

153 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Enable Gas Transmission, LLC

Docket No. CP14-503-001

ORDER DENYING REQUESTS FOR
REHEARING, CLARIFICATION, AND STAY

(Issued October 16, 2015)

1. On April 16, 2015, the Commission authorized Enable Gas Transmission, LLC (EGT),¹ pursuant to section 7 of the Natural Gas Act (NGA)² and section 157.205 of the Commission's Part 157 blanket certificate regulations,³ to construct and operate a pipeline lateral in Grady and McClain Counties, Oklahoma (Bradley Pipeline Lateral).⁴ On May 18, 2015, Susie Purcell, Gilbert Purcell, and Susan Perine (collectively, Landowners) filed a timely request for rehearing of the April 16 Order. The Landowners also request clarification and stay of the April 16 Order. As discussed below, we deny the requests for rehearing, clarification, and stay.

I. Background

2. As detailed in the April 16 Order, on June 20, 2014, EGT filed a prior notice request to construct and operate an approximately 16.2-mile-long, 24-inch-diameter pipeline lateral in Grady and McClain Counties, Oklahoma, extending from EGT's

¹ EGT is a natural gas company within the meaning of section 2(6) of the NGA and is subject to the Commission's regulatory jurisdiction. 15 U.S.C. § 717a(6) (2012).

² 15 U.S.C. § 717f (2012).

³ 18 C.F.R. § 157.205 (2015).

⁴ *Enable Gas Transmission, LLC*, 151 FERC ¶ 61,031 (2015) (April 16, Order).

existing Line AD-East to the Bradley Processing Plant (Bradley Plant) for natural gas produced in the South Central Oklahoma Oil Province.

3. The Commission's notice of EGT's prior notice application was issued on June 30, 2014, and published in the *Federal Register* on July 9, 2014,⁵ in accordance with section 157.205(d) of the Commission's regulations.⁶

4. Pursuant to section 157.205(h) of our regulations, authorization to construct and operate qualifying facilities under the blanket certificate regulations' prior notice provisions is automatic if no protests to the proposed activity are filed by the 60-day deadline.⁷ If a timely protest is not withdrawn within the 30-day reconciliation period following the 60-day notice period, the prior notice request is processed as an application under section 7(c) of the NGA for case-specific certificate authorization.⁸

5. On August 13, 2014, the Landowners filed a timely protest with the Commission, objecting to the proposed route of EGT's lateral across their 270-acre property in McClain County, Oklahoma (Nichols farm). Landowners' property lies between mileposts 5.1 and 5.9 of the 16.2-mile-long pipeline route. The Landowners also filed late motions to intervene, which the April 16 Order granted.⁹

6. Commission staff prepared an Environmental Assessment (EA) for EGT's prior notice proposal and entered it in the public record on February 25, 2015. The EA addressed the environmental concerns raised by the Landowners' protest. The EA, however, did not identify a need for any specific additional environmental conditions to address the Landowners' concerns.¹⁰ Consequently, the April 16 Order denied the Landowners' protest and authorized EGT to proceed with construction of the Bradley

⁵ 79 Fed. Reg. 38,882 (2014).

⁶ 18 C.F.R. § 157.205(d) (2015).

⁷ 18 C.F.R. § 157.205(h) (2015).

⁸ *Id.* Because notice was issued on June 30, 2014, the 60-day notice period ended on August 29, 2014, and the subsequent 30-day reconciliation period pursuant to section 157.205(g) ended on September 29, 2014.

⁹ April 16 Order, 151 FERC ¶ 61,031 at P 9.

¹⁰ EA at 30; April 16 Order, 151 FERC ¶ 61,031 at P 30.

Pipeline Lateral under its Part 157 blanket certificate, consistent with the Commission's policy against granting redundant case-specific authority.¹¹

II. Procedural Matters

7. On May 18, 2015, the Landowners filed a timely request for rehearing of the April 16 Order denying their protest. The Landowners' May 18 filing also requests clarification and stay of the April 16 Order.¹² On June 2, 2015, EGT filed an answer to the Landowners' filing. Our rules do not permit answers to requests for rehearing.¹³ However, EGT's answer provides information that has assisted in our decision-making process. Therefore, we will, for good cause, waive the regulatory proscription against answers to requests for rehearing.¹⁴

III. Discussion

A. Argument that EGT Does Not Hold a Valid Part 157 Blanket Certificate

8. On rehearing, the Landowners repeat their argument that EGT has no Part 157 blanket certificate authority because section 157.206(a)(2) of the Commission's regulations states that a Part 157 blanket construction certificate is not transferable, and EGT's prior notice filing purported to rely on the Part 157 blanket certificate issued in

¹¹ April 16 Order, 151 FERC ¶ 61,031 at P 23 (citing *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138 (2014) and *Kinder Morgan Gas Transmission, LLC*, 133 FERC ¶ 61,044 (2010)).

¹² On September 24, 2015, in response to the Oklahoma Supreme Court's September 14, 2015 order dissolving the district court's stay of the condemnation proceeding with respect to the Landowners' property, the Landowners filed a renewed request that the Commission stay EGT's certificate authority for a right-of-way on their farm. The state district court had granted the Landowners' request for stay until the Commission issued an order addressing their request for rehearing.

¹³ See 18 C.F.R. § 385.213(a)(2) (2015).

¹⁴ 18 C.F.R. § 385.101(e) (2015).

1982 to Arkansas Louisiana Gas Company, not to EGT.¹⁵ The Landowners assert that EGT has presented no evidence that no longer existing companies can be viewed as the same company as EGT for purposes of the 1982 blanket certificate, EGT and each predecessor company are distinct corporate entities, and section 157.206(a)(2) of the regulations states that a Part 157 blanket certificate is not transferable.

9. As we explained in the April 16 Order, while the Landowners are correct that EGT's Part 157 blanket construction certificate originally was issued to Arkansas Louisiana Gas Company in 1982, several name changes and a change in corporate structure to limited liability corporation status have resulted in the Part 157 blanket construction certificate presently being held in the name "Enable Gas Transmission, LLC." The April 16 Order explained the chronology:¹⁶

- On June 28, 1985, Arkansas Louisiana Gas Company filed a notice in Docket No. G-110 of a corporate name change to Arkla Energy Resources Company;
- As documented by the certification by the Secretary of the State of Delaware included as Exhibit D to EGT's September 26, 2014 answer, the corporate name was changed:
 - In 1994 from Arkla Energy Resources Company to NorAm Gas Transmission Company;
 - In 1999 from NorAm Gas Transmission Company to Reliant Energy Gas Transmission Company;
 - In 2002 from Reliant Energy Gas Transmission Company to CenterPoint Energy Transmission Company;
 - In 2010 from CenterPoint Energy Transmission Company to CenterPoint Energy Transmission, LLC, when the company converted to limited liability corporation status;

¹⁵ *Arkansas Louisiana Gas Company*, 20 FERC ¶ 62,408 (1982), *amended*, 22 FERC ¶ 61,148 (1983) (issuing Part 157 blanket certificate in Docket No. CP82-384-000).

¹⁶ April 16 Order, 151 FERC ¶ 61,031 at n.19.

- In 2013 from CenterPoint Energy Transmission, LLC to Enable Gas Transmission, LLC, the name in which the blanket certificate is currently held.

10. Commission practice and precedent allow a company to change its name and even its corporate structure without seeking reissuance of its existing certificate authorizations, so long as it will continue to be the same company under the laws of the state in which it is organized and remain subject to all obligations and liabilities, including those imposed by the NGA and the Commission's regulations. Prior to *Distrigas LLC*,¹⁷ when a company planned to change its corporate structure to become a limited liability corporation or limited partnership, the Commission had required that the company file an application under section 7 of the NGA for abandonment and new certificate authorizations to implement the transfer of jurisdictional facilities and service obligations to the new limited liability company or partnership.

11. However, in *Distrigas LLC*, the Commission decided that the filing of an application for abandonment authority and reissuance of certificate authorizations was not necessary under the NGA to implement a change in corporate structure if state law ensures that the company will continue to be subject to all of the obligations and liabilities of its predecessor. The Commission therefore determined in *Distrigas LLC* that a change in policy was appropriate in these circumstances to allow such restructuring without prior, affirmative approval by the Commission.¹⁸

12. *Distrigas* was a Delaware corporation and had made the conversion to a limited liability company under the provisions of Delaware state law, which ensured that the company would continue to be subject to all pre-existing obligations and liabilities.¹⁹

¹⁷ 93 FERC ¶ 61,221, at 61,743-44 (2000).

¹⁸ If a jurisdictional company's conversion to a limited liability partnership will involve other changes so that the new company will not be the same legal entity, then the company must file an application for Commission approval and NGA authorization to implement the change. *See, e.g., Ozark Gas Transmission System et al.*, 84 FERC ¶ 61,002 (1998) (granting necessary authorizations under the NGA for newly formed limited liability company to acquire and operate the facilities of two existing jurisdictional interstate pipeline companies).

¹⁹ *Distrigas LLC*, 93 FERC ¶ 61,221 at 61,743-44 (discussing Delaware corporation law providing that conversion to limited liability partnership shall not be deemed to affect any existing obligations or liabilities).

EGT, like Distrigas LLC, was reorganized as a limited liability corporation under Delaware state law.²⁰

13. As EGT points out in its answer, the only Commission orders that the Landowners cite as precedent to support their position are two orders involving authorizations issued under the Federal Power Act (FPA) for hydroelectric companies – *Larry Pane*²¹ and *Tropicana Ltd. Partnership*²² – and the Landowners are incorrect that the orders support their position.

14. In hydroelectric proceedings under the FPA, the issuance of a preliminary permit to an applicant does not preclude the filing of competing license applications, and a license application by the permittee will be granted by the Commission only if it finds that the permittee's application is the best adapted to meet the requirements of the FPA. However, Commission policy favors an application by the permittee if it is at least as good as that of other license applicants, and whether a license applicant is the same entity as the original permittee for a site therefore can become an issue.²³

15. Contrary to the Landowners' claim, those orders did not find that the limited liability partnerships involved in those proceedings could not rely on the Commission authorizations issued to their predecessors. Rather, in *Larry Pane*, the Commission held that the *individual* partners were not the same entity as the partnership and therefore could not take advantage of the partnership's permit priority. Nor does *Tropicana Ltd. Partnership* support the Landowners' position. In that proceeding, the Commission held that a partnership affiliated with the corporate applicant for a preliminary permit was bound by the deadline for filing development applications in competition with its affiliate's preliminary permit application.²⁴

²⁰ *Enable Gas Transmission, LLC*, 148 FERC ¶ 62,042, at 64,071 (2014).

