

179 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Kern River Gas Transmission Company

Docket No. CP21-197-000

ORDER ISSUING CERTIFICATE

(Issued May 19, 2022)

1. On April 23, 2021, Kern River Gas Transmission Company (Kern River) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate a 35.84-mile-long, 24-inch-diameter pipeline and appurtenant facilities in Millard County, Utah (Delta Lateral Project). For the reasons discussed below, we grant the requested certificate authorization, subject to certain conditions.

I. Background and Proposal

2. Kern River, 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. Kern River's interstate transmission system extends from Wyoming, through Utah and Nevada, to California.⁴

3. The Delta Lateral Project will provide up to 140,000 dekatherms per day (Dth/d) of firm transportation service from Kern River's existing mainline in Opal, Wyoming, to a new delivery point at Intermountain Power Agency's Intermountain Power Project near Delta, Utah. The project will provide natural gas to Intermountain Power Agency as part of its effort to convert the coal-fired electric power plant to a natural gas-fired combined

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2021).

³ 15 U.S.C. § 717a(6). Kern River is owned by Berkshire Hathaway. Kern River April 23, 2021 Application at 1 (Application).

⁴ Application at 2.

cycle power plant.⁵ Specifically, Kern River proposes to construct in Millard County, Utah: (1) an approximately 35.84-mile-long, 24-inch-diameter lateral pipeline; (2) a delivery meter station; and (3) appurtenant facilities.⁶ Kern River states that it will use existing mainline capacity to provide project service from Opal, Wyoming, to the location where Kern River's existing interstate natural gas pipeline system interconnects with the new pipeline lateral.

4. Kern River has entered into a firm transportation service agreement with Intermountain Power Agency for all the firm transportation service created by the project.⁷ Kern River held an open season and requested offers to turn back capacity from January 23 to February 14, 2020. No additional bids or offers of turn back were received.⁸ Kern River proposes to provide service to Intermountain Power Agency under a negotiated rate agreement.

5. Kern River estimates the total cost of the project to be \$93,140,275.⁹ Kern River proposes to apply its existing recourse rates under Rate Schedule KRF-1 as the initial maximum recourse charges for service on the project and to apply its existing fuel rate to recover the fuel costs associated with providing service on the project. Kern River also requests a pre-determination of rolled-in rate treatment.

II. Notice, Interventions, and Comments

6. Notice of Kern River's application was published in the *Federal Register* on May 11, 2021.¹⁰ The notice established May 26, 2021, as the deadline to file interventions, comments, and protests. Magnum Gas Storage, LLC and American Gas Association filed timely, unopposed motions to intervene.¹¹ On June 10, 2021, Natural Gas Supply Association and Center for Liquefied Natural Gas jointly filed a late,

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 9.

⁸ *Id.* at 3.

⁹ *Id.* at 7.

¹⁰ 86 Fed. Reg. 25,848 (May 11, 2021).

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2021).

unopposed motion to intervene, which was granted.¹² No comments or protests were filed in response to the notice of application.

III. Discussion

7. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹³

A. Certificate Policy Statement

8. The 1999 Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁴ The 1999 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 1999 Certificate Policy Statement explains that, in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider 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.

9. 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 route of the new

¹² October 20, 2021 Notice Granting Late Intervention.

¹³ 15 U.S.C. §§ 717f(c) and (e).

¹⁴ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement). On March 24, 2022, the Commission issued an order suspending the effectiveness of the policy statements issued in February 2022 to replace the 1999 Certificate Policy Statement. See *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022) (Order on Draft Policy Statements).

pipeline facilities.¹⁵ 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 complete the environmental analysis where other interests are considered.

1. No Subsidy Requirement and Project Need

10. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Kern River proposes to charge its existing system rates under Rate Schedule KRF-1 as initial recourse rates for project service. As discussed below, Kern River's existing system rates exceed illustrative incremental rates calculated to recover the costs of the project.¹⁶ Therefore, we find that the proposal will not result in subsidization of the project by Kern River's existing shippers.

11. Kern River entered into a binding firm transportation service agreement with Intermountain Power Agency, which is not affiliated with Kern River, for 140,000 Dth/d of firm transportation service. Service agreements for 100% of the project's capacity is significant evidence of the need for the proposed project. Intermountain Power Agency will use the gas transported on the project to generate electricity and convert the existing coal-fired Intermountain Power Project to natural gas-fired generation.

2. Impacts on Existing Customers, Existing Pipelines and Their Customers, and Landowners and Surrounding Communities

12. As discussed above, Kern River's existing shippers will not subsidize the proposed project. Further, the proposed project will have no adverse effect on Kern River's existing customers because the proposed facilities are designed to provide incremental service to meet the needs of the project shipper without degradation of service to Kern River's existing customers. None of Kern River's existing shippers has protested the project. We also find there will be no adverse impact on other pipelines in the region or

¹⁵ In 2021, the Commission established the Office of Public Participation (OPP) to support meaningful public engagement and participation in Commission proceedings. OPP provides members of the public, including environmental justice communities, with assistance in FERC proceedings—including navigating Commission processes and activities relating to the project.

¹⁶ See, e.g., *Tex. E. Transmission, LP*, 172 FERC ¶ 61,139, at PP 4-6 (2020); *Tex. E. Transmission, LP*, 161 FERC ¶ 61,226, at PP 13-17 (2017).

their captive customers because the project will provide additional transportation to meet the needs of the project shipper, not to displace existing service. Finally, no pipelines or their captive customers have objected to Kern River's proposal.

13. We are further satisfied that Kern River has taken steps sufficient to minimize adverse impacts on landowners and surrounding communities. Kern River used the Commission's pre-filing process, and states that during pre-filing it identified concerns of landowners and communities and implemented pipeline route and facility site changes to accommodate their concerns.¹⁷ Furthermore, no landowner has protested the proposal.

14. The proposed project will enable Kern River to provide up to 140,000 Dth/d of firm transportation service, 100% of the project's capacity, to Intermountain Power Agency. Accordingly, we find that Kern River has demonstrated a need for the Delta Lateral Project. Further, 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 consistent with the criteria set forth in the 1999 Certificate Policy Statement. We analyze the environmental impacts of the project below.¹⁸

B. Rates

1. Initial Recourse Rates

15. Kern River proposes to use its existing system recourse reservation charge of \$0.5191 per Dth and system usage charge of \$0.0044 per Dth under Rate Schedule KRF-1 as the initial maximum recourse charges for transportation service.¹⁹ Kern River

¹⁷ *Id.* at 4.

