²⁶

C. The Commission Has a Directly Applicable Pending Notice of Inquiry to Seek Evidence on the Issues It Purports to Resolve in this Order; to Ignore it is to Fail to Engage in Reasoned Decision Making

17. The Commission recognized just last month that it needed more information in order to decide whether to change its position regarding the feasibility of assessing significance and yet, my colleagues plow ahead with their policy change, uninterested in the fact that the questions presented in the NOI remain unanswered.²⁷ This surely cannot be reasoned decision making.

18. Given that the NOI’s comment period is still open and that it raises questions concerning whether a change in policy is feasible and whether the Commission even has the authority to establish its own methodology, the Commission should have waited at least until the remaining thirty-nine days of the comment period elapsed and until the record was developed and reviewed to determine whether a policy change such as that made here is appropriate or feasible. Chairman Glick stated at last month’s Commission meeting that “[a]fter we have received the comments and have had an opportunity to review them, I hope to work with my colleagues to develop an approach to improve our certificate decision making process.”²⁸ That approach would have allowed the Commission to have a developed record to inform its decision instead of the unsupported—and unexplained—policy we have instituted today.

D. The Commission Still Is Not an Environmental Regulator

19. There is no question that it is within the Environmental Protection Agency’s (EPA) purview—not the Commission’s—to determine whether emissions will have a significant effect on the environment.²⁹ In fact, the Clean Air Act provides just that.

²⁶ *WJG Tel. Co., Inc.*, 675 F.2d at 389 (quoting *Stereo Broads., Inc. v. FCC*, 652 F.2d 1026, 1031 (D.C. Cir. 1981)).

²⁷ The relevant questions that are being addressed in the NOI are included in Appendix A to this separate statement.

²⁸ *Transcript*, FERC, 65 (Feb. 18, 2021), <https://www.ferc.gov/media/transcript0218201>.

²⁹ *See Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011) (“It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions.”); *id.* at 427 (“The appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be

Specifically, that statute states that the Administrator of the EPA shall identify stationary sources that “in his judgment . . . cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare” and establish standards of performance.³⁰ Surely Congress did not intend for the Commission—an agency not charged with administering the Clean Air Act and lacking the expertise to develop a methodology to evaluate the significance of GHG emissions—to take such action. Rather, the Commission’s role in administering the NGA is to “encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”³¹

20. While adopting the role of environmental regulator may appeal to my colleagues, I would not act beyond the remit given to us by Congress. I agreed with then-Chairman Chatterjee when he said: “FERC is *not* an environmental regulator. We have neither the expertise nor the authority to weigh in on how to best curb emissions.”³² Today’s order suggests otherwise.

21. The Commission, as a mere “creature of statute,” can only act pursuant to law by which Congress has delegated its authority.³³ Whether project emissions will have a

prescribed in a vacuum: As with other questions of national or international policy, informed assessment of competing interests is required. . . . The Clean Air Act entrusts such complex balancing to EPA in the first instance, in combination with state regulators.”); *Wyoming v. U.S. Dep’t of Interior*, Nos. 2:16-CV-0285-SWS, *et al.*, 2020 WL 7641067 at *9 (D. Wyo. Oct. 8, 2020) (“The rub here, however, is whether the Rule, or at least certain provisions of the Rule, was promulgated *for the prevention of waste* or instead for the *protection of air quality*, which is expressly within the ‘substantive field’ of the EPA and States pursuant to the Clean Air Act.”) (emphasis in original).

³⁰ 42 U.S.C. § 7411(b)(1).

³¹ *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 669-70 (1976); *accord Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (quoting *NAACP*, 425 U.S. at 669-70).

³² *Remarks of Chairman Neil Chatterjee on the Technical Conference regarding Carbon Pricing in Organized Wholesale Electricity Markets*, FERC, <https://www.ferc.gov/news-events/news/remarks-chairman-neil-chatterjee-technical-conference-regarding-carbon-pricing> (Sept. 30, 2020) (emphasis in original).