²¹ 24 FERC ¶ 61,326 (1983).

²² 65 FERC ¶ 61,094 (1993).

²³ *See, e.g., Pacific Water & Power, Inc.*, Project No. 10658-001, 50 FERC ¶ 61,292, at 61,942 (1990).

²⁴ The Commission's practice is similar in proceedings under the FPA. An application for approval under section 8 of that Act is necessary only if a change will result in the licensee no longer being the same legal entity, but the licensee should file

(continued...)

B. Argument that the Bradley Lateral Does Not Qualify Under the Blanket Certificate Regulations

16. The Landowners also repeat their arguments why the Bradley Lateral cannot be constructed under Part 157 blanket certificate authority. First, they argue that a 16.2-mile-long, 24-inch-diameter pipeline lateral is too large a project to be a “routine” activity as contemplated by the blanket certificate program. They also assert based on the length and diameter of the Bradley Pipeline Lateral that it is more like a mainline transmission pipeline than a traditional lateral and therefore is not an “eligible” facility under the blanket certificate regulations. They also repeat their argument that EGT cannot use its blanket certificate to construct a pipeline designed to receive gas from a processing plant being constructed by an affiliate.

17. We do not agree that the length (16.2 miles) and diameter (24 inches) of the Bradley Lateral diameter are necessarily dispositive of whether it is mainline facility or a lateral. As the Commission explained in another prior notice proceeding where that was the issue:

The proper focus for this determination, however, is on the function of the line and its relationship to the rest of a pipeline’s overall system. The question is not whether the line will be of certain dimensions or transport a particular amount of gas, but rather, whether the line will be a principal transmission facility for the system.²⁵

18. However, regardless of whether the Bradley Lateral can be viewed as a mainline expansion because it has the potential to provide all its shippers with access to supplies processed at the upstream Bradley Processing Plant, it qualifies under the Part 157 blanket certificate regulations. As explained by the April 16 Order, a pipeline company may rely on its Part 157 blanket construction certificate to construct “eligible” facilities,

notice of the change with the Commission. *Fourth Branch Associates (Mechanicville) v. Niagara Mohawk Power Corporation*, 89 FERC ¶ 61,194, at 61,594 (1999).

²⁵ *Burton McDaniel, M.D. v. East Tennessee Natural Gas Company (McDaniel v. East Tennessee)*, 71 FERC ¶61,192, at 668 (1995), *order denying reh’g*, 74 FERC ¶ 61,185 (1996). The Commission found that the facilities proposed in the prior notice filing would function as mainline facilities because they would enable the pipeline company to connect its system with another pipeline system and enhance the flexibility and operation of its entire system. 74 FERC ¶ 61,185 at 61,640.

as defined in section 157.202(b)(2) of the regulations,²⁶ *as well as* certain other facilities which, although excluded from the definition of “eligible facility,” nevertheless qualify under other sections of the blanket certificate regulations. Thus, while Landowners are correct that section 157.202(b)(2)(ii) provides that an “eligible facility” does not include mainline facilities (except for certain replacement facilities), section 157.210 of the blanket certificate regulations authorizes the certificate holder “to acquire, construct, modify, replace, and operate natural gas *mainline* facilities . . . that are not eligible facilities under § 157.202(b)(2)(i),”²⁷ if it can satisfy all of the blanket certificate regulations’ environmental conditions and stay within those regulations’ cost limits.²⁸ EGT determined that it could meet all the applicable conditions and therefore filed under the blanket certificate regulations’ prior notice procedures to construct the Bradley Lateral.²⁹

19. Order No. 686 amended the Commission’s regulations in 2006 to allow companies to rely on their Part 157 blanket certificates to construct mainline facilities, LNG takeaway facilities, and certain underground storage facilities.³⁰ These types of facilities theretofore had been excluded from the blanket certificate program out of concern that their cost and operation could adversely impact existing pipeline customers’ rates and services.³¹ The Commission acknowledged in Order No. 686 that these concerns remained valid, and that there also has been increased attention to the environmental,

²⁶ 18 C.F.R. § 157.202(b)(2)(i) (2015).

²⁷ 18 C.F.R. § 157.210 (2015) (emphasis added).

²⁸ As the Commission stated in Order No. 234, which implemented the blanket construction certificate program in 1982, the per-project cost limitations serve to ensure that “a proposed activity is sufficiently routine and will have sufficiently small impact on ratepayers, so that it should be approved under the streamlined procedures of the blanket certificate regulations.” *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368, at P 30,206 (1982).

²⁹ When EGT filed its prior notice request on June 20, 2014, the current cost limit for blanket certificate projects subject to prior notice provisions was \$31,900,000. For calendar year 2015, the cost limit for prior notice projects is \$32,400,000.

³⁰ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231 (2006).

³¹ *Id.* at P 11.

safety, and security implications of all natural gas facilities. Therefore, the Commission made all blanket certificate projects to construct the newly-eligible types of facilities subject to the prior notice requirement, regardless of cost, in order to ensure appropriate review.

20. Order No. 686 also amended the blanket certificate regulations to increase the blanket certificate cost limits. The Commission acknowledged that Order No. 686's changes increasing the scope and scale of the blanket certificate program also increased the odds that projects authorized under the expanded blanket certificate program could have significant adverse impacts on the quality of the human environment. To ensure against the potential for adverse environmental impacts due to the enlargement of the blanket certificate program, Order No. 686 amended the blanket certificate regulations to adopt additional procedures and mitigation measures; require that companies submit more information in their prior notice applications for the newly-covered types of facilities; and require that companies' notices to affected landowners for blanket certificate projects include information on Commission proceedings and relevant eminent domain rules.³²

21. Order No. 686 also increased the length of the required advance notice periods for blanket certificate projects, from 30 days to 45 days for projects under the regulations' automatic provisions, and from 45 days to 60 days for projects subject to the prior notice provisions.³³ The Commission explained that, in addition to providing more time for landowners to state their concerns and for project sponsors and the Commission to respond, the additional time would provide the Commission with a more reasonable period of time to conduct and conclude its environmental assessment of a proposal.³⁴

22. For the reasons explained above, finding that the Bradley Lateral will function as a mainline facility would not disqualify it under the blanket certificate regulations. Nor is

³² *Id.* at PP 43 - 44. Order No. 686 amended section 157.203(d)(2)(iv) to add the requirement that companies' notices to affected landowners include a general description of the blanket certificate program and procedures, as posted on the Commission's website at the time the landowner notification is prepared, and the link to the information on the Commission's web site. Section 157.203(d)(2)(v) was added to require that the notice to affected landowners include a brief summary of the rights the landowner has in Commission proceedings and in proceedings under relevant eminent domain rules.

³³ 18 C.F.R. §157.203(d)(1) (2015).

³⁴ Order No. 686, FERC Stats. & Regs. ¶ 31,231 at PP 51 - 52.

the Bradley Lateral disqualified because it will receive gas from a processing plant owned by an affiliate. The affiliation has no bearing on whether the Bradley Lateral is a qualifying facility under the blanket certificate regulations, whether EGT's construction of the lateral meets the cost limit for prior notice projects, or whether EGT can satisfy all of the applicable environmental conditions. As the Commission concluded in another proceeding where the pipeline company's prior notice filing to interconnect with an affiliate's extraction plant was protested, the only potential concern raised by the affiliation would be anticompetitive behavior by the pipeline company to favor its shippers using its affiliate's extraction service.³⁵ The Commission found that concern was adequately addressed by its open-access policies and regulations prohibiting unduly discriminatory or preferential practices by open-access pipelines in providing service.

C. Alleged Deficiencies with the EA

23. The Commission's EA for EGT's proposed Bradley Lateral project was issued on February 15, 2015. On April 9, 2015, the Commission issued its Government in the Sunshine Notice that identified an order addressing the protest to EGT's prior notice filing as one of the matters that would be considered at its April 16, 2015 open meeting. On April 15, 2015, the Landowners filed a pleading urging the Commission to withdraw the order addressing EGT's protested prior notice filing from the agenda. That pleading included comments on the EA issued on February 15, 2015.³⁶ In their request for rehearing of the April 16 Order, the Landowners reiterate many of their comments alleging deficiencies in the EA. We address these comments below.

³⁵ *Colorado Interstate Gas Company*, 70 FERC ¶ 61,229, at 61,708 (1995). The Commission's order denied a protest to the pipeline company's prior notice filing under the blanket certificate regulations to construct a pipeline to transport its shippers' gas to and from a liquids and liquifiabiles extraction plant being constructed by its affiliate. The protester argued that the pipeline company could favor its affiliate's new extraction plant by somehow limiting shippers' continued access to an existing, unaffiliated extraction plant. The Commission found the argument speculative in view of its open-access regulations and policies.

³⁶ We note that the Commission has previously indicated that it does not favor parties filing last-minute pleadings that raise issues that could have been raised earlier in a proceeding since such pleadings operate to disrupt the orderly consideration of matters before the Commission. *Cf. Dominion Transmission, Inc.*, 143 FERC ¶ 61,148, at P 33 n.31 (2013); *The Electric Plant Board of the City of Paducah, Kentucky*, 121 FERC ¶ 61,091, at P 10 (2007).

1. Alternatives Analysis

24. The Landowners challenge the adequacy of the EA's alternatives analysis for failure to adopt an alternative route to avoid the Nichols Farm Property. In particular, the Landowners' contend that the EA does not identify what alternatives were considered, and only speculates that rerouting the Bradley Pipeline Lateral around the Landowners' farm would result in greater impacts on the resources considered in the EA.

