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

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

Tuscarora Gas Transmission Company — Docket No. CP20-486-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued May 20, 2021)

1. On June 24, 2020, Tuscarora Gas Transmission Company (Tuscarora) 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 regulations[2] requesting authorization to replace one 600 horsepower (hp) compressor unit with one 1,380 hp compressor unit at its existing Wadsworth Compressor Station in Washoe County, Nevada (Tuscarora XPress Project). The project is designed to provide an additional 15,000 dekatherms (Dth) per day of firm transportation service from an existing interconnect with Gas Transmission Northwest LLC in Klamath County, Oregon, to an existing interconnect with Paiute Pipeline Company in Washoe County, Nevada (Paiute Interconnect). For the reasons discussed below, this order grants the requested certificate and abandonment authorizations, subject to conditions.

I. Background and Proposal

2. Tuscarora, a general partnership organized and existing under the laws of Nevada, 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. Tuscarora's interstate transmission system consists of approximately 300 miles of pipeline commencing at an

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[1] 15 U.S.C. §§ 717f(b), (c).

[2] 18 C.F.R. pt. 157 (2020).

[3] 15 U.S.C. § 717a(6).

interconnection with Gas Transmission Northwest LLC's pipeline system in Klamath County, Oregon, and extending in a southeasterly direction into northern Nevada.[4]

3. Tuscarora states that through modifications to the original design assumptions of Tuscarora's engineering models, it has determined that its pipeline system can provide an additional 15,000 Dth per day of firm transportation service.[5] However, in order to maintain existing delivery pressure commitments at the Paiute Interconnect while providing the additional service, Tuscarora proposes the following at its Wadsworth Compressor Station in Washoe County, Nevada: (1) replace one 600 hp gas-fired reciprocating compressor unit with one 1,380 hp gas-fired reciprocating compressor unit; (2) replace related piping and appurtenant facilities; and (3) upgrade metering facilities.[6] Tuscarora states that its Wadsworth Compressor Station is a booster compressor station that ensures that gas from Tuscarora can enter Paiute's pipeline system, which operates at a higher pressure.[7] Tuscarora notes that the proposed replacement compressor unit will remain a booster unit on Tuscarora's system to facilitate deliveries into Paiute's system and will not, itself, add additional capacity on Tuscarora's system.[8]

4. Tuscarora states that it has executed a 20-year binding precedent agreement with Southwest Gas Corporation (Southwest) for all the capacity created by the project.[9] Tuscarora held an open season and request for offers to turnback capacity from October 4 to October 10, 2019. No additional bids or offers of turnback were received.

5. Tuscarora estimates the total cost of the project to be $13,441,506.[10] Tuscarora proposes to establish incremental recourse rates under new Rate Schedule FT-TXP for firm transportation service using the capacity provided by the project facilities and to

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[4] Application at 3.

[5] *See* Application at Exh. G.

[6] *Id*. at 1, 2.

[7] *Tuscarora Gas Transmission Co*., 96 FERC ¶ 61,356 (2001).

[8] Application at 4.

[9] Tuscarora Data Response, September 3, 2020. As discussed below, Southwest is a local distribution company (LDC) and will use this new supply for general system needs.

[10] Application at Exhibit K.

apply its existing system fuel rate to recover the fuel costs associated with providing service on the project.

II. Notice, Interventions, and Comments

6. Notice of Tuscarora's application was published in the *Federal Register* on July 14, 2020.[11] No timely motions to intervene, comments, or protests were filed. On August 10, 2020, Southwest filed a late motion to intervene, which was granted.[12]

III. Discussion

7. Because the facilities that Tuscarora 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.[13]

A. Abandonment

8. 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.[14] 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.[15]

9. 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.[16] If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing natural

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[11] 85 Fed. Reg. 42,383 (July 14, 2020).

[12] *Tuscarora Gas Transmission Co.*, 173 FERC ¶ 61,169 (2020) (order setting aside Secretary's notice denying Southwest's untimely motion to intervene).

[13] 15 U.S.C. §§ 717f(b), (c), (e).

[14] *Id.* § 717f(b).