³³ *Atl. City Elec. Co.*, 295 F.3d at 8 (“As a federal agency, FERC is a ‘creature of statute,’ having ‘no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress.”) (quoting *Michigan*, 268 F.3d at 1081); *see Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the

significant effect on climate change is not within our expertise. The regulation of air emissions, including GHG emissions, is assigned by the Clean Air Act, not the NGA, and that authority is delegated to the EPA, not the Commission. The Commission must comply with NEPA, but that does not mean the Commission can or is equipped to come up with its own framework for determining significance of project emissions on climate change. Because this is outside our expertise and we claim in this order to rely upon neither expert agency frameworks nor our own experience and expertise, we are effectively wetting a finger and putting it in the air. This determination is not even entitled to *Skidmore* deference and may in fact be outside the scope of our statutory authorization.³⁴

III. The Commission's Action Is Bad Governance

22. I would be hard pressed to imagine an issuance that would be less conducive to the deliberate and efficient development of natural gas infrastructure than this order.³⁵ It drastically departs from our long-standing policies and in doing so offers nothing that would provide the certainty that the financial markets require to rationally deploy capital. It leaves pipeline companies and those who depend on their services guessing what kind of project will pass muster, not just now, but in the future as the Commission's analysis "evolves." Thus we are asking pipeline companies and their customers to chase a hazy, indistinct—and moving—target. It would have been better for pipeline companies (though, admittedly, not for consumers) had we simply issued an order declaring that, until further notice, no section 7 certificates shall issue. That, at least, would offer clarity and allow the pipelines to divert their capital for the time being to Treasury notes.

23. The issuance of today's order is also unfair. It marks a drastic departure from established Commission precedent and does so without warning. Under the APA, it is of course the Commission's privilege to decide whether to pursue its objectives by rulemaking or by adjudication. But this change, I would argue, is more amenable to a

authority delegated by Congress.”).

³⁴ See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (“The weight of . . . a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”).

³⁵ See *NAACP*, 425 U.S. at 669-70 (“In the case of the Power and Gas Acts it is clear that the principal purpose of those Acts was to encourage the orderly development of plentiful supplies of electricity and natural gas at reasonable prices.”).

generic proceeding. The Commission appeared to agree with me when issuing our NOI.³⁶

24. But the problem with issuing this decision during the pendency of the NOI is much greater than the seeming inconsistency. One of the basic requirements of fairness is providing notice. The Commission has done the opposite. In fact, it has lulled people into believing that the answers to the questions appearing in the NOI had yet to be resolved. Right now, parties are drafting their comments. Imagine their surprise when they see today's order. Government should not conduct its business this way.

IV. The Commission's Action is Improvidently Advanced

25. I do hope that the advancement of today's order to this month's agenda is not the cynical exercise it might appear to be. A quick review of why this is a particularly inapt vehicle for sweeping policy changes will convince anyone that it was at best unwise to schedule it for a vote today because no one is likely in a position to challenge it, despite its dramatic reversal of policy and probable widespread effect.

26. First, no third party to the proceeding is likely in a position to seek rehearing. This is for several reasons. This is a small and obscure docket dealing with a relatively inconsequential section 7 certificate. Accordingly, few parties sought to intervene. Why would they? How could this proceeding affect their interests? Many parties who might otherwise have sought to participate had they known how important this case was going to be have not done so and are thereby deprived of a vehicle by which to challenge the Commission's decision.

27. Second, the proponent is unlikely to seek rehearing. Not only is Northern Natural unlikely to feel that it is aggrieved by an order that, whatever its reasoning, ultimately grants its requested authorizations, it is also in a Catch-22. As much as Northern Natural may want to challenge the Commission's reasoning because this order could very well pose challenges to other NGA section 7 applications it may pursue, it might decline to do so because, under the Commission's current regulations, it would then have to wait until the Commission acts on its rehearing request in order to receive its notice to proceed with construction.³⁷ Nonetheless, I would suggest that rehearing is in order to cabin the effect

³⁶ See Renewed NOI, 174 FERC ¶ 61,125 at PP 16-17.