25. As the Landowners' state, section 102(C)(iii) of the National Environmental Policy Act of 1969 (NEPA) requires that an agency's environmental document discuss alternatives to a proposed action,³⁷ and section 1502.14 of the Council on Environmental Quality's (CEQ) regulations requires that an agency give thorough consideration to alternatives, including alternatives not within its jurisdiction. However, the Landowners are wrong in their assertion that CEQ regulations require consideration of all alternatives, "whether feasible or not."³⁸ Section 1502.14 only requires an agency to evaluate *reasonable* alternatives,³⁹ and CEQ guidance clarifies that alternatives are not reasonable if they are not *feasible*.⁴⁰

26. The Landowners also are incorrect that the EA for EGT's proposal did not identify and adequately discuss the alternatives that were considered. Those alternatives included the no-action alternative, potential variations that EGT described in Resource Report 10

³⁷ 42 U.S.C. § 4332(C)(iii) (2012).

³⁸ Rehearing request at 21.

³⁹ 40 C.F.R. § 1502.14 (2015). Section 1502.14(a): "Rigorously explore and objectively evaluate all *reasonable* alternatives" (emphasis added). Section 1502.14(a): "Include *reasonable* alternatives not within the jurisdiction of the lead agency." (emphasis added).

⁴⁰ CEQ, *Guidance Regarding NEPA Regulations* (1983), available at <https://ceq.doe.gov/nepa/regs/1983/1983guid.htm> 48 Fed. Reg. 34263 (1983) (Memorandum from A. Allan Hill, CEQ Chairman to Heads of Federal Agencies, (Discussing sufficiency of limiting "consideration of sites to only those sites which were considered feasible, given the applicant's stated goals"; stating "an agency's responsibilities to examine alternative sites has always been 'bounded by some notion of feasibility' to avoid NEPA from becoming 'an exercise in frivolous boilerplate'"; acknowledging that "NEPA has never been interpreted to require examination of purely conjectural possibilities whose implementation is deemed remote and speculative"; and "the agency's duty is to consider 'alternatives as they exist and are likely to exist'".)

for portions of its proposed route, and two pipeline route alternatives developed by EGT to avoid the Landowners' farm specifically. Each alternative was evaluated to determine whether it was technically and economically feasible and environmentally preferable.

27. Under the no-action alternative, the proposed project would not be constructed. While the associated impacts of the EGT's proposed project would be avoided, EGT's shippers would not be able to access supplies processed at the Bradley Plant, and the objectives of EGT's project would not met. The EA correctly concluded that the no-action alternative was not a viable alternative.⁴¹

28. As explained in the EA, feasible route alternatives for a new pipeline to interconnect EGT's pipeline system to the Bradley Plant would need to connect to EGT's existing Line AD-East pipeline at a hydraulically feasible point downstream of EGT's compression facilities on that line. EGT's proposed route was a relatively direct, straight-line route between its Line AD-East and the Bradley Plant to minimize overall pipeline length and ground disturbance, which generally minimized associated impacts to environmental resources and landowners. Further, EGT agreed to make adjustments to the most direct route to follow property lines to the extent practicable and avoid or minimize impacts to identified sensitive environmental resources.⁴²

29. As explained in the EA, the two route variations developed by EGT specifically to avoid the Landowners' 270-acre farm would have required the construction of additional pipeline and increased the pipeline's overall length. Further, EGT already had signed right-of-way agreements with all landowners for the entire 16.2-mile pipeline route except the portion of the route between mileposts 5.1 and 5.9 over the Landowners' farm. Therefore, as stated in the EA, rerouting to avoid the Landowners' farm would have impacted different landowners with whom EGT would have to begin new negotiations to acquire right-of-way.⁴³ Although not explicitly explained in the EA, it is unlikely that the pipeline could be rerouted to follow a path going around the Landowners' farm just beyond their property lines. Thus, aside from making it unlikely that EGT would be able to use some already-acquired right-of-way approaching the Landowners' farm from each side, going around their farm would increase the length of the pipeline and the number of landowners that would be impacted. Therefore, the EA reasonably concluded that

⁴¹ EA at 29.

⁴² *Id.*

⁴³ *Id.* at 30.

rerouting the pipeline around the Landowners' farm likely would delay the project and have greater impact on landowners and resource areas.⁴⁴

30. We believe the EA evaluated the reasonable alternatives to EGT's proposal and made clear why it did not recommend any of those alternatives over EGT's proposal: The no-action alternative would not meet the objectives of the project, and none of the rerouting alternatives would be clearly environmental preferable to EGT's proposal,⁴⁵ for which no significant environmental impacts were identified. Indeed, as the EA concluded, while requiring EGT to route its pipeline project around the Landowners' farm would avoid impacts on their property, such rerouting necessarily would significantly increase the pipeline's length, increasing total construction and operational land requirements, which could reasonably be expected to cause greater overall project impacts. Further, as discussed below, we are affirming our reasons in the April 16 Order for rejecting the Landowners' arguments alleging specific environmental impacts to their property as reasons for not allowing EGT's Bradley Pipeline Lateral to cross their property. The blanket certificate regulations' environmental and other conditions will ensure that the impacts of EGT's project on the Landowners' farm or other affected landowners' properties will not result in a significant adverse effect on the quality of the human environment.⁴⁶

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ We allowed EGT to proceed with construction of the Bradley Pipeline Lateral under its Part 157 blanket certificate, rather than grant it redundant case-specific certificate authority, because we did not find that the Landowners' arguments justified the imposition of any additional environmental conditions beyond those specified in section 157.206 of the blanket certificate regulations. The EA and our April 16 Order addressed the Landowners' assertions that there are rare species of lizards on their farm and found that, although two species of horned lizards and two species of horned toads are known to occur in the project area, they carry no legal protective status under state or federal law. Further, while the EA surmised that EGT could, with the Landowners' approval, use excess rock from the right-of-way trench to create potentially beneficial habitat on the Landowners' farm for lizards and other small animals, the Landowners did not request such a condition and neither the EA nor our April 16 Order imposed such a condition. April 16 Order, 151 FERC ¶ 61,031 at P 19. The April 16 Order also noted the EA's statement that EGT had agreed to meet with the Landowners to assess the feasibility of minor shifts in the pipeline alignment and/or workspace to preserve Hackberry trees on their farm. The Commission agreed that was a reasonable approach,

(continued...)

31. We reject the Landowners' argument that the Commission allowed itself to be ham-strung in its consideration of alternative routes because approval of EGT's proposed route was a foregone conclusion when we did not prohibit it from acquiring property easements along its proposed route before the EA was completed. Indeed, while not constraining in any way the Commission's consideration and adoption of alternative routes or imposition of such mitigation measures as it may find appropriate, the Commission's Certificate Policy Statement gives considerable weight to how much of the necessary right-of-way for the proposed route an applicant has already been successful in acquiring through negotiation before it even files its certificate application.⁴⁷ Further, the Commission also has explained that while it "is aware that many individuals do not want a pipeline constructed in their communities under any circumstances," the opposition of some affected landowners does not necessarily preclude the Commission from finding that a proposed pipeline project crossing their properties nevertheless is in the public interest.⁴⁸

32. The EA's consideration of reasonable alternatives was in no way circumscribed or inhibited because EGT proceeded with acquiring right-of-way for its proposed pipeline route before the EA was completed. As the Landowners point out, EGT did so "at its own risk." Thus, when the EA took into account the fact that recommending one of the

but did not impose any certificate condition. *Id.* at P 20. In this regard, the Commission's April 16 Order noted that pursuant to section 157.206(b)(1) of the blanket certificate regulations, section 380.15(b) of the Commission's NEPA implementation regulations applies to companies constructing under blanket certificate authority, and section 380.15(b) provides that "the desires of landowners should be taken into account in the planning, location, clearing and maintenance of rights-of-way and the construction of facilities on their property." Therefore, the Commission found that the April 16 Order did "not need to impose a specific condition to ensure that EGT honors its commitment to make minor shifts in its pipeline route over the [Landowners'] Farm Property to the extent feasible to preserve specimen trees while allowing for the safe operation of construction equipment. *Id.* n.37.

⁴⁷ See, e.g., *Southern Natural Gas Company, L.L.C.*, 152 FERC ¶ 61,048, at P 14 (2015) (finding in balancing of criteria under the Certificate Policy Statement that the applicant had worked with landowners by revising its originally planned route to address their concerns and minimize adverse economic impacts to the landowners).

⁴⁸ See, e.g., *Midwestern Gas Transmission Company*, 116 FERC ¶ 61,182, at PP 61 and 65 (2006).

alternative route variations under consideration would entail EGT having to provide notice to a different set of landowners and commence new negotiations for right-of-way, it was for the purpose of considering the amount of delay that would result and whether that delay would jeopardize the viability of EGT's proposal and thus its potential benefits of providing its shippers with access to additional sources of gas supplies. However, the delay that would result from EGT having to start negotiations with new landowners was not the primary reason the EA did not recommend any of the alternatives over EGT's proposed route; rather, the EA also concluded that each of the routing alternatives would require the construction of a significantly longer pipeline and likely have greater impacts on landowners and resource areas. In any event, the EA did not find any of the alternatives to be environmentally preferable to EGT's proposal.⁴⁹

2. Cumulative Impacts Analysis

33. CEQ defines "cumulative impact" as "the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions"⁵⁰ The requirement that an impact must be "reasonably foreseeable" to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

34. The "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."⁵¹ CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."⁵² Further, a cumulative impact analysis need only include "such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible."⁵³ An agency's analysis should be proportional to the

⁴⁹ The EA states that the Commission's staff was unable to identify any options that would be environmentally preferable to EGT's proposal.

⁵⁰ 40 C.F.R. § 1508.7 (2015).

⁵¹ *Kleppe v. Sierra Club*, 427 U.S. 390, at 413 (1976).

⁵² CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 12-16 (January 1997) (1997 CEQ Guidance).

⁵³ *Id.*

magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.⁵⁴

35. As we have explained, consistent with CEQ guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.⁵⁵ While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not reasonably foreseeable so as to be included in a cumulative impacts analysis.⁵⁶

36. Challenging the scope of the EA’s cumulative impact analysis, the Landowners argue that the EA’s discussion of the cumulative impacts of EGT’s proposed project and other projects identified in the EA is speculative, conclusory, and lacking analytical analysis. The Landowners quote *Delaware Riverkeeper Network v. FERC*,⁵⁷ where the court explained that a meaningful assessment of cumulative impacts must identify:

(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.⁵⁸

⁵⁴ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis*, at 2-3 (June 24, 2005).

⁵⁵ See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁵⁶ *Id.* at P 120.

⁵⁷ 753 F.3d 1304 (D.C. Cir. 2014) (*Delaware RiverKeeper*).