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

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

gas transportation services, it will defer to the applicant's business judgment to abandon the facilities.[17]

10. Here, Tuscarora proposes to construct a replacement booster compressor unit that will be capable of supporting the same level of service to the existing customers currently being served by the Tuscarora's system. Because the proposed abandonment will not jeopardize service to existing customers and will enable Tuscarora to maintain its existing delivery pressure obligations, we find that the proposed abandonment is permitted by the public convenience or necessity.

B. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[18] 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.

12. 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.

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[17] *Id*. (citing *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108, at P 65 (2013).

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

13. Tuscarora's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for expansion services that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.[19] Tuscarora is proposing a new incremental initial recourse rate that is higher than Tuscarora's system rate to recover costs associated with the project. Accordingly, we find that the project has met the threshold no-subsidy requirement of the Certificate Policy Statement.

14. In addition, the project will have no adverse effect on service to Tuscarora's existing customers because the project is designed to provide new incremental service while maintaining service to existing customers. Further, the project is not intended to replace existing transportation service on other pipelines and no pipelines or their captive customers have protested Tuscarora's proposal. Therefore, we find that there will be no adverse impacts on existing customers and other pipelines or their captive customers.

15. The proposed project will also have minimal adverse impacts on landowners and surrounding communities. Tuscarora proposes to construct the project within the existing footprint of the Wadsworth Compressor Station, thereby limiting new disturbances to affected landowners. Tuscarora also states that there are no residences within one half mile of the project vicinity and the nearest noise sensitive area to the compressor station is approximately two miles away. Furthermore, no landowner has protested the proposal. Thus, we find that Tuscarora has taken sufficient steps to minimize adverse impacts on landowners and surrounding communities for the purposes of our consideration under the Certificate Policy Statement.

16. The proposed project will enable Tuscarora to provide 15,000 Dth per day of incremental firm transportation service and Tuscarora has entered into a long-term precedent agreement with Southwest for 100% of the project's capacity. Accordingly, we find that Tuscarora has demonstrated a need for the Tuscarora XPress Project and further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore,

[19] *See, e.g.*, *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 22 (2017).

we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.[20]

C. Rates

1. Initial Recourse Rates

17. Tuscarora proposes new incremental recourse rates under new Rate Schedule FT-TXP for service on the project capacity, as set forth in *pro forma* section 4.1 - Statement of Rates of its tariff, included in Exhibit P of its application. Tuscarora calculated an initial incremental cost-based monthly reservation charge of $8.9276 per Dth based on an estimated first-year incremental reservation cost of service of $1,606,961 and annual reservation billing determinants of 180,000 Dth.[21] Tuscarora calculated an incremental cost-based usage charge of $0.0017 per Dth based on an estimated first-year incremental usage cost of service of $7,134 and annual delivery billing determinants of 4,106,250 Dth, which reflect a 75% load factor.[22] Tuscarora states that the cost of service was calculated using the capital structure, cost of debt, return on equity, and depreciation rates underlying its currently effective rates as approved by the Commission in Docket No. CP93-685-000[23] and Docket No. RP16-299-000.[24] Specifically, Tuscarora uses a capital structure of 70% debt and 30% equity, a cost of debt of 7.25%, a return on equity of 10.55%,[25] a weighted average of the last approved mainline transmission and facilities depreciation rate of 1.30% and the compressor equipment depreciation rate of 3.38%, and a terminal negative salvage rate of 0.18%, as approved in its 2016 Settlement.

18. We have reviewed Tuscarora's proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. Under the Commission's

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

[21] Application at Exhibit P, Page 1 of 10.

[22] *Id.*

[23] *Tuscarora Gas Transmission Co.,* 73 FERC ¶ 61,231 (1995).

[24] *Tuscarora Gas Transmission Co.*, 156 FERC ¶ 61,188 (2016) (2016 Settlement).

[25] As Tuscarora's return on equity has not changed since the issuance of its initial certificate, its 10.55% return on equity reflects the most recent return on equity approved by the Commission. *El Paso Natural Gas Co.,* 154 FERC ¶ 61,120 (2016).

Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.[26] Tuscarora's proposed incremental monthly reservation charge of $8.9276 per Dth plus the incremental usage charge of $0.0017 per Dth is higher than Tuscarora's currently effective maximum monthly recourse reservation charge of $7.3305 per Dth plus the maximum recourse usage charge of $0.0029 per Dth under Rate Schedules FT and LFS.[27] The Commission has previously allowed incremental usage charges below the system usage charge when the project's overall rate (reservation plus usage) is greater than the system recourse rate.[28] Thus, we approve Tuscarora's proposed initial incremental firm recourse reservation charge and usage charge under Rate Schedule FT-TXP as the initial recourse charges for the project.

2. <u>Fuel</u>

19. Tuscarora proposes to apply its generally applicable system fuel rate[29] to recover the fuel costs associated with providing service on the project. In support of its proposal, Tuscarora provided an illustrative fuel study[30] which calculates an estimated incremental fuel and line loss percentage of 0.04% based on a load factor of 75% for the project, which is less than Tuscarora's average system-wide fuel and line loss percentage for June 2019 to May 2020 of 0.70%. Tuscarora explains that the system fuel rate is determined on a monthly basis and posted on Tuscarora's website not less than ten days prior to the beginning of the applicable month, consistent with the fuel mechanism set forth in its tariff.[31] Tuscarora has adequately supported the projected fuel usage and line losses associated with the project. Thus, we approve Tuscarora's proposal to apply its generally applicable system fuel rate to the project.

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[26] Certificate Policy Statement, 88 FERC at 61,746.

[27] Tuscarora Gas Transmission Company, FERC NGA Gas Tariff, Tuscarora Tariffs, 4.1 - Statement of Rates, FT and LFS Rates, 10.0.0.

[28] *Texas Eastern Transmission, LP*, 161 FERC ¶ 61,226 (2017).

[29] *See* Section 40, General Terms and Conditions, Adjustment Mechanism for Fuel and Line Loss Percentage, of Tuscarora FERC Gas Tariff.

[30] Application at Exhibit Z-2.

[31] *Id*.

3. Negotiated Rates

20. Tuscarora proposes to provide service to Southwest under a negotiated rate agreement. Tuscarora must file either negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement[32] and the Commission's negotiated rate policies.[33] Tuscarora must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.[34]

4. Reporting Incremental Costs

21. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged.[35] The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.[36] Therefore, the Commission will require Tuscarora to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project as required by section 154.309. The books should be maintained with applicable cross-reference required by section 154.309. This information must be in sufficient detail so

[32] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

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

[34] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g. Texas Eastern Transmission, LP,* 149 FERC ¶ 61,198, at P 33 (2014). 18 C.F.R. § 154.112(b) (2020).

[35] 18 C.F.R. § 154.309 (2020).

[36] *Id.*

that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.[37]

D. Environmental Analysis

22. On August 4, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Tuscarora XPress Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register[38] and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments in response to the NOI from the U.S. Environmental Protection Agency (EPA) identifying topics to include in the environmental analysis, such as alternatives, the range of effects/impacts, air quality impacts, ecological connectivity, environmental justice, community involvement, source water protection areas for drinking water, water quality impacts, and impacts on protected species.

23. To satisfy the requirements of the National Environmental Policy Act of 1969,[39] our staff prepared an Environmental Assessment (EA) for Tuscarora's proposal. The analysis in the EA addresses geology, soils, vegetation, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA also addresses the EPA's comments. The EA does not assess impacts on water resources, fisheries, or wetlands as these resources are not present and would not be affected by the project. The EA was issued in the public record for this proceeding on February 19, 2021. On March 17, 2021, Tuscarora filed comments on the EA. The comments are addressed below.

1. Air Quality

24. Tuscarora states that the EA incorrectly identifies the total construction emissions for volatile organic compounds (VOCs). Tuscarora notes that 0.15 tons from fugitive emissions should have been included in the total, resulting in 0.35 tons emitted during construction. We acknowledge this clarification and note that it does not change any of the conclusions or determinations in the EA.

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[37] *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

[38] 85 Fed. Reg. 63,269 (Oct. 7, 2020).

[39] 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).