¹⁸ See 1999 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).

¹⁹ Kern River Gas Transmission Company, FERC NGA Gas Tariff, Gas Tariff, Sheet No. 5A (Statement of Rates, Rate Schedule KRF-1 Firm Incremental Rate Service) (25.0.0); Kern River Gas Transmission Company, FERC NGA Gas Tariff, Gas Tariff, Sheet No. 5A.02 (Statement of Rates, Rate Schedule KRF-1 Firm Incremental Rate Service Period Two Rates) (9.0.0). The reservation charge of \$0.5833 is adjusted downward by \$0.0642 for a Tax Reform Credit pursuant to section 31 of the General Terms & Conditions of Kern River's tariff, to arrive at \$0.5191.

estimates a first-year cost of service of \$16,243,165.²⁰ This cost of service incorporates a depreciation rate of 1.8%, a negative salvage rate of 0.12%, and a return on equity of 11.55%.²¹

16. The Commission has generally held that the applicable system recourse rate is appropriate for a project if the estimated cost-based rate is less than the current system rate. Otherwise, the pipeline is required to establish an incremental rate to ensure that there is no subsidization from existing shippers.²² We have calculated an illustrative incremental reservation charge based on Kern River's first-year cost of service and monthly stated billing determinants. The calculated illustrative incremental reservation charge of \$0.3179 per Dth²³ for the Delta Lateral Project is lower than the currently effective system recourse Rate Schedule KRF-1 charge and the illustrative usage charge would be \$0.00 per Dth because there are no variable costs associated with the project.

17. We have reviewed Kern River's proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. Because the rate analysis demonstrates that the maximum Rate Schedule KRF-1 system recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges, respectively, we will approve Kern River's request to use its existing system charges under Rate Schedule KRF-1 as the initial recourse charges for the Delta Lateral Project.

2. Fuel

18. Kern River states that there will be no new compression built for the Delta Lateral Project and states that it will use existing mainline capacity when making deliveries to the new lateral. Kern River states in a data request response that the sole project shipper will reimburse Kern River for fuel used and unaccounted-for gas on an in-kind basis at the percentages applicable to the system fuel rate under Rate Schedule KRF-1.²⁴ Therefore, we will approve Kern River's use of its existing fuel rate for the Delta Lateral Project.

²⁰ Application at Ex. N, p. 2.

²¹ *Id.* at Ex. N., pp. 3, 5.

²² 1999 Certificate Policy Statement, 88 FERC at 61,746.

²³ Staff estimated this illustrative incremental reservation charge using the first-year cost of service of \$16,243,164 divided by 140,000 Dth/d divided by 365 days, which equals \$0.3179 per Dth.

²⁴ Kern River September 10, 2021 Filing at 4.

3. Pre-Determination of Rolled-in Rates

19. Kern River requests a pre-determination that the costs of the project qualify for rolled-in rate treatment in its next NGA section 4 rate proceeding.²⁵ In support of its request, Kern River asserts that the Delta Lateral Project will result in incremental revenues exceeding incremental costs.

20. To support a request for a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA general section 4 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. In general, this means that a pipeline must demonstrate that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future section 4 proceeding, we compare the cost of the project to the revenues generated using actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).²⁶

21. For the Delta Lateral Project, the incremental revenues of \$18,140,500, based on the negotiated rate, exceed the incremental cost of service of \$16,243,165 by \$1,897,335 in the first year of operation.²⁷ Therefore, we grant Kern River's request for a pre-determination of rolled-in rate treatment for the costs of the Delta Lateral Project, absent any significant change in circumstances.

4. Reporting Incremental Costs

22. We require Kern River to keep separate books and accounting of costs and revenues attributable to the capacity created by the Delta Lateral Project in the same manner as required by section 154.309 of the Commission's regulations.²⁸ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future

²⁵ 1999 Certificate Policy Statement, 88 FERC at 61,744.

²⁶ *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

²⁷ See Application at Ex. N, p. 1.

²⁸ 18 C.F.R. § 154.309 (2021). See *Gulf S. Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (*Gulf South*) (for projects that use existing system rates for the initial rates, the Commission's requirement for separate books and accounting applies only to internal books and records).

NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.²⁹

5. Negotiated Rates

23. Kern River proposes to provide service to the project shipper under a negotiated rate agreement. Kern River must file either the negotiated rate agreement or tariff records setting forth the essential terms of the agreement in accordance with the Alternative Rate Policy Statement³⁰ and the Commission's negotiated rate policies.³¹

C. Environmental Impacts

24. On July 1, 2020, Commission staff began its environmental review of the Delta Lateral Project by granting Kern River's request to use the pre-filing process, assigning Docket No. PF20-4-000.³² As part of the pre-filing review, Kern River sponsored two open houses in Holden and Delta, Utah, on October 27 and 28, 2020, respectively. Commission staff participated in these meetings to explain the Commission's environmental review process to interested stakeholders.

25. On August 26, 2021, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Delta Lateral Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review* (NOI). The

²⁹ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008). In *Gulf South*, the Commission clarified that a pipeline charging its existing system rates for a project is not required to provide books and accounting consistent with Order No. 710. However, a pipeline is required to maintain its internal books and accounting such that it would have the ability to include this information in a future FERC Form No. 2 if the rate treatment for the project is changed in a future rate proceeding.

³⁰ *Alt. to Traditional Cost-of-Serv. Ratemaking for Nat. 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 Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

³¹ *Nat. Gas Pipelines Negotiated Rate Policies & Practices*, 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).

³² Kern River Gas Transmission Co., Letter, Docket No. PF20-4-000 (issued July 1, 2020); see also 18 C.F.R. § 157.21(b) (2021).

NOI was published in the *Federal Register*³³ and mailed to interested entities including: federal, state, and local officials; agency representatives; environmental and public interest groups; Native American Tribes; local libraries and newspapers; and affected property owners. In response to the NOI, the U.S. Environmental Protection Agency (EPA), the State of Utah Public Lands Policy Coordination Office, and two individual members of the public filed comments.

26. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an environmental impact statement (EIS) for Kern River's proposal. On November 4, 2021, the Commission issued a draft EIS. The draft EIS was filed with the EPA, and a formal notice of availability was published in the *Federal Register* on November 12, 2021.³⁴ The notice was mailed to the same interested entities noted above, along with other interested entities (i.e., individuals who provided scoping comments or asked to be on the mailing list). The notice established a 45-day comment period on the draft EIS that ended on December 27, 2021. The Commission received comments on the draft EIS from the Hopi Nation, the U.S. Department of Interior, the State of Utah Public Lands Policy Coordination Office, and the Pipeliners Union.