⁵⁸ *Id.* at 1319 (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002)).

37. Additionally, the Landowners allege that the EA's consideration of cumulative impacts was inadequate because it only identified other projects within a 0.5-mile radius of EGT's project. In support of their position that the EA needed to consider a much larger area, the Landowners emphasize that section 1508.8(b) of CEQ's regulations requires the Commission to consider the indirect impacts of a proposed action, including those that may occur later in time or farther removed in distance than direct project impacts but are still reasonably foreseeable.⁵⁹

38. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects issues associated with the proposed action.⁶⁰ The agency should then establish the geographic scope for analysis.⁶¹ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.⁶² Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁶³ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁶⁴

⁵⁹ The Landowners also assert that the EA is inadequate because the cumulative impacts analysis did not take into account greenhouse gas emissions from the Bradley Plant that may impact climate change. This argument is addressed in more detail below.

⁶⁰ 1997 CEQ Guidance at 11.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2, which notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action. Further, the Supreme Court held that determination of the extent and effect of cumulative impacts, "and particularly identification of the geographic area within which they occur, is a task assigned to the special competency of the agenc[y]," and is overturned only if arbitrary and capricious. See *Kleppe v. Sierra Club*, 427 U.S. 390, 414-415.

39. The cumulative effects analysis in the EA took precisely the approach recommended by the CEQ guidance.⁶⁵ EGT's proposed construction corridor, including temporary workspace, for its 16.2-mile-long Bradley Pipeline Lateral does not exceed 100 feet in width in any area.⁶⁶ Additionally, Commission staff concluded that most of the pipeline construction impacts on resources, including geology, soils, vegetation, wildlife, groundwater, wetlands, waterbodies,⁶⁷ land use, and cultural resources would be confined to the areas disturbed by the construction work area. However, to ensure that the scope of the EA was adequate to identify any impacts beyond the right-of-way,⁶⁸ the EA included all areas within an approximately 0.5 mile radius of EGT's proposed pipeline project – i.e., areas within 0.5 mile of any point along EGT's proposed 16.2-mile-long pipeline – as the possible region of influence of EGT's project for most resources. Because the impacts of EGT's Bradley Pipeline Lateral project will be limited primarily to the approved construction corridor, which does not exceed 100 feet in width in any area, and are expected to be short-term in nature, occurring primarily during the construction phase, the EA reasonably concluded that the region of influence potentially affected by the project would not extend more than 0.5 mile from any point along the pipeline's 16.2-mile-long route.

40. Based on the region of influence for the project, the EA identified 15 present and reasonably foreseeable actions that could potentially result in cumulative impacts.⁶⁹ The

⁶⁵ We note that the 1997 CEQ Guidance at 15 states that the “applicable geographic scope needs to be defined case-by-case.”

⁶⁶ The width of the permanent right-of-way for EGT's Bradley Pipeline Lateral is 50 feet.

⁶⁷ A pipeline company constructing under its blanket certificate also must adhere to the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*, which can be found on the FERC website at <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

⁶⁸ For example, the EA acknowledged that turbidity from stream crossings and sediment carried by runoff may exit the construction work area. However, the EA explained (EA at 2-3) that sediment should also settle out quickly with implementation of the mitigation measures required by the Commission staff's *Upland Erosion Control, Revegetation, and Maintenance Plan*, which can be found on the FERC website at <http://www.ferc.gov/industries/gas/enviro/plan.pdf>.

⁶⁹ EA at 22-24, Table B.9-1.

identified projects included the then under-construction Bradley Processing Plant, the meter station and materials and equipment staging areas for construction of the processing plant, and the planned expansion of the plant. As part of this analysis, the EA also considered the impacts of the non-jurisdictional pipelines being constructed to transport gas to or receive gas from the processing plant, which included an approximately 6.1-mile-long pipeline and an approximately 3.3-mile-long pipeline to transport gas from gathering areas to the processing plant, and six other pipelines varying in length between 0.9-miles-long and 20-miles-long to transport processed gas from the plant to downstream transmission facilities.⁷⁰

41. Furthermore, the EA's cumulative impacts analysis fully complies with NEPA's requirements as set forth by the court in *Delaware Riverkeeper*. The EA evaluated the potential impacts of these other projects on geology and soils; water resources; vegetation, wildlife, and special status species; cultural resources; land use, recreation, special interest areas, and visual resources; air quality; and noise. The EA concluded that, when considered with the impacts that other planned or ongoing projects could have in the same areas impacted by EGT's pipeline's pipeline project, the incremental effects of EGT's project would not result in significant long-term cumulative effects in those areas. The EA's analysis and findings regarding other projects' impacts, including any potential impacts beyond the 0.5-mile region of influence identified in the course of preparing the EA, are summarized below. We concur with these findings.

Geology and Soils

42. The EA acknowledged that the drilling of oil and gas wells and other non-jurisdictional activities, including the construction of gas gathering lines and other pipelines to transport gas from the Bradley Processing Plant, would have direct impacts on near-surface geology and soils. Like EGT's pipeline project, the impacts of those other projects also were expected to be highly localized and limited primarily to the construction periods. Therefore, the EA concluded that cumulative impacts on geology and soils within the region of influence for EGT's project – i.e., areas within 0.5 mile of the Bradley Pipeline Lateral's 16.2-mile-long construction route – would primarily occur only to the extent the other projects involved construction in the same areas and at the same times as activities to construct the Bradley Pipeline Lateral.

43. EGT's construction right-of-way would be 75 feet wide except in a few areas where additional temporary workspace would make a 100-foot-wide construction right-

⁷⁰ *Id.*

of-way necessary.⁷¹ Aside from the Bradley Plant with which EGT's lateral and other pipelines will interconnect, the only areas where other companies will be engaged in construction activities within 0.5 mile of EGT's pipeline are the areas where EGT's pipeline route and other pipelines' route intersect.⁷² However, those overlapping areas will be minimal. Further, the Bradley Plant and the intersecting pipelines were either complete, already under construction, or still awaiting approval when the Commission issued its April 16 Order authorizing EGT to proceed with construction. As a practical matter, it is unlikely that EGT and the companies constructing the intersecting pipelines would be constructing at the same times in the areas where their construction rights-of-way overlap.

44. Further, as noted in the EA, the implementation of erosion control and restoration measures at the other non-jurisdictional construction sites likely would also minimize their impacts on soil and geology following excavation and grading. EGT would be required to comply with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*,⁷³ which would minimize any direct or indirect impacts of its project. In view of these considerations, the EA concluded that EGT's project and the other non-jurisdictional projects would not have significant cumulative impacts on soil and geology in the 0.5-mile region of influence.⁷⁴

Surface Water Resources

45. The EA stated that construction of the proposed Bradley Plant and meter station would not impact water resources or fisheries. The EA acknowledged, however, that waterbodies may be crossed by the routes of some of Table B.9-1's identified gathering lines to take gas to the processing plant and non-jurisdictional pipelines to transport processed gas from the plant, and construction of those pipelines therefore could have impacts on waterbodies and fisheries. The EA also acknowledged that water is used in oil and gas well drilling operations, and development of the wells identified in

⁷¹ The permanent right-of-way acquired by EGT for the Bradley Pipeline Lateral is 50 feet wide.

⁷² Intersecting pipelines are identified in Table B.9-1 in the EA.

⁷³ EA at 2-3. The Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* may be found on the FERC website at <http://www.ferc.gov/industries/gas/enviro/plan.pdf>.

⁷⁴ EA at 21 and 24.

Table B.9-1 therefore could have impacts on waterbodies and fish. However, the EA concluded that such impacts would be temporary as pipeline and well developers would have to comply with applicable regulations and obtain required permits.⁷⁵

46. Table B.9-1 in the EA also identified the Oklahoma Department of Transportation's planned repairs to a state highway bridge that crosses the Washita River approximately 0.5 mile from EGT's pipeline route. The EA explained that the U. S. Army Corps of Engineers had already issued a permit including special conditions to address potential impacts and that the bridge repair project therefore was not expected to have significant impacts on water resources and fisheries.

47. Most of the projects listed in table B.9-1 are within watersheds crossed by the EGT's proposed pipeline route, and the EA acknowledged that EGT's project and other projects could potentially result in impacts on the same wetlands and surface waters. The EA explained that the impacts of EGT's project on surface waters would end shortly after its pipeline is constructed and vegetation begins to regrow on disturbed areas. Since most of the potential impacts of EGT's project on wetlands and surface waters would be temporary and short-term, the EA concluded that the project would contribute little to any long-term impacts. The EA assumes that the developers constructing other non-jurisdictional facilities would follow Best Management Practices similar to those to be used by EGT so as to minimize impacts on waterbodies.

48. The EA stated that wetland resources identified within 0.5 mile of EGT's 16.2-mile pipeline route include 141 freshwater ponds (largely manmade farm and livestock ponds), 13 emergent marshes, 9 shrub swamps, 12 forested wetlands, 1 forested wetland/shrub swamp, 1 lake, and 4 riverine wetlands. The EA acknowledged that construction of the non-jurisdictional pipelines identified in Table B.9-1 also would be likely to have some impacts on any of the identified wetlands that they cross. However, the EA concluded that the impacts on wetlands from any pipeline crossing would be expected to be temporary and not significant unless the crossing resulted in permanent conversion of forested wetlands to non-forested wetland types. However, the EA concluded that due to potential mitigation requirements, companies constructing non-jurisdictional facilities generally would try to any avoid forested wetland impacts.

49. The EA acknowledged that the development of oil and gas wells can affect wetlands if well pads or access roads require wetland fill. However, because oil and gas wells are typically sited in uplands, the EA concluded that development of the wells identified in Table B.9-1 is not expected to significantly impact wetlands. Further, before

⁷⁵ EA at 24.

undertaking any construction activities with potential impacts to wetlands, developers of well and pipeline projects will have to obtain any required water permits from the U. S. Army Corps of Engineers, and the permits will include any conditions the Corps deems necessary to ensure that wetlands are restored or that impacts are minimized or appropriately mitigated.

50. The EA explained that EGT's pipeline project has been designed to avoid all permanent wetland impacts, and that its impact avoidance and minimization measures include careful pipeline routing, aboveground facility siting, and the use of horizontal directional drilling (HDD) and conventional bore to avoid impacts to forested wetlands. Further, EGT must comply with the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*.⁷⁶

51. For the above reasons, the EA concluded that EGT's pipeline project would not have incremental impacts which when added to other projects' impacts could result in a significant cumulative impact on wetland resources.