³⁷ See 18 C.F.R. § 157.23 (2020) ("no authorization to proceed with construction activities will be issued: (a) Until the time for the filing of a request for rehearing under 15 U.S.C. 717r(a) has expired with no such request being filed, or (b) *If a timely request for rehearing is filed, until the Commission has acted upon the merits of that request.*") (emphasis added). This is because the Commission failed to address this issue, which was raised on rehearing in Docket No. RM20-15-001. See *Limiting Authorizations to Proceed with Constr. Activities Pending Rehearing*, Order No. 871-A, 174 FERC ¶

of this issuance and ensure that its consequences do not metastasize throughout the industry and obstruct every other pending project including those proposed by Northern Natural itself.

V. A Warning

28. This order is likely to have profound consequences. I reiterate the advice I have given to everyone who would listen since the Commission's issuance in *Algonquin*³⁸ last month: *every single* natural gas pipeline company, LNG company, and shipper should intervene in *every single* certificate item. Start now. Most interventions are costless. If the requested intervention is out of time, rely upon this case and *Algonquin* as justification for prophylactic intervention in order to demonstrate good cause. A reference to the pendency of the NOI, if that played any part in the decision not to file a timely intervention, would also not be amiss. I would hope that, given how consequential these orders have been, the Commission would show particular solicitude to parties doing no more than that which is necessary to ensure that their rehearing and appeal rights are not extinguished, especially when they have twice been surprised by policy changes with no notice and because the Commission has recently granted late intervention *after* the issuance of the order for which intervention was sought.³⁹

29. There are, of course, numerous other pending certificate applications.⁴⁰ While this order provides no concrete guidance, the "significance" of the emissions of those projects are hardly likely to be deemed as minor as they were in this case. The full implications of the Commission's decision may not be apparent at first glance—the new "policy" is, after all, "evolving." Nevertheless, especially when paired with the majority's seeming willingness to reopen closed certificate proceedings to evaluate whether there are "mitigation measures the Commission should impose in response to air emissions" for projects currently in operation,⁴¹ I fear that today's order marks the beginning of a series

61,050 (2021) (Danly, Comm'r, dissenting at PP 3-4).

³⁸ *Algonquin*, 174 FERC ¶ 61,126.

³⁹ See *Kern & Tule Hydro LLC*, 174 FERC ¶ 61,081 (2021) (granting late intervention filed nineteen days following issuance of order and finding good cause on the basis that some project details were not specified).

⁴⁰ See Appendix B.

⁴¹ *Algonquin*, 174 FERC ¶ 61,126 at P 2; cf. *id.* (Danly, Comm'r, dissenting at P 20) ("Only by re-litigating the Certificate Order and modifying Environmental Condition 10 of the Certificate Order can the Commission 'reconsider the current operation of the Weymouth Compressor Station,' consider 'changes in . . . projected air emissions or public safety impacts,' 'impose' 'additional mitigation measures,' or 'stay

of decisions that will have profound effects on the industry, its customers, and on NGA section 3 and section 7 approvals going forward.

For these reasons, I respectfully concur in part and dissent in part.

James P. Danly
Commissioner

or reverse the Authorization Order.”); *id.* (Christie, Comm’r, dissenting at P 3) (“Now, four years after finding *public convenience and necessity require approval and certification of the Atlantic Bridge Project* and inviting investors to commit substantial funds to build it, and without recognizing the request for rehearing was denied by operation of law, the majority literally invites opponents of the project to re-litigate the core question of whether the project should even have been built.”) (emphasis in original).