27. Commission staff issued the final EIS on February 25, 2022, and published a formal notice of availability in the *Federal Register* on March 4, 2022.³⁵ The notice was mailed to the same entities as the draft EIS as well as to any additional entities or individuals that commented on the draft EIS.³⁶ The final EIS addresses: geology; soils; water resources; wetlands; fisheries and aquatic resources; vegetation; wildlife; special status species; land use, recreation, and visual resources; environmental justice; cultural resources; air quality and noise; reliability and safety; and alternatives. The final EIS also addresses all substantive environmental comments received on the draft EIS.

28. As discussed in the final EIS and below, the construction and operation of the project would result in limited adverse environmental impacts and, in the case of greenhouse gas emissions, an overall emissions reduction.³⁷ The Commission received

³³ 86 Fed. Reg. 49,017 (Sept. 1, 2021).

³⁴ 86 Fed. Reg. 62,808 (Nov. 12, 2021).

³⁵ 87 Fed. Reg. 12,449 (Mar. 4, 2022).

³⁶ See Final EIS at app. A for the distribution list.

³⁷ Final EIS at 5-1.

one comment on the final EIS from the EPA raising concerns regarding GHGs,³⁸ which are addressed below.

1. Greenhouse Gas Emissions and Climate Change

29. The Council on Environmental Quality (CEQ) defines impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.”³⁹ An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.”⁴⁰

30. For the proposed project, we find that the construction emissions, direct operational emissions, and the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.⁴¹ With respect to downstream emissions, the record in this proceeding demonstrates that the natural gas to be transported by the project will be combusted at Intermountain Power Agency’s electric generating facility.⁴² The Commission is not herein characterizing these emissions as significant or insignificant because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going

³⁸ EPA April 5, 2022 Comments.

³⁹ 40 C.F.R. § 1508.1(g) (2021).

⁴⁰ *Id.* § 1508.1(aa).

⁴¹ See *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

⁴² Application at 3.

forward.⁴³ However, we are providing and considering information about these emissions, based on the information in this proceeding.⁴⁴

31. The final EIS estimates that construction of the project may result in emissions of up to 14,470 metric tons of carbon dioxide equivalent (CO₂e).⁴⁵ The project's estimated operational greenhouse (GHG) emissions are 155.3 metric tons per year (tpy) CO₂e.⁴⁶ With respect to downstream emissions, Kern River submitted a study analyzing the GHG emissions associated with the Delta Lateral Project.⁴⁷ The study shows that the project will result in a net reduction of downstream GHG emissions due to Intermountain Power Agency's retirement of coal-fired generation. Specifically, the study finds that the fuel switch from coal to natural gas will result in a projected net GHG emissions reduction of

⁴³ Although we acknowledge that the Commission has previously assessed the "significance" of GHGs, *see N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021), we do not do so here. The Commission is considering approaches for assessing significance in a pending proceeding. *See Order on Draft Policy Statements*, 178 FERC ¶ 61,197. However, to the extent NEPA requires the Commission to assess significance in this context, net emissions reductions would be an adequate basis to determine that project emissions are not significant compared to the Intermountain Power Agency facility's current coal-fired generation. A project's GHG emissions may support such a finding when "the net result was expected to be 'long-term, ongoing emission reductions.'" *See 350 Montana v. Haaland*, 29 F.4th 1158, 1172 (9th Cir. 2022) (quoting *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1130 (9th Cir. 2011)).

⁴⁴ *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013).

⁴⁵ Final EIS at 18.

⁴⁶ *Id.* Additionally, the estimate includes blowdowns and fugitive emissions from various piping components, fittings, and aboveground equipment and from operation and maintenance activities at the compressor station. *Id.*

⁴⁷ Kern River June 2, 2021 Filing. Assuming that the facilities are operated at maximum capacity for 365 days/year, 24 hours/day, i.e., 100% utilization, the project may result in downstream emissions of up to 2.7 million tpy of CO₂e. Final EIS at 4-75. This represents an upper bound estimate and Kern River would use existing mainline capacity when making deliveries to the new lateral, meaning downstream emissions are not new system capacity. *Id.* Moreover, this calculation does not account for any offsets that would occur with a coal to natural gas switch. *See infra* P 32.

4.17 million metric tpy of CO₂e when compared against the pre-project emissions baseline.⁴⁸

32. In its comments on the draft EIS, the EPA argues that Kern River overstates the GHG emissions reduction because it compares emissions associated with replacing 9.154 terawatt hours (TWh) of coal-generated electricity with only 7.358 TWh of gas-generated electricity.⁴⁹ The EPA believes that a more appropriate estimate would either compare emissions under a one-to-one replacement of electricity generation, or account for the emissions associated with the missing 1.795 TWh of generation.⁵⁰ Under a one-to-one replacement scenario, the project would result in a net reduction of downstream GHG emissions of approximately 2.64 million metric tpy of CO₂e.

33. The EPA states that “[r]easonable ranges of emissions forecasts can be produced for upstream GHG emissions” and recommends the Commission develop that information for the proposed project.⁵¹ That is not required here. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations, where the supply source is unknown.⁵² Here, the specific source of natural gas to be transported via the Delta Lateral Project is currently unknown and may change throughout the project’s operation.

34. The EPA recommends that the Commission disclose the conflict between project GHG emissions and national, state, and local GHG reduction policies and goals.⁵³ The Commission is unable to determine how individual projects will affect international, national, or state-wide GHG emissions reduction targets or whether a project’s GHG

⁴⁸ Kern River June 2, 2021 Filing at 5.

⁴⁹ EPA December 27, 2021 Comments at 2.

⁵⁰ *Id.* at 3.

⁵¹ EPA April 5, 2022 Comments at 1-2.

⁵² See, e.g., *Cent. N.Y. Oil & Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App’x. 472, 474-75 (2d Cir. 2012) (unpublished opinion); see also *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 243 (2019), *order on reh’g*, 171 FERC ¶ 61,049, at P 89 (2020).

⁵³ EPA April 5, 2022 Comments at 2.

emissions comply with those goals or laws. However, based on the record as stated above, the proposed project is expected to result in a net reduction of GHG emissions.