25. Tuscarora also notes that, with respect to Table 6.3-1 of the EA, Operational Emissions from Wadsworth Compressor Station, VOC emissions do not count towards the permit applicability analysis and should not be included in the table. While the emissions may not count towards permitting applicability in Nevada, we disclose all emissions from the project. Thus, the EA appropriately identifies the VOC emissions. Similarly, we include fugitive emissions in our disclosure of carbon dioxide equivalent (CO2e) emissions for greenhouse gases (GHG). We acknowledge however, that in Table 6.3-1, we incorrectly summed the CO2e emissions and the correct CO2e emissions are 8,327 tons per year (tpy)[40] (7,553 metric tpy), including all emission sources and fugitive methane emissions.

26. Last, Tuscarora clarifies that the sulfur dioxide generated by the space heaters associated with the project is 0.0005 tpy; however, this clarification does not change the resulting emissions for sulfur dioxide reported in the EA. Tuscarora also states that that the proposed equipment will be a Caterpillar G3516J Engine. We acknowledge these comments and clarifications and note that they do not change any of the conclusions or determinations in the EA.

2. Greenhouse Gas Emissions and Climate Change

27. The EA discusses the direct GHG impacts from construction and operation of the project, the climate change impacts in the region, and the regulatory structure for GHGs under the Clean Air Act.[41] The EA estimates that the maximum potential GHG emissions from operation of the project to be 7,553 metric tons per year of carbon dioxide equivalent (CO2e).[42]

28. Additionally, we conservatively estimate the downstream emissions from a project assuming all the gas to be transported is eventually combusted. Here, the sole project shipper, Southwest Gas, is a local distribution company. Tuscarora identified the growing demand for natural gas in the Reno, Nevada market area as the purpose for the project[43] and stated that, while the precise end-use is not known, Southwest Gas is expected to use the natural gas to meet its various needs, including cooling and

[40] In the EA, we incorrectly omitted the emissions of the space heaters in the total, which increased the emissions identified in the EA to 8,253 tpy, an additional 74 tpy.

[41] EA at 28-33.

[42] EA at 20-21, 28-33. We note that this calculation does not include the total estimated construction-related emissions of 579 metric tons of CO_2e.

[43] Application at 3-4.

supporting electric generation.[44] The project can deliver up to 15,000 Dth per day of new volumes to end-use customers in the United States, which can produce 289,700 metric tpy of CO2e from end-use combustion.[45] We note that this CO2e estimate represents an upper bound amount of end-use combustion that could result from the gas transported by this project. This is because some of the gas may displace other fuels, which could actually lower total CO2 emissions. It may also displace gas that otherwise would be transported via different means, resulting in no change in GHG emissions. Additionally, this estimate assumes that the maximum capacity is transported 365 days per year, which is rarely the case because many projects are designed for peak use

29. Next, we will compare the project's GHG emissions to the total GHG emissions of the United States as a whole. This comparison allows us to assess the project's share of contribution to GHG emissions at the national level. The annual GHGs from operation of the project, including the downstream combustion of the gas transported by the project, are 297,253 metric tpy CO2e. To provide context to the GHG estimate, 5.769 billion metric tons of CO2e were emitted at a national level in 2019 (inclusive of CO2e sources and sinks).[46] Construction of this project could potentially increase CO2e emissions based on the 2019 levels by 0.00001% in 2021; in subsequent years, the project operations and downstream combustion of gas transported by the project could potentially increase emissions by 0.0052%.[47] When states have GHG emissions

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[44] Tuscarora September 3, 2020 Data Response.

[45] Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018* at Annex 2.3, Table A-47 (2020) (Carbon Content Coefficients Used in this Report, Row: Carbon Content of Pipeline Natural Gas, Column: 2018 data), https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf. The 2019 Annex data has not been published as of the date of this order.

[46] U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks*: 1990-2019 at ES-7 to -9 (Table ES-2) (2021), https://www.epa.gov/sites/production/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf (accessed Apr. 21, 2021).

[47] 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). On April 21, 2021, the U.S. announced a goal of reducing its net greenhouse gas emissions by 50% to 52% below 2005 levels in 2030. Reducing Greenhouse Gases in the United States: A 2030 Emissions Target (Apr. 21, 2021),

reduction targets we will also endeavor to consider the GHG emissions of a project as compared to those state goals. The State of Nevada proposed in June of 2019 to reach a net-zero emissions economy by 2050 with required annual reports identifying the measures needed to reduce GHG emissions to 28% below 2005 levels by 2025, and 45% below 2005 levels by 2030. The emissions from the project would represent 0.83% and 1.08% of Nevada's 2025 and 2030 GHG inventory goals, respectively.[48] The forgoing analysis of greenhouse gas emissions is offered for information purposes only, does not inform any part of this order's holding, and shall not serve as precedent for any future order.