Appendix A

The following questions are relevant to the determination made in this proceeding and are currently under consideration in the NOI (Docket No. PL18-1-000):

C2. Are there any environmental impacts that the Commission does not currently consider in its cumulative impact analysis that could be captured with a broader regional evaluation? If so, how broadly should regions be defined (e.g., which states or geographic boundaries best define different regions), and which environmental resources considered in NEPA would be affected on a larger, regional scale? Does the text of NGA section 7 permit the Commission to do this? If this is contemplated by the NGA, would one applicant's section 7 application prejudice another applicant's section 7 application?

C3. In conducting an analysis of a project, how could the Commission consider upstream impacts (e.g., from the drilling of natural gas wells) and downstream end-use impacts? Should applicants be required to provide information on the origin and end use of the gas? How would the Commission determine end-use impacts if the gas is sent to a pooling point or a mid-stream shipper? If the end use is electric generation or an LDC, how would the Commission determine the GHG emissions of existing and anticipated gas usage attributed to a project? How would additional information related to upstream or downstream impacts of a proposed project inform the Commission's decision on an application? Should shippers who have subscribed capacity on a project (or potentially, the shippers' customers) be encouraged to provide the type of information contemplated above? If so, how might this be done? How could such a policy be squared with CEQ's final rule?

C4. In conducting an analysis of the impact of a project's GHG emissions, how could the Commission determine the significance of these emissions' contribution to climate change? Should significance criteria be based on a specific fraction of existing carbon budgets in international agreements; state or regional targets; a specific fraction of natural carbon sinks; or other metrics? If so, how and why would that basis be appropriate? Alternatively, should the Commission focus its analysis on GHG emission impacts on global climate metrics (e.g., CO₂ levels, ocean acidification, sea level rise) or regional impacts (e.g., snowpack, storm events, local temperature changes)? If so, how and why would that basis be appropriate? What would be an appropriate GHG climate model for use on a project-level basis? Is there any level of GHG emissions that would constitute a *de minimis* impact? If so, how much and why would such number be appropriate? How would such analysis meaningfully inform the Commission's decision making?

C5. As part of the Commission's public interest determination, how would the Commission weigh a proposed project's adverse impacts against favorable impacts to determine whether the proposed project is required by the public convenience and necessity and still provide regulatory certainty to stakeholders?

C6. Does the NGA, NEPA, or other federal statute authorize or mandate the use of Social Cost of Carbon (SCC) analysis by the Commission in its consideration of certificate applications? If so, how does the statute direct or authorize the Commission to use SCC? Does the statute set forth specific metrics or quantitative analyses that the Commission must or may use and/or specific findings of fact the Commission must or may make with regard to SCC analysis of a certificate application? Does the statute set forth specific remedies the Commission must or may implement based on specific SCC findings of fact?

C7. If the Commission chooses to use the SCC tool, how could it be used to determine whether a proposed project is required by the public convenience and necessity? How would the Commission determine the appropriate discount rate to use? Should the Commission consider multiple discount rates or one discount rate? Please provide support for each option. How could the Commission use the SCC tool in the weighing of the costs versus benefits of a proposed project? How could the Commission acquire complete information to appropriately quantify all of the monetized costs/negative impacts and monetized benefits of a proposed project? Should the Commission use the tool to determine whether a project has significant effects on climate? If so, how could the Commission connect the SCC estimate with the actual effects of the project? What level of cost would be significant and why?

C8. Are there alternatives to the SCC tool that the Commission should consider using? If so, how could the Commission use those tools?

C9. How could the Commission determine whether a proposed project's GHG emissions are offset by reduced GHG emissions resulting from the project's operations (e.g., displacing a more carbon-intensive fuel source such as coal or fuel oil)?