35. The EPA states that the Commission should use the social cost of GHGs to assess climate impacts generated by each ton of GHGs emitted or saved by the project.⁵⁴

36. The social cost of GHGs is an administrative tool intended to quantify, in dollars, estimates of long-term damage that may result from future emissions of carbon dioxide, nitrous oxide, and methane. In response to EPA's comments, we are disclosing Commission staff's estimate of the social cost of GHGs associated with the reasonably foreseeable emissions from the Delta Lateral Project using the calculations described below.⁵⁵ However, noting pending litigation challenging federal agencies' use of the Interagency Working Group on the Social Cost of Greenhouse Gas' (IWG) interim values for calculating the social cost of GHGs,⁵⁶ we are not relying on or using the social cost of GHGs estimates to make any finding or determination regarding either the impact of the project's GHG emissions or whether the project is in the public convenience and necessity.⁵⁷

37. Commission staff used the methods and values contained in the IWG's current draft guidance but note that different values will result from the use of other methods.⁵⁸

⁵⁴ *Id.* at 3.

⁵⁵ See also *Vecinos, Para El Bienestar De La Comunidad Costera v. FERC*, 6 F.4th at 1321, 1329-30 (D.C. Cir. 2021).

⁵⁶ *Missouri v. Biden*, 8th Cir. No. 21-3013; *Louisiana v. Biden*, No. 21-cv-1074-JDC-KK (W.D. La). On February 11, 2022, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction limiting federal agencies' employment of estimates of the social costs of GHGs and use of the IWG's interim estimates. On March 16, 2022, the U.S. Court of Appeals for the Fifth Circuit issued a stay of the district court's preliminary injunction, finding among other things that the federal agency respondent's continued use of the interim estimates was lawful. *Louisiana v. Biden*, No. 22-30087 (5th Cir. Mar. 16, 2022).

⁵⁷ Furthermore, the Commission is not applying the social cost of GHGs herein because it has not determined which, if any, modifications are needed to render that tool useful for project-level analyses. See CEQ's May 27, 2021 Comments filed in Docket No. PL18-1-000, at 2 (noting that it is working with representatives from the IWG to develop forthcoming additional guidance regarding the application of the social cost of GHGs tool in federal decision-making processes, including in NEPA analyses).

⁵⁸ *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, Interagency Working Group on

Accordingly, Commission staff calculated the social cost of carbon dioxide, nitrous oxide, and methane. For the analysis, staff assumed discount rates of 5%, 3%, and 2.5%,⁵⁹ assumed the project will begin service in 2024, assumed a net reduction in downstream emissions of 2.64 million metric tpy of CO₂e, and that the project's emissions will be at a constant rate throughout the life of the 21-year contract. Noting these assumptions, the emissions from construction and operation of this project and the estimated net reduction in downstream emissions are calculated to result in a total social cost of GHGs equal to -\$671,043,020, -\$2,575,271,682, and -\$3,907,162,681,⁶⁰ respectively (all in 2020 dollars).⁶¹ Using the 95th percentile of the social cost of GHGs using the 3% discount rate,⁶² the total social cost of GHGs from the project is calculated to be -\$7,826,831,817 (in 2020 dollars).

38. Next, the EPA recommends that the Commission consider and incorporate practicable mitigation measures to reduce the proposed action's GHG emissions into the proposed terms and conditions required as part of certificate issuance.⁶³ We decline to do

Social Cost of Greenhouse Gases, United States Government, February 2021 (IWG Interim Estimates Technical Support Document).

⁵⁹ IWG Interim Estimates Technical Support Document at 24. To quantify the potential damages associated with estimated emissions, the IWG methodology applies consumption discount rates to estimated emissions costs. The IWG's discount rates are a function of the rate of economic growth where higher growth scenarios lead to higher discount rates. For example, IWG's method includes the 2.5% discount rate to address the concern that interest rates are highly uncertain over time; the 3% value to be consistent with Office of Management and Budget Circular A-4 (2003) and the real rate of return on 10-year Treasury Securities from the prior 30 years (1973 through 2002); and the 5% discount rate to represent the possibility that climate-related damages may be positively correlated with market returns. Thus, higher discount rates further discount future impacts based on estimated economic growth. Values based on lower discount rates are consistent with studies of discounting approaches relevant for intergenerational analysis. *Id.* at 18-19, 23-24.

⁶⁰ The values are expressed as negative numbers because the project will result in a net reduction of GHG emissions.

⁶¹ The IWG draft guidance identifies costs in 2020 dollars. *Id.* at 5 (Table ES-1).

⁶² This value represents "higher-than-expected economic impacts from climate change further out in the tails of the [social cost of CO₂] distribution." *Id.* at 11. In other words, it represents a higher impact scenario with a lower probability of occurring.

⁶³ EPA April 5, 2022 Comments at 3.

so and note that mitigation of GHG emissions is among the issues the Commission is considering in a generic proceeding in Docket No. PL21-3-000.

2. Environmental Justice

39. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).⁶⁴ Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”⁶⁵ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁶⁶

⁶⁴ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). *See also id.* § 6-604 (“Independent agencies are requested to comply with the provisions of this order.”). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties. *See* 15 U.S.C. § 717f; *see also* FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

⁶⁵ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, EJ 2020 Glossary (Sep. 7, 2021), <https://www.epa.gov/environmentaljustice/ej-2020-glossary> (last visited Apr. 26, 2022).

⁶⁶ EPA, *Learn About Environmental Justice*, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (Sep. 22, 2021) (last visited Apr. 26, 2022). Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in

40. Consistent with CEQ⁶⁷ and EPA⁶⁸ guidance, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)⁶⁹ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. Following the issuance of the draft and final EIS, Commission staff corrected a mistake in the assessment of whether minority or low-income populations exist in the project area. The results of that analysis, including the correction, are described below. As recommended in *Promising Practices*, the Commission uses the fifty percent and the meaningfully greater analysis methods to identify minority populations.⁷⁰ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area

the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

⁶⁷ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were opportunities for public involvement for environmental justice communities during the Commission's pre-filing and environmental review processes, though the record does not demonstrate that these opportunities were targeted at engaging environmental justice communities. *See supra* PP 24-28. For assistance with interventions, comments, requests for rehearing, or other filings, and for information about any applicable deadlines for such filings, members of the public are encouraged to contact OPP directly at 202-502-6592 or OPP@ferc.gov for further information. *See supra* note 15.