Ground Water

52. The EA stated that construction of EGT's pipeline project, the other non-jurisdictional pipeline projects identified in Table B.9-1, the Bradley Plant (including its meter station and material/staging areas) and the 4-mile-long electric transmission line to service the processing plant are not expected to cause changes in the quality or quantity of groundwater resources. The EA also stated that EGT and its affiliate constructing the processing plant both would have in place Spill Prevention, Control, and Countermeasure Plans to contain spills that might occur during construction or operation.⁷⁷ EGT also represented that it would apply for a hydrostatic testing discharge permit from the Oklahoma Corporation Commission and comply with all terms and conditions of the permit.⁷⁸ The EA also explained that the Oklahoma Corporation Commission regulates

⁷⁶ The Commission's *Wetland and Waterbody Construction and Mitigation Procedures* can be found on the FERC website at <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>.

⁷⁷ EA at 26.

⁷⁸ EA at 15. Although not specifically noted in the EA, the companies constructing non-jurisdictional pipeline facilities identified in Table B.9-1 also would have to obtain any necessary hydrostatic testing discharge permit from the Oklahoma Corporation Commission.

oil and gas well drilling activities in that state and has regulations that include requirements to protect groundwater resources.

53. In view of the above considerations, the EA concluded that incremental impacts from EGT's proposed pipeline would not result in a significant cumulative impact on groundwater resources.

Vegetation, Wildlife, and Special Status Species

54. The EA acknowledged the potential for EGT's pipeline project and other projects to have cumulative effects on vegetation in the region of influence to the extent the other projects involve construction within 0.5 mile of EGT's pipeline route. (As discussed above, those areas are limited to the area where EGT's pipeline and other pipelines will interconnect with the Bradley Plant and downstream points where other pipelines' routes will intersect EGT's pipeline route.) However, EGT's construction activities and another company's construction activities should not result in cumulative effects if there is sufficient time between the two companies' construction activities. As discussed above, intersecting pipelines were either complete, already under construction, or still awaiting approval when the Commission issued the April 16 Order authorizing EGT's project. Further, the implementation of erosion control and restoration measures would help to restore disturbed vegetation. EGT would be required to comply with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan*.

55. The EA explained that the region where EGT's pipeline will be located is predominantly agricultural land and rangeland (30 percent agricultural and 32 percent rangeland, respectively). Almost all of EGT's 16.2-mile-long proposed pipeline route was sited across rangeland (52.3 percent), agricultural lands (20.0 percent), open land (12.6 percent), or industrial/commercial properties (11.6 percent). Only 3.5 percent of EGT's construction workspaces would affect forested lands. EGT also would employ HDD or conventional bore to avoid impacts to forested areas. EGT would minimize long-term impacts of its project to forested habitats by reducing project workspaces to the extent practicable, while allowing for safe and efficient construction of the project. EGT would be required to comply with the Commission's standard mitigation measures and procedures to minimize impacts to forested habitats during construction and operation of the project.

56. The EA stated that the Bradley Plant and meter station had both been sited entirely on rangeland. The EA acknowledged, however, that EGT's project and the other identified pipeline projects pipelines would have some long-term impacts on forested areas, which comprise approximately 26 percent of the region.

57. The EA acknowledged that no information was readily available on specific vegetation cover types potentially impacted by the 113 permitted oil and gas wells within

two miles of EGT's pipeline route. The EA stated, however, that the impact of well pad development generally would be expected to be limited to the size of the well pad and any associated access roads, which commonly affect an area of 3 to 5 acres per well.

58. The EA acknowledged that the impacts of EGT's and the non-jurisdictional projects listed in Table B.9-1 on vegetation providing wildlife habitat would not be inconsequential. The EA concluded, however, that the overall impact of these projects would be considered minor in comparison to the abundance of comparable habitat in the region. EGT would have to comply with the Commission's mitigation measures, and the EA assumed that the developers of non-jurisdictional facilities would be held to similar standards by applicable permitting agencies and affected landowners.

59. Although there would be long-term impacts on vegetation and wildlife habitat to the extent of forest clearing, temporary workspaces would be allowed to revert to forested habitat. The EA noted that areas that are rangeland and open land would quickly revert after reseeding to preconstruction conditions, and agricultural land could be placed back into agriculture soon after construction is completed. Minor acreage would be permanently disturbed for a permanent access road and construction of the Bradley Lateral tie-in facility.

60. Based on EGT's consultations with the U.S. Fish and Wildlife Service, the Oklahoma Department of Wildlife Conservation, and the Oklahoma Natural Heritage Inventory, the EA concluded that no impacts to state or federally listed threatened or endangered species were anticipated as a result of EGT's project.

61. In view of the above considerations, the EA determined that when added to the impacts of recently constructed, under construction, and reasonably foreseeable future actions, the impacts of EGT's proposed project, other pipeline projects identified in Table B.9-1, and the Bradley Processing Plant would not result in significant cumulative impacts on vegetation and wildlife habitat.

Cultural Resources

62. EGT consulted with the Oklahoma Archeological Society and State Historic Preservation Office. Based on those consultations and the absence of any other evidence suggesting that there are any protected historic properties or cultural resources within 0.5 mile of EGT's pipeline route, the EA concluded that EGT's project would not cause an incremental increase in any cumulative impacts on historic properties or cultural resources in the region of influence.

Land Use, Recreation, Special Interest Areas, and Visual Resources

63. With the exception of associated aboveground facilities and the permanent right-of-way limiting surface use, pipeline projects typically only have temporary impacts on land use. Vegetation within the rights-of-way for EGT's pipeline lateral and other identified pipeline projects would be cleared during construction, and permanent rights-of-way are maintained clear of trees or other structures.

64. While the EA acknowledged that EGT's project and the non-jurisdictional projects listed in Table B.9-1 would disturb hundreds of acres of land affecting a variety of land uses, the EA focused on incremental impacts that EGT's project could potentially add to those of other projects in the region of influence, i.e., areas within 0.5 mile of the 16.2-mile pipeline route. The EA acknowledged that EGT's pipeline project would have long-term impacts as some forested land would have to be cleared and kept clear for EGT's permanent 50-foot-wide right-of-way.⁷⁹ However, since disturbed rangeland will revert to rangeland and agricultural land can again be used for agricultural purposes once pipeline rights-of-way are restored, the impacts from pipeline projects to these types of land uses generally are temporary and short-term.

65. In this regard, the EA reiterated that EGT would have to comply with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*, which would ensure that the impacts of EGT's project will be minimized or mitigated to the greatest extent practicable. The EA also reiterated the assumption that the developers of other pipeline projects in the region, including the pipeline projects intersecting EGT's pipeline route and thus crossing the region of influence, would be subject to requirements that they implement similar construction and restoration practices to minimize impacts on land use would mostly be limited to the construction phase and would be temporary and minor.⁸⁰

⁷⁹ Based on U. S. Geological Service Land Cover Datasets, 26 percent of all land within 0.5 mile of EGT's pipeline route is forested land. As noted above, however, forested land comprises only 3.5 percent of the land that will be used for construction workspaces (permanent and temporary right-of-way) for EGT's proposed pipeline. Thus, to the extent practicable, it appears that EGT has sited its proposed pipeline route to avoid forested areas.

⁸⁰ *Id.* at 28.

66. In view of the above considerations, the EA concluded that impacts to agriculture and rangeland from EGT's pipeline project and the other identified pipeline projects would be temporary.⁸¹

67. The EA's section on land noted again that development of a gas and/or oil well development typically results in surface disturbance of between three to five acres of land for the well pad, waste pits, and access roads. The EA therefore found that the non-jurisdictional projects with the greatest potential for long-term impacts in the region of influence for EGT's pipeline project were the South Oklahoma Oil Province development projects identified within two miles of EGT's pipeline route.⁸²

68. The EA found that EGT's pipeline project would not impact any special interest areas, such as public lands; natural, recreational, or scenic areas; or wildlife management areas. Therefore, no cumulative impacts to such areas were anticipated.⁸³

69. The EA explained that most visual and aesthetic impacts associated with EGT's pipeline project would be limited to the period of active construction and would be associated with the presence of construction equipment, personnel, and disturbed soil. Following construction, the landscape would be re-contoured to as near pre-construction conditions as practical, revegetated in accordance with the Commission's standard mitigation requirements, and allowed to revert to pre-construction uses and condition (except in areas of permanent tree clearing on the right-of-way). The portions of the route crossing agricultural land, emergent wetlands, most scrub/shrub wetlands, open lands, and rangeland would return to pre-construction conditions within one to two growing seasons.⁸⁴

70. The EA acknowledged that EGT's pipeline project would have some long-term visual impacts since some forested land would be cleared. In addition to clearing for the permanent 50-foot-wide right-of-way, another 1.4 acres of forestland would need to be cleared for temporary construction areas. Although the temporary work spaces would eventually recover to pre-construction conditions, the EA acknowledged that the impact nevertheless will be long-term. Forested areas cleared for permanent right-of-

⁸¹ EA at 27.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

way would be converted to herbaceous ground cover, which would result in a permanent visual impact over limited sight distances. The EA stated that EGT's construction and operation of the above-ground tie-in facility between its proposed lateral and its existing mainline would have a permanent but minor impact on the visual landscape. However, EGT would maintain naturally existing vegetation to screen the aboveground tie-in facilities to lessen the visual impact to landowners. The EA concluded that EGT's project would not have significant impacts on visual resources.⁸⁵

Air Quality

71. The EA acknowledged that the operation of equipment and ground disturbance during construction of EGT's pipeline would have impacts on air quality.⁸⁶ However, once construction is completed, associated emissions would subside, and EGT's operation of the pipeline lateral would not have any further impacts on air quality.

72. The EA acknowledged that the construction of facilities for the other identified projects also would have air impacts. However, the EA concluded that EGT's project and another project would have cumulative impacts on air quality in the same area only if EGT and the company constructing the other project engage in construction activities in the same area during the same timeframe. Based on the limited scope of EGT's proposed construction activities and the temporary nature of construction emissions, the EA concluded EGT's project will not have significant air quality impacts, and its air quality impacts will not be sufficient to have an incremental effect on air quality impacts from other sources so as to create a significant cumulative impact on air quality.