3. Environmental Analysis Conclusion

30. Based on the analysis in the EA, we conclude that if abandoned, constructed, and operated in accordance with Tuscarora'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.

IV. Conclusion

31. 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 Tuscarora XPress Project, subject to the conditions in this order.

32. 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

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https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%2021%202021%20Final.pdf.

[48] Nevada's 2005 CO2 emissions were 50.1 million metric tons. U.S. Energy Information Administration, *Energy-Related CO2 Emission Data Tables* (Table 1 - State energy-related carbon dioxide emissions by year, unadjusted (1990-2018)), https://www.eia.gov/environment/emissions/state/. Therefore, we consider the 2025 GHG emission target to be 35.972 million metric tons and the 2030 GHG emission target to be 27.555 million metric tons.

conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

33. 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.[49]

34. 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 Tuscarora to construct and operate the Tuscarora XPress 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) Tuscarora's completion of the 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) Tuscarora'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

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[49] *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).

(3) Tuscarora's compliance with the environmental conditions in the appendix of this order.

(C) Tuscarora shall file a written statement affirming that it has executed a firm contract for the capacity levels and terms of service represented in the signed precedent agreement, prior to commencing construction.

(D) Tuscarora is granted permission and approval under section 7(b) of the NGA to abandon the facilities as described in this order, subject to Tuscarora's compliance with environmental conditions listed in the appendix to this order.

(E) Tuscarora must notify the Commission within 10 days of the abandonment of the facilities discussed in Ordering Paragraph (D).

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

(G) Tuscarora's proposed initial incremental firm recourse reservation charge and usage charge under Rate Schedule FT-TXP are approved as the initial recourse charges for the project, as described above.

(H) Tuscarora's proposal to charge its existing system-wide fuel rate for the project is approved.

(I) Tuscarora must file actual tariff records reflecting the initial recourse rates applicable to services provided on its proposed project at least 30 days, but not more than 60 days before the proposed in-service date of the project.

By the Commission. Chairman Glick and Commissioner Clements are concurring in part and dissenting in part with a joint separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

Appendix – Environmental Conditions

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

1. Tuscarora Gas Transmission Company (Tuscarora) 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. Tuscarora 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, abandonment, and operation of the project. This authority shall allow:

    a. the modification of conditions of the Order;
    b. stop-work authority; and
    c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction, abandonment, and operation.

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

4. The authorized facility location shall be as shown in the EA, as supplemented by filed plot plans/facility diagrams. **As soon as they are available, and before the start of construction**, Tuscarora shall file with the Secretary any revised detailed plot plans/facility diagrams for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these plot plans/diagrams.

   Tuscarora'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. Tuscarora's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tuscarora shall file with the Secretary detailed plot plans/facility diagrams and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and staging areas, 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 plot plans/facility diagrams/aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **before construction in or near that area**.

   This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

   Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

   a. implementation of cultural resources mitigation measures;
   b. implementation of endangered, threatened, or special concern species mitigation measures;
   c. recommendations by state regulatory authorities; and
   d. agreements with individual landowners that affect other landowners or

could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the authorization and before construction begins**, Tuscarora shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Tuscarora must file revisions to the plan as schedules change. The plan shall identify:

   a. how Tuscarora 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 Tuscarora will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;

   c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

   d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;

   e. the location and dates of the environmental compliance training and instructions Tuscarora 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 Tuscarora's organization having responsibility for compliance;

   g. the procedures (including use of contract penalties) Tuscarora 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. Tuscarora shall employ at least one EI for the project. The EI shall be:

    a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
    b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
    c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
    d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
    e. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Tuscarora shall file updated status reports with the Secretary on a **monthly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

    a. an update on Tuscarora's efforts to obtain the necessary federal authorizations;
    b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
    c. a listing of all problems encountered, and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
    d. a description of the corrective actions implemented in response to all instances of noncompliance;
    e. the effectiveness of all corrective actions implemented;
    f. a description of any 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 Tuscarora from other federal, state, or local permitting agencies concerning instances of noncompliance,

and Tuscarora's response.