⁶⁸ *See generally* EPA, *Promising Practices for Environmental Justice Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

⁶⁹ *See generally* Exec. Order No. 12,898, 59 Fed. Reg. 7629. Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. *Promising Practices* at 25.

⁷⁰ *See Promising Practices* at 21-25.

exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.⁷¹

41. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of low-income population in the identified block group is equal to or greater than that of the county.

42. To identify potential environmental justice communities, Commission staff used 2019 U.S. Census American Community Survey data⁷² for the race, ethnicity, and poverty data at the state, county, and block group level.⁷³ Additionally, in accordance with *Promising Practices*, staff used EJSCREEN, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

43. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities, and evaluated health or environmental hazards; the natural physical environment; and associated social, economic, and cultural factors to determine whether impacts to environmental justice communities are disproportionately high and adverse. For this project, Commission staff determined both whether impacts were disproportionately high and adverse on environmental justice populations and also

⁷¹ Here, Commission staff selected Millard County as the comparable reference community to ensure that affected environmental justice communities are properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

⁷² U.S. Census Bureau, American Community Survey 2019 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/cedsci/table?q=B17017> (last visited Apr. 27, 2022); U.S. Census Bureau, American Community Survey 2019 ACS 5-Year Estimates Detailed Tables, File #B03002 Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002> (last visited Apr. 27, 2022).

⁷³ For this project, we determined that a one-mile radius around the proposed aboveground facilities was the appropriate unit of geographic analysis for assessing project impacts on the environmental justice communities. A one-mile radius is sufficiently broad considering the likely concentration and range of construction emissions, noise, traffic impacts and visual impacts in proximity to the proposed facilities.

whether those impacts were significant.⁷⁴ Commission staff assessed whether impacts to an environmental justice community were disproportionately high and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.⁷⁵

44. Staff identified one census block group in Millard County (Census Tract 9741, Block Group 3), which will be crossed by the pipeline lateral, where the population exceeds the thresholds defined above for both minority and low-income communities and is therefore an environmental justice community.⁷⁶ The pipeline lateral crosses about 1,000 feet of this block group at the point where the pipeline crosses the Sevier River, Canal A, and the Union Pacific Railroad tracks. The land crossed in this area consists of privately owned and BLM-managed property. The closest residence within the census block is approximately 2.6 miles southwest of the pipeline, which would be constructed in this area using a horizontal directional drill.⁷⁷

45. The final EIS appropriately disclosed impacts on the identified environmental justice community in proximity to the directional drill pipeline crossing under the Sevier River, canal, and railroad tracks, including construction-related dust, traffic, noise, and visual impacts. Kern River proposes to implement measures to mitigate air emissions during construction, including using gasoline or diesel fuel compliant with current federal regulations for construction vehicles and equipment and required emission control

⁷⁴ See *Promising Practices* at 33 (stating that “an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA” and in other circumstances “an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA”).

⁷⁵ *Promising Practices* at 44-46 (explaining that there are a number of factors used to determine whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be “predominantly borne by minority populations or low-income populations”). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

⁷⁶ We note that the final EIS identifies Census Tract 9741, Block Group 3 as an environmental justice community based on the low-income threshold, but it inadvertently does not also identify the Block Group as meeting the minority community threshold. Census Tract 9741, Block Group 3 is now identified as an environmental justice community, based on the low-income criteria and the minority criteria. See Table in Appendix B for the full population data.

⁷⁷ Final EIS at 4-55.

devices.⁷⁸ Kern River would also implement a fugitive dust control plan during construction, which includes mitigation measures such as reducing vehicle and equipment speed in construction work areas and on access roads to account for adverse weather conditions (e.g., high wind velocities, dry soil conditions, etc.).⁷⁹ The final EIS concluded that, with the mitigation measures proposed by Kern River, impacts from the project on environmental justice communities would not be disproportionately high and adverse and would be less than significant due to the distance between the project and the closest residences within the environmental justice community and the temporary nature of the work.⁸⁰ We agree.

3. Environmental Analysis Conclusion

46. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the Delta Lateral Project, as well as the other information in the record. We are accepting the environmental recommendations in the final EIS as modified herein and are including them as conditions in an appendix to this order. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the Delta Lateral Project, if implemented as described in the final EIS, is an environmentally acceptable action.

IV. Conclusion

47. The proposed project will enable Kern River to provide firm transportation service to Intermountain Power Agency. We find that Kern River has demonstrated a need for the Delta Lateral Project, 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. We have analyzed the technical aspects of the projects and conclude that it has been appropriately designed to achieve its intended purpose. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of the Delta Lateral Project, subject to the conditions in this order.

48. 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

⁷⁸ *Id.* at 4-57.

⁷⁹ *Id.*

⁸⁰ *Id.* at 4-60.

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.

49. 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.⁸¹

50. 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 to Kern River, authorizing the Delta Lateral 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 issued in Ordering Paragraph (A) is conditioned on:

- (1) Kern River'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) Kern River's compliance with all applicable Commission's regulations, particularly the general terms and conditions set forth in

⁸¹ 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).

Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

- (3) Kern River's compliance with the environmental conditions listed in the appendix of this order.

(C) Kern River's existing system recourse charges and fuel rate for transportation under Rate Schedule KRF-1 are approved as the initial recourse charges for the Delta Lateral Project.

(D) Kern River's request for a pre-determination of rolled-in rate treatment for the costs of the Delta Lateral Project in a future NGA section 4 general rate proceeding is approved, absent a significant change in circumstances.

(E) Kern River shall keep separate books and accounting of costs attributable to the proposed service, as more fully described above.

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

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

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A - Environmental Conditions

As recommended in the final environmental impact statement (EIS), and otherwise amended herein, this authorization includes the following conditions.

1. Kern River shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by the Order. Kern River 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. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Kern River 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 facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Kern River 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 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.

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

5. Kern River shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval of 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 acceptance of the Certificate and before construction begins**, Kern River shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Kern River must file revisions to their plan as schedules change. The plan shall identify:
- a. how Kern River will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) identified in the EIS, and required by the Order;
 - b. how Kern River 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 on-site construction and inspection personnel;
 - c. the number of EIs assigned, and how Kern River 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 Kern River 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 Kern River's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Kern River will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of on-site personnel;

- iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Kern River shall employ at least one EI for each pipeline spread. 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. 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, Kern River shall file updated status reports for the project with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Kern River's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period and any scheduled changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Kern River from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kern River's response.
9. Kern River must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Kern River must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Kern River 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 30 days of placing the authorized facilities in service**, Kern River shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Kern River 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.