C10. How could the Commission impose GHG emission limits or mitigation to reduce the significance of impacts from a proposed project on climate change? Can the Commission interpret its authority under NGA section 7(e) to permit it to mitigate GHG emissions? If the Commission decides to impose GHG emission limits, how would the Commission determine what limit, if any, is appropriate? Should GHG mitigation be considered only for direct project GHG emissions or should downstream end-use, or upstream emissions also be evaluated? What are the options or methods applicants could propose to mitigate GHG emissions through offsets or other means?

Appendix B

The following list includes the Natural Gas Act section 7 and section 3 proceedings that are currently pending before the Commission. I offer this list as a convenience. Parties contemplating intervention would be well-advised to confirm the information contained in this appendix by referring to the relevant docket.

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
Sabal Trail Transmission, LLC	CP15-17-005	Request for Rehearing of Authorization to Commence Service of Phase II Facilities	N/A
Atlantic Coast Pipeline, LLC	CP15-554-004, CP15-554-005, CP15-554-006, and CP15-554-007	Requests for Rehearing of Notices to Proceed	N/A
Atlantic Coast Pipeline, LLC and Eastern Gas Transmission and Storage, Inc.	CP15-554-009 and CP15-555-007	Atlantic Coast Project Disposition and Restoration Plan and Supply Header Project Restoration Plan	4/16/21
Mountain Valley Pipeline, LLC	CP16-10-008	Request for Rehearing of Order Partially Lifting Stop Work Orders and Allowing Certain Construction to Resume	N/A
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC	CP16-9-012	February 18, 2021 Order Establishing Briefing	4/5/21 deadline for initial briefs, 5/4/21 deadline for reply briefs
Spire STL Pipeline,	CP17-40	March 18, 2021 Order on	N/A

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
LLC		Environmental Compliance	
Midship Pipeline Company, LLC	CP17-458 and CP19-17	March 18, 2021 Order on Environmental Compliance	N/A
Equitrans, L.P.	CP19-473	Tri-State Corridor Project	7/5/19
Commonwealth LNG, LLC	CP19-502	Commonwealth LNG Project	9/24/19
Corpus Christi Liquefaction, LLC	CP19-514	Liquefaction Project Amendment	10/31/19
Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.	CP19-515	Liquefaction Project Amendment	10/30/19
North Baja Pipeline, LLC	CP20-27	North Baja XPress Project	1/21/20
Equitrans, L.P.	CP20-312	Application for Abandonment of Gathering Facilities and Service	5/28/20
Freeport LNG Development, L.P.; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; and FLNG Liquefaction 3, LLC	CP20-455	Noble Gas Project	6/18/20
Enable Mississippi River	CP20-456	East Unionville Storage Field Certificate	6/17/20

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
Transmission, LLC		Amendment	
PennEast Pipeline Company, LLC	CP20-47	2020 Amendment	3/4/20
Washington 10 Storage Corporation and South Romeo Gas Storage Company, L.L.C.	CP20-470	Washington 10 and South Romeo Storage Project	7/1/20
Iroquois Gas Transmission System, L.P.	CP20-48	Enhancement by Compression Project	3/4/20
Rio Bravo Pipeline Company, LLC	CP20-481	Rio Bravo Pipeline Project Amendment	7/16/20
ANR Pipeline Company and Great Lakes Gas Transmission Limited Partnership	CP20-484 and CP20-485	Alberta XPress Project	7/22/20
Tuscarora Gas Transmission Company	CP20-486	Tuscarora XPress Project	7/28/20
Northern Natural Gas Company	CP20-487	South Sioux City to Sioux Falls A-line Replacement Project	8/4/20
Tennessee Gas Pipeline Company, L.L.C.	CP20-493	East 300 Upgrade Project	8/5/20
Andalusian Energy, LLC	CP20-496	Petition for Declaratory Order	8/20/20
Tennessee Gas Pipeline Company,	CP20-50 and CP20-51	Evangeline Pass Expansion Project	3/13/20