73. We agree with EA's conclusion regarding air quality impacts. As discussed above, although EGT's pipeline route is intersected by several other pipelines' routes, practical considerations make it unlikely they will be working in their overlapping construction rights-of-way at the same time. Further, the other projects have different construction schedules, and some are already completed. Regarding the Bradley Plant, once EGT has completed its construction activities, particularly its construction of its interconnect at the Bradley Processing Plant, EGT's pipeline project will not be a continuing source of emissions or otherwise affect air quality in any way that would have an incremental effect on any air quality impacts from the Bradley Plant's gas

⁸⁵ *Id.*

⁸⁶ EA at 19, Table B.7-1, "Estimated Construction Emissions - Bradley Lateral Project."

processing operations. Once construction of EGT's lateral is complete, the associated emissions would subside and air quality would return to previous conditions and not further impact air quality in the project area. Based on the limited scope of EGT's proposed activities and the temporary nature of construction emissions, there would be no significant cumulative impact on air quality as a result of the project.

Noise

74. The EA stated that ambient noise levels would be affected by HDD and the operation of other equipment during construction of the Bradley Pipeline Lateral. The EA stated that in areas where EGT's construction activities are increasing ambient noise levels, noise levels also could be affected by other companies' construction activities that were occurring at the same time, depending on their location. Although EGT and another company are unlikely to be working in their overlapping rights-of-way area at the same, the EA thus acknowledged that EGT and another company could be engaged in construction activities at the same time in sufficient proximity that they would both affect noise levels in the same area. However, the EA noted the limited scope of EGT's pipeline lateral project, that its construction activities at any particular location (including its HDD sites) would be temporary, and the fact that construction activities generally would be during daylight hours. Since these conclusions generally also would be valid regarding any other companies' construction activities at the same time in near enough proximity to affect noise levels in the same area, we agree with the EA's conclusion that any incremental noise from EGT's construction activities would not be the cause of significant cumulative noise impacts.

75. As demonstrated by the above discussion of the EA's findings and conclusions, the EA's discussion was not "speculative and conclusory" with "no analytical analysis at all" as characterized by the Landowners. Rather, the EA sufficiently addressed the other projects' impacts in areas where the impacts of EGT's project could reasonably be deemed to be cumulative effects.

3. Greenhouse Gas Emissions

76. In their rehearing request, the Landowners assert for the first time that the Commission failed to comply with CEQ's Draft Guidance for *Greenhouse Gas Emissions and Climate Change Impacts*⁸⁷ by failing to discuss the Bradley Plant's impacts on

⁸⁷ *Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews*, issued on December 18, 2014, available at

(continued...)

climate change.⁸⁸ CEQ's draft guidance was issued on February 28, 2010, and its revised draft guidance was issued on December 18, 2014. CEQ has not finalized its draft guidance.

77. The processing plant is currently operating and completed intrastate pipeline facilities are already transporting processed gas to downstream transmission systems.⁸⁹ Thus, the Bradley Plant can (and currently does) operate completely independently of EGT's lateral, which has not yet been completed or placed in service. As discussed below, the Bradley Plant is not part of the proposed action.

78. Moreover, any impacts of GHG emissions from the Bradley Plant will be minimal. The Oklahoma DEQ's air quality permit for the Bradley Plant was a "minor source" permit, and the greenhouse gas emissions associated with the Bradley Plant are expected to be very minor (below the reporting threshold of 25,000 metric tons per year of carbon dioxide equivalents). Further, because emissions from the plant are expected to be minor, the Oklahoma DEQ's air quality permit does not require Enable Midstream to report emissions information. CEQ's December 14, 2014 draft guidance states at page 10:

In addressing GHG emissions, agencies should be guided by the principle that the extent of the analysis should be commensurate with the quantity of projected GHG emissions. This concept of proportionality is grounded in the fundamental purpose of NEPA to concentrate on matters that are truly important to making a decision on the proposed action.

<http://energy.gov/nepa/downloads/revised-draft-guidance-consideration-greenhouse-gas-emissions-and-climate-change-nepa> (*Revised Draft Guidance*).

⁸⁸ Rehearing request at 17. As the Commission has explained on numerous occasions, raising new issues in such an untimely manner as in a request for rehearing is disruptive to the administrative process and unfairly prejudices applicants and other parties. *See, e.g., Enron Energy Services Inc. v. Sellers of Energy*, 122 FERC ¶ 61,015, at P 64 n.98 (2008) (citing *Sierra Pacific Power Co.*, 96 FERC ¶ 61,050, at 61,124 (2001)); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,113, at P 188 (2006) (denying rehearing of new issues as outside the proper scope of the rehearing).

⁸⁹ EA at 22-24, Table B.9-1.

79. However, notwithstanding our finding that any impacts of GHG emissions from the Bradley Plant will be minimal, even if we believed that the Bradley Plant's GHG emissions could increase atmospheric concentrations and have some impact on climate change, there is currently no methodology or policy guidance to determine how the plant's incremental contribution to greenhouse gasses would translate into physical effects on the global environment.

D. The Bradley Processing Plant

80. The Landowners assert that the Commission erred in failing to include Enable Midstream's non-jurisdictional Bradley Processing Plant as part of its environmental analysis under NEPA. We disagree.

81. As explained in the April 16 Order and discussed above, in considering cumulative impacts attributable to EGT's proposed pipeline lateral project, the Bradley Plant, and several non-jurisdictional pipelines being constructed to receive gas processed at the plant were among the non-jurisdictional projects identified by the EA as projects that might have cumulative environmental impacts.⁹⁰ The most significant environmental permit required for the Bradley Plant was the Air Quality Minor Source General Permit for Oil and Gas Facilities (GP-OGF). The Oklahoma Department of Environmental Quality (Oklahoma DEQ) issued the necessary GP-OGF Authorization to Construct on December 18, 2013 (Permit No. 2013-2217-NOI), and the plant is currently operating. On September 26, 2014, the Oklahoma DEQ modified the permit which enabled the plant operator to begin the second phase expansion of the plant's processing capabilities. The second phase plant facilities are currently under construction.

82. The EA did not identify any significant cumulative impacts that would result from construction and operation of the Bradley Plant, which will be located on a 40-acre sited entirely on rangeland to avoid impacts on wetland resources and fisheries.⁹¹ The developer of the Bradley Plant is employing Best Management Practices, which include the implementation of erosion control and restoration measures, to minimize impacts on

⁹⁰ As discussed herein, other projects that the EA identified as having the potential for cumulative impacts included 113 oil/gas well permits issued since 2010 by the Oklahoma Corporation Commission for wells in Grady, McClain, and Garvin Counties; several gathering pipelines to transport raw gas to the processing plant; and several pipelines to receive processed gas from the plant. EA at 22-24, Table B.9-1.

⁹¹ *Id.* at 24-26.

waterbodies.⁹² The developer also has in place a Spill Prevention, Control, and Countermeasure Plan to be implemented to contain any spills that occur during construction and operation of the Bradley Plant.⁹³

83. Notwithstanding the fact that no significant cumulative impacts were identified in the EA's analysis of the Bradley Plant, the Landowners argue that the Commission was nevertheless required to review impacts of the plant as though construction of the plant were part of EGT's proposed pipeline project. Under the test developed by the U.S. Corps of Engineers, the following four factors are considered in order to determine whether there is sufficient federal control over a non-jurisdictional project to warrant inclusion of the project in the agency's environmental analysis: (i) whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project); (ii) whether there are aspects of the non-jurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity; (iii) the extent to which the entire project will be within the Commission's jurisdiction; and (iv) the extent of cumulative federal control and responsibility.⁹⁴

⁹² *Id.* at 25.

⁹³ *Id.* at 26.

⁹⁴ See *Algonquin Gas Transmission Company (Algonquin)*, 59 FERC ¶ 61,255 at 61,934. Some parties in the *Algonquin* proceeding opposed the construction of the new electric generation plant that would be served by Algonquin's proposed pipeline facilities. The Commission acknowledged that, in light of the courts' holdings in *Henry v. FPC*, 513 F.2d 395 (D.C. Cir. 1975) and *Winnebago Tribes of Nebraska v. Ray*, 621 F.2d 269, 272 (8th Cir.), *cert. denied*, 449 U.S. 836 (1980) (*Winnebago*), there may be situations where there is sufficient nexus between proposed jurisdictional facilities and planned non-jurisdictional facilities and sufficient Federal control and responsibility over all the facilities that the projects should be viewed as one Federal action for environmental purposes, requiring the Commission to give some environmental consideration to the non-jurisdictional facilities. *Algonquin*, 59 FERC ¶ 61,255 at 61,935-36. Therefore, in *Algonquin* the Commission applied the four-prong test that was developed by the U. S. Corps of Engineers following the *Winnebago* decision and upheld by the court in *Sylvester v. Corps of Engineers*, which found that the Corps' procedures "strike an acceptable balance between the needs of NEPA and the Corps' jurisdictional limitation." 884 F.2d 394 (9th Cir. 1989). The Commission concluded in *Algonquin* that it did not have sufficient control and responsibility to cause the construction of the private electric generation power plant to become a Federal action.

84. With respect to factor (i), EGT's Bradley Pipeline Lateral will be a link in but one of the transportation corridors created by the Bradley Plant project. Pipelines will be constructed to transport raw gas to the plant and four non-jurisdictional pipelines also are being constructed to receive processed gas from the Bradley Plant.⁹⁵ In view of these considerations, EGT's pipeline lateral project is not a major part of the construction activities, and the first factor therefore does not militate in favor of the Commission's environmental assessment of EGT's project including analysis of the Bradley Plant as part of the Commission's action.

85. With respect to factor (ii), while the Bradley Plant certainly determines the upstream end of EGT's proposed pipeline lateral since the lateral must interconnect with the plant to receive gas from it, operationally, the other end of EGT's lateral only needs to interconnect with its existing mainline facility at a hydraulically feasible point downstream of the mainline's compression facilities. While EGT had an incentive to propose the most direct feasible route between its mainline and the Bradley Plant in order to minimize expense, overall pipeline length, and ground disturbance, EGT had considerable flexibility in designing the route between any of those points and the Bradley Plant. Indeed, while EGT proposed what it believed to be the most direct and shortest route, EGT made numerous adjustments as information became available in order to address landowner and community concerns, follow property lines to the extent practicable, use existing rights-of-way, and avoid or minimize impacts to identified sensitive environmental resources. Thus, while the location of the Bradley Plant was a significant factor in siting the Bradley Pipeline Lateral, it was not wholly determinative of the location and configuration of the lateral.