Appendix B – Updated Table 4.11-7

Table 4.11-7
Minority Populations by Race and Ethnicity and Low-Income Populations in the Project Area

	RACE ^a AND ETHNICITY COLUMNS									LOW-INCOME COLUMN
State/County/ Tract/Block Group	White (Not Hispanic) (%)	Black or African American (%)	Asian (%)	American Indian and Alaskan Native (%)	Native Hawaiian and Other Pacific Islander (%)	Some other race (%)	Two or more races (%)	Hispanic or Latino (%)	Total Minority (%) ^a	Total Persons Below Poverty Level (%)
Utah	78.3	1.1	2.3	0.9	0.9	0.2	2.3	14.0	21.7	9.7
Millard County ^b	83.0	0.2	1.2	1.1	0.1	0.1	1.4	12.9	17.0	11.6
<i>Census Tract 9741, Block Group 1</i>	90.1	0.0	0.0	0.6	0.4	1.3	3.4	4.2	9.9	6.4
<i>Census Tract 9741, Block Group 3</i>	79.0	1.1	0.0	0.0	0.0	0.0	2.1	17.8	21.0	13.8
<i>Census Tract 9743, Block Group 1</i>	96.7	0.0	1.0	0.0	0.0	0.0	0.4	0.7	3.3	4.2

Source: American Community Survey, 2015-2019, File # B01017 and File # B03002.

^a "Minority" refers to people who reported their ethnicity and race as something other than non-Hispanic White.

^b All Project facilities are located within Millard County.

Low-income or minority populations exceeding the established thresholds are indicated in red, bold, type and blue shading.

Due to rounding differences in the dataset, the totals may not reflect the sum of the addends.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kern River Gas Transmission Co.

Docket No. CP21-197-000

(Issued May 19, 2022)

GLICK, Chairman, and CLEMENTS, Commissioner, *concurring*:

1. We concur with the decision to issue a certificate of public convenience and necessity to Kern River Gas Transmission Company (Kern River) for its proposed Delta Lateral Project. We write separately because today's order does not assess the significance of the climate impacts from the project's greenhouse gas (GHG) emissions.¹ Both Commission precedent and common sense support the conclusion that the project's GHG emissions will not "significantly" affect the environment within the meaning of the National Environmental Policy Act (NEPA).² Where, as here, it is obvious that climate impacts cannot be deemed significant under *any* framework for assessing significance that the Commission may ultimately adopt, the Commission should simply say so.
2. In *Northern Natural Gas Co.*, the Commission found that it could determine the significance of GHG impacts for NEPA purposes using best available quantitative and qualitative evidence and applying its expertise and judgment.³ The courts have long

¹ *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121, at P 30 (2022) (Order). We agree with one another that (1) the Commission is fully capable of determining the significance of GHG emissions, and (2) there is no reason to wait for a final GHG Policy Statement to find the emissions here insignificant when they would be deemed so under any reasonable framework for assessing significance. However, as reflected in our separate concurring statements in recent certificate orders, our approaches differ when emissions levels are potentially significant. *See, e.g., Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041 (2022) (Glick, Chairman, concurring, at P 7) ("I would have found this project's GHG emissions to be significant") (Clements, Comm'r, concurring, at P 3) (appropriate to decline to label emissions or significant or insignificant while Commission considers comments on Draft GHG Policy Statement).

² NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

³ *See N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at PP 32, 33 (2021).

construed NEPA based on a “common sense” understanding of its terms.⁴ The Commission has appropriately decided it will not make significance findings in cases involving potentially significant GHG emissions while we are considering comments on the draft GHG Policy Statement.⁵ However, that does not compel us to abandon applicable Commission precedent – or our common sense – in determining whether the GHG emissions in this case would “significantly” affect the environment.

3. First, the construction related and operational GHG emissions resulting from the Delta Lateral Project would be *lower* than those from the project in *Northern Natural*. The final EIS for the Delta Lateral Project estimates that project construction may generate GHG emissions of up to 14,470 metric tons of carbon dioxide equivalent (CO₂e).⁶ The project’s estimated operational emissions would be approximately 155 metric tons per year (tpy) CO₂e.⁷ In *Northern Natural*, construction-related emissions were estimated at 19,655 metric tons and operational emissions at 351 tpy of CO₂e.⁸

4. Second, the Delta Lateral Project would result in a substantial net *decrease* in downstream GHG emissions.⁹ Here, Kern River submitted a study showing that the Delta Lateral Project would result in a net reduction of 4.17 million metric tpy in downstream GHG emissions due to Intermountain Power Agency’s replacement of coal-

⁴ See, e.g., *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978) (“common sense” teaches NEPA requirement for “detailed statement of alternatives” does not include every conceivable alternative).

⁵ Order at P 30.

⁶ Final EIS at 18.

⁷ *Id.* To place this number in context, it is estimated that the typical household in the United States has a “carbon footprint” of approximately 48 metric tpy of CO₂e. *Carbon Footprint Factsheet*, Center for Sustainable Systems, U. Mich. (Sept. 2021), <https://css.umich.edu/factsheets/carbon-footprint-factsheet>. Using that estimate, the annual operational emissions from the Delta Lateral Project would equate to the emissions from 3.2 households. No reasonable framework for assessing significance would find the emissions from three households (too few even for a respectable block party) to be significant under NEPA.

⁸ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 at P 29.

⁹ There were no reasonably foreseeable downstream emissions in *Northern Natural*. The project there entailed abandonment and replacement of pipeline facilities, which would not change the downstream GHG emissions. See *id.* at PP 4, 6.

fired generation with gas-fired generation.¹⁰ Even under the alternative methodology offered by EPA, there would still be a net reduction of downstream emissions of 2.64 million metric tpy.¹¹

5. When the net reduction in downstream emissions is factored in, the project would substantially reduce GHG emissions overall. The Commission should apply our precedent, as well as our common sense, to find that the GHG emissions here are not significant.

For these reasons, we respectfully concur.

Richard Glick
Chairman

Allison Clements
Commissioner

¹⁰ Kern River April 23, 2021 Filing at 5.

¹¹ Order at P 32.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kern River Gas Transmission Company

Docket No. CP21-197-000

(Issued May 19, 2022)

DANLY, Commissioner, *concurring in the judgment*:

1. I concur in the issuance of a Natural Gas Act (NGA) section 7(c)¹ certificate of public convenience and necessity to Kern River Gas Transmission Company (Kern River), authorizing the construction and operation of the Delta Lateral Project² because the project is required by the public convenience and necessity. I write separately to make a handful of points.