9. Tuscarora must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction or abandonment by removal of any project facilities.** To obtain such authorization, Tuscarora must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. Tuscarora 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 areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Tuscarora shall file an affirmative statement with the Secretary, certified by a senior company official:

    a. that the facilities have been constructed/abandoned/installed 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 Tuscarora has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Tuscarora shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit at the Wadsworth Compressor Station in service. If a full load condition noise survey is not possible, Tuscarora shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the modified station under interim or full horsepower load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive area, Tuscarora shall file a report on what changes are needed and install additional noise controls to meet that level **within 1 year** of the in-service date. Tuscarora shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tuscarora Gas Transmission Company Docket No. CP20-486-000

(Issued May 20, 2021)

GLICK, Chairman, CLEMENTS, Commissioner, *concurring in part and dissenting in part*:

1. We write separately to address two issues regarding Tuscarora Gas Transmission Company's (Tuscarora) Tuscarora Xpress Project (Project): the need for the Project and the Commission's consideration of the greenhouse gas (GHG) emissions it will cause.

2. The question of need is relatively straightforward. Tuscarora has executed a precedent agreement with an unaffiliated local distribution company—to transport natural gas that will be used to cool homes and businesses and support electric generation. That is enough to find that the Project is needed, and we concur with the Commission's determination on that point.

3. We dissent, however, from the Commission's decision not to prepare a supplemental environmental impact statement (EIS) to examine the effect that the GHG emissions caused by the Project will have on climate change. The National Environmental Policy Act[1] (NEPA) requires the Commission to prepare an EIS for a certificate order unless the Commission can determine either that the project will not cause any significant adverse impacts or such impacts will be mitigated.[2] In other words, when there are any "arguably significant" environmental impacts, the Commission must address them in an EIS.[3]

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

[2] *E.g.*, *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1039 (D.C. Cir. 2021) ("'If *any* 'significant' environmental impacts might result from the proposed agency action[,] then an EIS must be prepared *before* agency action is taken.'" (citing *Grand Canyon Trust v. FAA*, 290 F.3d 339, 340 (D.C. Cir. 2002) and quoting *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983))); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (EIS required where there might be significant impacts unless the impacts are mitigated) (quoting *TOMAC v. Norton*, 433 F.3d 852, 860 (D.C. Cir. 2006)); *see* 40 C.F.R. § 1501.3 (2020).

[3] *See Myersville,* 783 F.3d at 1322 (quoting *TOMAC,* 433 F.3d at 860).

4. Unlike the Commission's recent order in *Northern Natural*,[4] we do not believe that we confidently answer that question one way or another on the present record. As a result, NEPA requires us to perform a supplemental EIS to fully examine the issue and determine whether the Project's adverse effect on climate change is significant—just as we would any other environmental impact. Nevertheless, instead of performing a supplemental EIS, the Commission relies on an environmental assessment that does not assess the significance of the Project's GHG emissions or their effect on climate change. Because we believe that is insufficient to satisfy our responsibilities under NEPA, we have no choice but to dissent.

5. Finally, we observe that finding a project's GHG emissions to be significant is not a death knell for that project. The Commission may very well conclude that the project's benefits outweigh even *significant* adverse impacts.[5] In addition, the Commission could require a pipeline to adopt measures that would mitigate the GHG emissions of the project, or the project developer could propose voluntary measures that would be incorporated as certificate conditions to mitigate those adverse impacts, further increasing the likelihood that a project's benefits outweigh its adverse impacts. But before the Commission can engage in that balancing process, it must first adequately assess the significance of a project's adverse impacts, including its impact on climate change.

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

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Richard Glick Chairman	Allison Clements Commissioner

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[4] *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021).

[5] *See Sierra Club v. FERC,* 867 F.3d 1357, 1373 (D.C. Cir. 2017) (explaining that section 7 of the NGA requires the Commission to balance "'the public benefits [of a proposed pipeline] against the adverse effects of the project,' including adverse environmental effects" (quoting *Myersville*, 783 F.3d at 1309)).