86. With respect to factor (iii), the extent to which the entire project is within the jurisdiction of the Commission further weighs against the Commission needing to include the Bradley Plant in its environmental review. In view of the non-jurisdictional production wells that will produce the gas processed at the Bradley Plant, the non-jurisdictional gathering lines being constructed to transport the raw gas to the Bradley Plant, and the other, non-jurisdictional intrastate, pipelines being constructed to receive processed gas from the Bradley Plant, EGT's 16.2-mile-long jurisdictional pipeline

⁹⁵ In addition to EGT's Bradley Pipeline Lateral, four intrastate pipelines, one 2.5-mile-long, one 0.9-mile-long, one 3.2-mile-long, and one 5.4-mile-long, will be constructed to transport gas from the processing plant to downstream pipeline systems. These other pipelines, being constructed by existing intrastate pipeline companies, can also be used to provide service under section 311 of the Natural Gas Policy Act for the transportation of gas that will enter the interstate pipeline grid. EA at 22-23, Table B.9-1.

lateral is a minor part of the “project.” The Commission has no authority over the permitting, licensing, funding, construction, or operation of any of the other facilities. In other words, the Commission’s jurisdiction over EGT’s proposed pipeline lateral is not sufficient to “federalize” the Bradley Plant or any of the other projects if they and EGT’s project are all viewed as one project.

87. Finally, with respect to factor (iv), federal control is determined by the amount of federal financing, assistance, direction, regulation, or approval inherent in a project.⁹⁶ Here, the extent of cumulative federal control and responsibility over the Bradley Plant is limited. The Bradley Plant facilities will be owned by Enable Products, LLC with no federal financial involvement. While Enable Products must obtain any necessary federal permits, Oklahoma has responsibility for the permitting of oil and gas production, and processing facilities fall under the jurisdiction of the Oklahoma Corporation Commission and other state and local agencies, including the Oklahoma DEQ. Consequently, cumulative federal control over the Bradley Plant is minimal and does not warrant the Commission extending its own environmental review to include the Bradley Plant.

88. In view of the above considerations, on balance we find that we are not compelled to consider the Bradley Plant as part of our action of authorizing the Bradley Pipeline Lateral for purposes of NEPA. Moreover, the EA’s consideration of the Bradley Plant in the cumulative impacts analysis was sufficient to satisfy our NEPA responsibility.

E. Issue Relating Specifically to the Landowners’ Farm

89. The Landowners argue that the EA’s discussion of mitigation measures is conclusory, and fails to require EGT to avoid mature hackberry trees or groundwater wells located on the Nichols Farm Property. The EA and April 16 Order fully addressed these issues.⁹⁷ However, we clarify that our statements in the April 16 Order regarding EGT meeting with the Landowners to assess feasibility of making shifts in pipeline alignment and/or workspace to preserve Hackberry trees on the Landowners’ farm,⁹⁸ and our observation that section 380.15(b) of the regulations states that the desires of landowners should be taken into account in the planning, location, clearing, and

⁹⁶ *Algonquin*, 59 FERC at 61,935.

⁹⁷ EA at 12 (springs and groundwater) and 16 (Hackberry trees); April 16 Order at P 16 (Hackberry trees) and 21 (springs and groundwater).

⁹⁸ April 16 Order at P 20.

maintenance of rights-of-way and the construction of facilities on their property,⁹⁹ were not intended to convey that EGT was or would be required to accede to the Landowners' in such regards. Rather, while we always encourage pipeline companies to engage in civil discussions with landowners and accommodate their desires to the extent feasible, EGT is not required to make any changes to the April 16 Order's approved route across the Landowners' farm which it does not determine to be feasible.

90. As discussed in the April 16 Order, the Bradley Pipeline Lateral will be constructed pursuant to, among other things, the procedures and mitigation measures set forth in the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures*.¹⁰⁰ We found that section 157.206(b)'s standard environmental conditions, including the above plan and procedures, are sufficient to protect vegetation and water resources. Further, EGT is required to follow the construction procedures and mitigation measures described in its application, supplemental filings, and as identified in the EA, and any modifications require Commission approval.¹⁰¹ There is no need for any other additional conditions with respect to construction on the Landowners' farm.

F. Other Issues Raised by the Landowners

91. The Landowners state that the EA failed to adequately consider numerous adverse environmental impacts, including impacts to soils, migratory birds, water resources, land use, tree clearing, reliability and safety, seismic activity, and cultural resources. We address these issues below.

Floodplain Permit

92. Landowners asserted that EGT's McClain County floodplain development permit expired on March 15, 2015. However, the Commission has confirmed that EGT's McClain County floodplain development permit was issued on September 9, 2014, and required EGT to commence construction within one year. EGT satisfied that condition.

⁹⁹ *Id.* at n.37.

¹⁰⁰ EA at 2-3 (Our Plan and Procedures may be found on the FERC website at <http://www.ferc.gov/industries/gas/enviro/plan.pdf> and <http://www.ferc.gov/industries/gas/enviro/procedures.pdf>).

¹⁰¹ *See* Environmental Condition 1, Appendix to the EA.

Soils

93. The Landowners complain that the EA does not contain adequate discussion of impacts to soils on the Nichols Farm Property. We disagree. The EA specifically addressed impacts to soils, including those found on the Nichols Farm Property, and concluded that impacts to soils would be insignificant.¹⁰² As explained in the EA, EGT must implement mitigation measures contained in Commission staff's *Upland Erosion Control, Revegetation, and Maintenance Plan*, such as use of waterbars, sediment filters, erosion control fabric, trench breakers, and mulch, to mitigate any minor impacts to soils, including soils found on the Nichols Farm Property.¹⁰³ Erosion control devices would also be maintained during construction and until disturbed areas are restored, seeded, and stabilized. Further, EGT must conduct post-construction monitoring to verify that revegetation is successful. Therefore, we agree with the EA's conclusion that impacts to soils would be minor, and deny rehearing on this matter.

Migratory Birds

94. The Landowners contend that the EA misstates the U.S. Fish and Wildlife Service's (FWS) findings regarding impacts to bald eagles, arguing that the FWS's information is out of date and that bald eagle habitat may be in the vicinity of the project.

95. Section B.3 of the EA addressed endangered species and their habitats, and concluded that the project may affect, but is not likely to adversely affect federally-listed species identified as potentially occurring in the project area.¹⁰⁴ EGT consulted with the FWS, the Oklahoma Natural Heritage Inventory, and Oklahoma Department of Wildlife Conservation concerning threatened and endangered species. The federally listed or endangered species potentially in the project area include the whooping crane, interior least tern, black-capped vireo, piping plover, and Arkansas River shiner. Records from these agencies indicate that none of these species have known occurrences in the project area. As stated in the EA, if any active nests — including any bald eagle nests, which are not known to occur but could potentially occur along the Wachita River — are encountered near work areas, EGT will be required to avoid construction activities within 660 feet of the nest (as required by the FWS), and EGT would consult with the FWS for further guidance. This buffer is required whenever an active nest is found to be present.

¹⁰² EA at 7-8

¹⁰³ EA at 7.

¹⁰⁴ EA at 9-10.

However, we also note that project construction has been timed to avoid tree clearing during nesting season, and bald eagles typically complete nesting by the end of June. Thus, we agree with EA's conclusion that there is a low likelihood of adversely affecting migratory birds, including bald eagles, and deny rehearing on this matter.

Water Resources

96. The Landowners argue that the EA does not adequately address the potential impacts to spring water located on the Nichols Farm Property. We disagree. The EA addressed impacts to water resources and concluded that impacts to groundwater resources would be minimal because the shallow excavation necessary for pipeline construction is typically less than 10 feet.¹⁰⁵ EGT did not identify any wells on the Landowners' property within 150 feet of construction activities. While the Landowners state that there is a spring located on their property, they have neither identified its location nor permitted EGT to survey their property to locate the spring. Consequently, we find no reason to disagree with the EA's conclusion that impacts to groundwater resources will be minimal, and deny rehearing on this matter.

97. However, we acknowledge the importance of springs to the Landowners' farm and its continued operation, and we encourage EGT to agree to requested minor shifts in the pipeline alignment and/or site-specific reductions in construction workspace to the extent feasible to avoid impacts to any springs on their property. While we are not imposing any specific condition in this regard, we point out that EGT has an incentive to avoid causing impacts since it would be responsible for mitigating any damages to farm springs, including providing an alternative source of water, compensating the Landowners, or mitigating and reestablishing the spring's hydrology.

Land Use

98. The Landowners complain that the project will significantly impact their use of their farm property because the project right-of-way will likely contain some restrictions. After construction, affected agricultural areas of the Landowners' farm will be allowed to revert back to their current use. Trees would be restricted on the permanent pipeline easement, as would permanent structures. Trees can be allowed to regrow on the temporary right-of-way. Farm equipment will be able to cross over the pipeline. However, if the Landowners will need to cross the pipeline right-of-way with heavy equipment in the future, they should discuss this issue with EGT to address in the pipeline design specifications the need for specific safe crossing locations, as necessary.

¹⁰⁵ EA at 11-14.

Finally, EGT is responsible for compensating the Landowners for any losses caused by the project right-of-way. In a few of these considerations, potential short-term and long-term impacts to the Landowners' use of their property do not justify rerouting the pipeline to avoid Landowners' property.

Tree Clearing

99. The Landowners state that the EA erroneously failed to require EGT to mitigate the potential clearing of mature hackberry trees on their property. This issue is fully addressed above,¹⁰⁶ and all we will add here is to note that the EA concluded that the impacts of forest clearing would not be significant, because only a small area of trees on their property will be affected by EGT's project.¹⁰⁷ The Landowners will not be allowed to plant trees on the permanent right-of-way which will include about 4.1 acres. Trees can be allowed to grow on the 1.4 acres needed for temporary additional width for the construction right-of-way and other workspace. We agree with the EA's conclusion that these impacts would not be significant.