2. *First*, although I agree that the Commission must act “in accordance with our . . . statutory duties,”³ it is necessary to take a moment to explain the scope of the public convenience and necessity standard. The Supreme Court has found that NGA section “7(e) requires the Commission to evaluate all factors bearing on the public interest.”⁴ This obligation, however, is not unlimited in scope and this requirement cannot be read in a vacuum. The Supreme Court has explained that the inclusion of the term “public interest” in our statute is not “a broad license to promote the general public welfare”—instead, it “take[s] meaning from the purposes of the regulatory legislation.”⁵ We must then turn to the purpose of the NGA, which the Supreme Court has instructed us is “to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.”⁶ To the extent to which any of the Commission’s recent or future

¹ 15 U.S.C. § 717f(c).

² See *Kern River Gas Transmission Co.*, 179 FERC ¶ 61,121 (2022) (*Kern River*).

³ *Id.* P 39 n.66 (“While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties.”) (citing 15 U.S.C. § 717f; FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>).

⁴ *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959).

⁵ *NAACP v. FPC*, 425 U.S. 662, 669 (1976) (*NAACP*).

⁶ *Id.* at 669-70; accord *Myersville Citizens for a Rural Cmty.*, 783 F.3d 1301, 1307

certificate issuances attempt to expand the subjects considered in the Commission's balancing under the public convenience and necessity standard, as contemplated in the now-draft Updated Certificate Policy Statement,⁷ I reiterate my view that any balancing regime the Commission employs must "take meaning" from the purpose of the NGA.

3. *Second*, I would like to take a moment to address the Commission's assertion that "the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions."⁸ I recognize that the Commission's determination is based on the U.S. Court of Appeals for the District of Columbia Circuit's decision in *Sierra Club v. FERC (Sabal Trail)*.⁹ I would be remiss, however, if I did not point out that both the partial dissenting statement in *Sabal Trail*¹⁰ and another case from the U.S. Court of Appeals for the Eleventh Circuit cast serious doubt on *Sabal Trail*'s holding.¹¹ *Sabal Trail* is also in obvious conflict with the Supreme Court's holding in *Public Citizen*.¹²

(D.C. Cir. 2015) (quoting *NAACP*, 425 U.S. at 669-70). I note that the Supreme Court has also recognized the Commission has authority to consider "other subsidiary purposes," such as "conservation, environmental, and antitrust questions." *NAACP*, 425 U.S. at 670 & n.6 (citations omitted). But all subsidiary purposes are, necessarily, subordinate to the statute's primary purpose.

⁷ *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement); see *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements issued on February 18, 2022, Updated Certificate Policy Statement, 178 FERC ¶ 61,107 and *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement), to "draft" policy statements).

⁸ *Kern River*, 179 FERC ¶ 61,121 at P 30.

⁹ 867 F.3d 1357, 1375 (D.C. Cir. 2017).

¹⁰ See *id.* at 1380-83 (Brown, J., concurring in part and dissenting in part).

¹¹ See *Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1299-1300 (11th Cir. 2019) (referring to *Sabal Trail* as "questionable").

¹² See *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) ("[The National Environmental Policy Act (NEPA)] requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause. The Court analogized this requirement to the 'familiar doctrine of proximate cause from tort law.'") (citation

4. *Third*, as I have explained in recently-issued certificate orders,¹³ while not fatal to the durability of the order, I would have explicitly repudiated *Northern Natural Gas Company*¹⁴ and reaffirmed the Commission's prior position that "[w]ithout an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas [(GHG)] emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change."¹⁵ This is because, as the Commission has stated, it is unable to connect a particular project's GHG emissions to discrete, physical effects on the environment.¹⁶ The Council on Environmental Quality (CEQ) has found similarly.¹⁷ Moreover, there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of GHG emissions.¹⁸ And the Commission's recent attempts to do so, absent the expertise to

omitted) (*Public Citizen*).

¹³ See, e.g., *Columbia Gulf Transmission, LLC*, 178 FERC ¶ 61,198 (2022) (Danly, Comm'r, concurring in the judgment at PP 2-4) (*Columbia Gulf*).

¹⁴ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021) (*Northern Natural*). In *Northern Natural*, a majority of my colleagues established what has been referred to (by some) as the "eyeball" test. See Catherine Morehouse, *Glick, Danly spar over gas pipeline reviews as FERC considers project's climate impacts for first time*, UTIL. DIVE. Mar. 19, 2021, <https://www.utilitydive.com/news/glick-danly-spar-over-gas-pipeline-reviews-as-ferc-considers-projects-cli/597016/> ("We essentially used the eyeball test," [Chairman Glick] said, adding that based on that analysis, "it didn't seem significant in terms of the impact of those emissions on climate change.").

¹⁵ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 67 (2018) (footnote omitted).

¹⁶ See, e.g., *Nat'l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 188 (2017).

¹⁷ See CEQ, *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions*, at 3 (Feb. 18, 2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf> ("it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand.").

¹⁸ See, e.g., *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 292 (2018).

make such a determination, have amounted to little more than picking arbitrary numbers.¹⁹

5. By now stating in our certificate orders that “[t]he Commission is not herein characterizing these emissions as significant or insignificant because we are conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward,”²⁰ the Commission has effectively preserved its ability to expand its use of the flawed “eyeball” test, possibly with a new number picked as the threshold. Perhaps, the number picked will be 165,000 metric tons per year of GHG emissions.²¹ Perhaps higher.²² Or perhaps lower. There is no way of knowing. But we have learned that if a new number is to be picked to serve as a significance

¹⁹ See Interim GHG Policy Statement, 178 FERC ¶ 61,108 at PP 79-81 (establishing a significance threshold of 100,000 metric tons per year of CO₂e); *id.* (Daly, Comm’r, dissenting at PP 32-36) (explaining why the majority’s presumptive significance threshold is illogical); see also *Northern Natural*, 174 FERC ¶ 61,189 (Daly, Comm’r, concurring in part and dissenting in part at P 16) (comparing the *Northern Natural* test to “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”).

²⁰ *Kern River*, 179 FERC ¶ 61,121 at P 30.