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
L.L.C. and Southern Natural Gas Company, L.L.C.		and SNG Evangeline Pass Expansion Project	
Northern Natural Gas Company	CP20-503	Northern Lights 2021 Expansion Project	9/2/20
WBI Energy Transmission, Inc.	CP20-52 and CP20-52-001	North Bakken Expansion Project	3/18/20
Delaware River Partners LLC and Bradford County Real Estate Partners LLC	CP20-522 and CP20-524	Petitions for Declaratory Order	10/15/20 and 10/23/20
Columbia Gulf Transmission, LLC	CP20-527	East Lateral XPress Project	10/29/20
Stingray Pipeline Company, L.L.C.	CP20-528, CP20-528-001, and CP20-529	Application for Abandonment by Sale and Request for Jurisdictional Determination, Amendment, and Application for Abandonment by Sale	10/20/20 and 1/6/21
Port Arthur LNG Phase II, LLC and PALNG Common Facilities Company, LLC	CP20-55	Port Arthur LNG Expansion Project	3/25/20
Enable Gas Transmission, LLC and Enable Gulf Run Transmission,	CP20-68 and CP20-70	Line CP Modifications/Gulf Run Pipeline	4/3/20

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
LLC			
Golden Pass Pipeline LLC	CP21-1	Compression Relocation and Modification Project	11/9/20
Spire Storage West LLC	CP21-6	Clear Creek Expansion Project	11/12/20
Adelphia Gateway, LLC	CP21-14	Marcus Hook Electric Compression Project	2/16/21
Columbia Gas Transmission, LLC	CP21-17	2021 Wellington Well Abandonments Project	2/16/21
Columbia Gas Transmission, LLC	CP21-23	2021 Coco B and Coco C Wells Abandonment Project	3/15/21
Northern Natural Gas Company	CP21-28	Redfield Underground Storage Facility Buffer Zone Project	2/16/21
Texas Eastern Transmission, LP	CP21-31	Perulack Compressor Units Replacement Project	2/23/21
LA Storage, LLC	CP21-44	Hackberry Storage Project	3/3/21
Florida Gas Transmission Company, LLC	CP21-45	Big Bend Project	3/5/21
Mountain Valley Pipeline, LLC	CP21-57	Mountain Valley Pipeline Project Amendment	3/22/21

<u>Applicant</u>	<u>Docket Number(s)</u>	<u>Name of Pending Matter</u>	<u>Intervention Deadline</u>
ANR Pipeline Company	CP21-78	Wisconsin Access Project	Awaiting notice

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. CP20-487-000

(Issued March 22, 2021)

CHRISTIE, Commissioner, *concurring in part and dissenting in part*:

1. I concur with the finding in today's order that Northern's application¹ meets all applicable statutory requirements and should be approved.
2. I dissent to the extent that the order makes the approval of this application legally dependent on what is presented herein as an analysis of the purported impact on climate change of this project's level of GHG emissions.² This is a major question of law and, as the order acknowledges,³ will be considered in a separate proceeding we initiated just one month ago at our February Commission Meeting: the Notice of Inquiry (NOI) on certificate proceedings.⁴
3. The whole point of this NOI proceeding – at least for me – is to give all interested persons and groups a fair opportunity to weigh in on major issues such as this one, that are relevant to the certificate process, without preconditions or prejudgments on those

¹ The application requested authorization to abandon in place certain line segments and authorization to construct and operate approximately 87.3 miles of pipeline and to modify existing and install new above-ground facilities to replace the capacity associated with the abandoned facilities.

² Order at PP 29-39.

³ *Id.* at P 33.

⁴ *Certification of New Interstate Natural Gas Facilities*, 174 FERC ¶ 61,125 (Feb. 18, 2021).

issues. Among other issues, this NOI seeks comment on legal questions concerning potential GHG emission and climate change analyses. It is unfair and premature at best to jump the gun on that NOI process by effectively deciding this major question of law in this order with its limited participation.

For these reasons, I respectfully concur in part and dissent in part.

Mark C. Christie
Commissioner