²¹ See *Columbia Gulf*, 178 FERC ¶ 61,198 (Glick, Chairman, concurring at P 5) (“I would have preferred to apply *Northern Natural* here and would have concluded based on evidence in the record that the relevant 165,000 metric tons per year of GHG emissions are not significant.”) (footnote omitted); *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Glick, Chairman, concurring at P 5) (“I would have preferred to apply *Northern Natural* here and would have concluded based on evidence in the record that the relevant 145,000 metric tons per year of GHG emissions are not significant.”) (footnote omitted) (*Tennessee Gas*).

²² See *Columbia Gulf*, 178 FERC ¶ 61,198 (Glick, Chairman, concurring at P 5 n.14) (“I recognize the now-draft GHG policy statement proposes 100,000 metric tons as a threshold over which a project’s GHG emissions would be presumed significant. In my view, *that is a deliberately conservative number* intended to ensure that the Commission did not lead projects developers down the path of an environmental assessment, only to subsequently change course and require an environmental impact statement *in the event that the Commission were to establish a lower threshold* in a final GHG policy statement than it did in the then-interim, now-draft policy statement. I remain open to reviewing the comments submitted in response to that draft statement, as well as guidance we may receive from other federal agencies, in considering what threshold would be appropriate in a final policy statement.”) (citation omitted) (emphasis added); *Tennessee Gas*, 178 FERC ¶ 61,199 (Glick, Chairman, concurring at P 5 n.13) (same).

threshold for GHG emissions, that number will be based solely on the whim of a majority of commissioners. Regardless, such action is neither within our authority²³ nor can it be considered reasoned decision making.²⁴

6. In response to exhortations that the Commission employ “common sense”²⁵ when discharging its NEPA obligations—I absolutely agree. But I am bewildered by this plea in the face of the Chairman’s direction to prepare a lengthy and expensive Environmental Impact Statement (EIS), causing unnecessary delay for a project whose climate impacts, according to my colleagues, “cannot be deemed significant under *any* framework.”²⁶ No commissioner would be happier to see the reinvigoration of NEPA’s rule of reason than I.

²³ See *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (“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 v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)) (emphasis in *Atl. City Elec. Co.*); 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 authority delegated by Congress.”); see also Senate Energy & Nat. Res. Committee, *Full Committee Hearing To Review FERC’s Recent Guidance On Natural Gas Pipelines*, <https://www.energy.senate.gov/hearings/2022/3/full-committee-hearing-to-review-ferc-s-recent-guidance-on-natural-gas-pipelines>, at 00:58:30 (Mar. 3, 2022) (questioning by Chairman Manchin regarding the recent policy statements: “The Commission, you all acknowledge, that . . . no federal agency, including this Commission has established a threshold for determining what level of project-induced greenhouse gas emissions is significant. Why do you all think that FERC, whose primary purpose is to regulate efficient and reliable energy, should be the first agency, the first to set such a standard rather than the environmental agencies?”); see generally Interim GHG Policy Statement, 178 FERC ¶ 61,108 (Danly, Comm’r, dissenting).

²⁴ The Commission is authorized to make a “‘rational legislative-type judgment’” but may not “pluck a number out of thin air when it promulgates rules.” *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.”) (citation omitted).

²⁵ *Kern River*, 179 FERC ¶ 61,121 (Glick, Chairman & Clements, Comm’r, concurring at P 2).

²⁶ *Id.* (Glick, Chairman & Clements, Comm’r, concurring at P 1) (emphasis in original).

7. *Fourth*, regarding the inclusion of a calculation of the Social Cost of Carbon from the project's emissions,²⁷ the Commission has provided extensive discussion on why the use of the Social Cost of Carbon is not appropriate in project-level NEPA review, and why it cannot meaningfully inform the Commission's decisions on natural gas infrastructure projects under the NGA.²⁸ Nothing can be gleaned from the numbers calculated by Commission staff and included in today's order. Moreover, because the Social Cost of Carbon was not developed for project-level review, its use is not required for the evaluation of impacts under section 1502.21 of the CEQ's regulations.²⁹

8. I also observe that in the *project need* section, the Commission discusses the purported end use of the gas transported by the project, stating that "Intermountain Power Agency will use the gas transported on the project to generate electricity"³⁰ I point this out merely because the discussion of end use in the project need section has been included in several recent certificate orders. This inclusion perhaps gestures in the direction of the now-draft Updated Certificate Policy Statement in which the Commission wishes to afford itself the discretion to deny a section 7 application if applicants fail to provide end use information.³¹

²⁷ See *Kern River*, 179 FERC ¶ 61,121 at P 37.

²⁸ See, e.g., *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-97 (2018), *aff'd sub nom. Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *2 (D.C. Cir. 2019) ("[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.").

²⁹ 40 C.F.R. § 1502.21(c). This reasoning is consistent with *Florida Southeast Connection, LLC* where the Commission stated, "[a]nd we do not dispute that [the Social Cost of Carbon] is generally accepted in the scientific community and can play an important role in different contexts, such as rulemaking proceedings." 164 FERC ¶ 61,099, at P 35 (2018) (footnote omitted) (emphasis added).

³⁰ See *Kern River*, 179 FERC ¶ 61,121 at P 11.

³¹ See Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 55 ("To the extent applicants do not have information on the end use of the gas, they are encouraged to work with their prospective shippers to obtain it. The absence of this information may prevent an applicant from meeting its burden to demonstrate that a project is needed.").

9. *Finally*, the natural gas industry has seen tremendous uncertainty due to several recent Commission actions: its establishment of the “eyeball test,”³² its reopening of a final non-appealable certificate order,³³ the preparation of EISs where Environmental Assessments had long sufficed, and the establishment of a significance threshold in the Interim GHG Policy Statement,³⁴ which has since wisely been converted to a draft policy statement. I fear that there is yet more uncertainty to come with CEQ’s new NEPA regulations taking effect tomorrow, May 20, 2022.³⁵ Although it is not yet clear how the Commission will apply the new regulations to currently pending projects where environmental documents have already been prepared, should the Commission decide to prepare supplemental environmental documents, or receive guidance from CEQ to do so, project sponsors will likely experience even more delay.

For these reasons, I respectfully concur in the judgment.

James P. Danly
Commissioner

³² See *infra* n.14.

³³ See *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126 (2021) (Danly, Comm’r, dissenting).

³⁴ See Interim GHG Policy Statement, 178 FERC ¶ 61,108 at PP 79-81.

³⁵ See National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,543 (Apr. 20, 2022) (to be codified at 40 C.F.R. pts. 1502, 1507, and 1508).