Reliability and Safety

100. The Landowners complain that the EA does not adequately address the reliability and safety of project facilities, including the dangers of methane releases. As stated in the EA,¹⁰⁸ all project facilities must be designed, constructed, tested, operated, and maintained to conform with, or exceed, the requirements of the part 192 of the U.S. Department of Transportation's (DOT) regulations (*Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards*);¹⁰⁹ the siting and maintenance requirements of section 380.15 of the Commission's regulations;¹¹⁰ and any other applicable federal and state regulations. These regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures.

¹⁰⁶ See *supra* Part II.B.4.

¹⁰⁷ EA at 8.

¹⁰⁸ EA at 20-21.

¹⁰⁹ 49 C.F.R. pt. 192 (2015).

¹¹⁰ 18 C.F.R. § 380.15 (2015).

101. We note that under a Memorandum of Understanding on Natural Gas Transportation Facilities dated January 15, 1993 between the DOT and the Commission, DOT has the exclusive authority to promulgate federal safety standards used in the transportation of natural gas. Section 157.14(a)(9)(vi) of the Commission's regulations¹¹¹ requires applicants to certify that they will design, install, inspect, test, construct, operate, replace, and maintain the facility for which a certificate is requested in accordance with federal safety standards and plans for maintenance and inspection. The Commission accepts this certification and does not impose additional safety standards other than the DOT standards. Therefore, we find that the EA fully addressed the reliability and safety of project facilities, and deny rehearing on this matter.

Seismic Activity

102. The Landowners complain that the EA does not discuss the risks to the project posed by seismic activity in the state of Oklahoma. The EA fully addressed this issue. The Landowners raise no new issues on this matter, and we will deny rehearing.

103. As stated in the EA,¹¹² historically, Oklahoma has not experienced very large earthquakes (magnitude 5.0 and greater). The largest earthquakes on record that had epicenters in Oklahoma were a magnitude 5.5 earthquake in El Reno in 1952 and a magnitude 5.6 in Lincoln County in 2011. Secondary effects of earthquakes include liquefaction and related slope failure. Based on the distance of the project from active fault zones which are greater than 100 miles away, seismically active areas, and the overall geologic setting, the geologic hazard associated with seismicity and faulting is considered to be of relatively low risk to the project area. Correspondence that EGT received from the Oklahoma Geological Survey on May 14, 2014, stated that earthquake hazards in the vicinity of the proposed project are minimal, and that any faults in the area are small, dormant, and at depths of 1,000 feet or more from the ground surface.

Cultural Resources

104. The Landowners restate their position that their ancestor, Jewel Eugenia Nichols, who originally received the Nichols Farm Property as an allotment from the Chickasaw nation, was enrolled as a blood Chickasaw, and that their property therefore is entitled to special protections as Native American tribal land.

¹¹¹ 18 C.F.R. § 157.14(a)(9)(vi) (2015).

¹¹² EA at 6.

105. The EA and April 16 Order fully addressed this issue. The Landowners raise no new issues on this matter, and we will deny rehearing. As explained by the April 16 Order, Commission staff consulted with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) to ascertain whether any special protections, including Native American tribal land protection, apply to the Nichols Farm Property. That consultation revealed that the Nichols Farm Property would have no special protective status unless the property had been allotted to an allottee having 50 percent or more Indian Blood.¹¹³ Relying on correspondence from the BIA filed as Exhibit A to EGT's December 10, 2014 comments, which indicated that Jewel Eugenia Nichols was enrolled as a 1/16 blood Chickasaw, the EA concluded that the Nichols Farm Property is not subject to any special protections as Native American tribal land.¹¹⁴

G. Alleged Procedural Deficiencies

106. The Landowners challenge that the Commission failed to provide for sufficient public involvement with the Commission's NEPA procedures because the Commission did not seek public comment on the EA prepared for EGT's prior notice proposal. We disagree.

107. Federal agencies contemplating a major federal action must "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures."¹¹⁵ When a decision requires only an EA, rather than an EIS, agencies must still involve the public in the EA process "to the extent practicable."¹¹⁶ However, agencies have "significant discretion in determining when public comment is required with respect to EAs."¹¹⁷ When an agency prepares an EA accompanied by a finding of no significant impact, as is the case here, it must only make the finding available for public review and

¹¹³ EA at 18.

¹¹⁴ *Id.*

¹¹⁵ 40 C.F.R. § 1506.6(a) (2015).

¹¹⁶ 40 C.F.R. § 1501.4(b) (2015); also *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 518 (D.C. Cir. 2010).

¹¹⁷ *Id.* at 519 (citing *TOMAC v. Norton*, 433 F.3d 852, 861 (D.C. Cir. 2006)).

comment if the action is one in which the agency would normally prepare an EIS, or if the nature of the action is without precedent.¹¹⁸

108. The Commission's notice of EGT's prior notice application was issued on June 30, 2014, and published in the *Federal Register* on July 9, 2014,¹¹⁹ in accordance with section 157.205(d) of the Commission's regulations.¹²⁰ Trans Louisiana Gas Pipeline, Atmos Energy, Laclede Gas, and the Missouri Public Service Commission filed timely unopposed motions to intervene. On August 13, 2014, the Landowners filed a timely protest with the Commission, objecting to the proposal's route across their 270-acre property. On September 18 and October 29, 2014, the Landowners filed untimely motions to intervene as well as additional information to supplement their August 13 Protest. No other comments or protests to EGT's prior notice proposal were filed with the Commission.

109. Because the Landowners' protest was not withdrawn before the end of the 30-day reconciliation period, EGT's prior notice request was treated as an application for case-specific certificate authorization under section 7 of the NGA.¹²¹ As such, Commission staff prepared an EA to evaluate whether the adverse environmental impacts of EGT's proposal could be reduced to acceptable levels under section 157.206(b)'s standard environmental conditions, as well as to address the specific environmental concerns raised by the Landowners' protest. In order to fully address the Landowners' specific concerns, on October 22, 2014, Commission staff issued an environmental data request to EGT seeking additional information concerning the issues raised by the Landowners' protest.

110. On February 11, 2015, Commission staff posted notice on the Commission's website explaining when the EA for EGT's proposal would be available and how interested parties could subscribe to receive the EA directly. The EA addressed the Landowners' specific environmental concerns and concluded that EGT's proposal could be authorized under the Part 157 blanket certificate construction program. Further, as detailed above, we have fully addressed the Landowners' comments on the EA on rehearing. Consequently, we conclude that staff acted within the Commission's

¹¹⁸ 40 C.F.R. § 1501.4(e)(2) (2015).

¹¹⁹ 79 Fed. Reg. 38,882 (2014).

¹²⁰ 18 C.F.R. § 157.205(d) (2015).

¹²¹ 18 C.F.R. § 157.205(f) (2015).

significant discretion in deciding that public comment on the EA was not required in this case, and deny rehearing on this matter.¹²²

111. The Landowners also claim that the Commission must hold an evidentiary hearing to resolve disputed issues of material fact, specifically the extent of adverse environmental impacts on their farm and whether the property is entitled to special protections as Native American tribal land. We disagree. The Commission's decision

¹²² The Landowners also contend that the Commission erred by issuing the April 16 Order in advance of the "90-day federal authorization decision deadline" set by Commission staff's February 11, 2015 Notice of Schedule for Environmental Review. The Landowners are mistaken; the deadline noticed by staff's February 11 Notice establishes the date by which other federal authorizations should be made. It has no relevance to timing of Commission action.

Pursuant to the Energy Policy Act of 2005, Pub. L. No. 109-58, § 241(b), 119 Stat. 594, 688-89 (2005), Congress authorized the Commission to coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to sections 3 and 7 of the NGA, including the authority to establish a schedule for the completion of all federal authorizations required for such proceedings. Thus, the Commission established a 90-day decision deadline from the date of issuance of the Commission's final environmental document for federal or state agencies to issue all necessary federal authorizations (*i.e.*, permits, special use authorizations, certifications, opinions, or other approvals). *See Regulations Implementing the Energy Policy Act of 2005; Coordinating the Processing of Federal Authorizations for Applications under Sections 3 and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record*, Order No. 687, FERC Stats. & Regs. ¶ 31,232 (2006). This 90-day decision deadline, however, applies to other federal or state agencies, not the Commission. Staff's February 11 Notice merely provided relevant federal and state agencies with notice of the Commission's schedule for environmental review of the Bradley Lateral Project, including the proposed 90-day federal authorization decision deadline for the project (*i.e.*, May 28, 2015). Further, the Commission regularly issues authorizations under section 3 of the NGA or certificates of public convenience and necessity under section 7 of the NGA prior to expiration of the applicable 90-day federal authorization decision deadline. *See, e.g., Equitrans, LP*, 147 FERC ¶ 61,032 (2014); *Panhandle Eastern Pipeline Co., LP*, 147 FERC ¶ 61,043 (2014); *Southeast Supply Header, LLC*, 148 FERC ¶ 61,121 (2014).

whether to hold an evidentiary hearing is discretionary,¹²³ and an evidentiary hearing is not required if any genuine issues of material fact can be adequately resolved on the written record.¹²⁴ The fact that the Landowners do not agree with the Commission's decisions based on the existing record regarding certain disputed facts does not mean that the existing record is insufficient to support the Commission findings.

112. As explained above, the record in this proceeding was sufficient for the EA and April 16 Order to address the extent of adverse environmental impacts on the Landowners' farm property and the issue of whether the property is entitled to any special protections, including Native American tribal land protection. The Landowners have not offered any new evidence that was not part of the written record upon issuance of the EA and the April 16 Order. Thus, we conclude that these issues were adequately resolved on the written record, and deny rehearing on this matter.

H. Eminent Domain Authority

113. The Landowners seek clarification that the April 16 Order does not entitle EGT to the right of eminent domain authority for the Bradley Lateral Project, arguing that the April 16 Order did not make a finding of public convenience and necessity for the project. For the reasons discussed below, we deny clarification of the April 16 Order.

114. As the Commission explained in 1981 when it proposed regulations to implement the Part 157 blanket certificate construction program, “[a] blanket certificate granted under section 157.204 of the [proposed] regulations is a certificate of public convenience and necessity,” and that the new blanket certificate program was based on “generic determinations of public convenience and necessity” for the limited scope and types of construction activities and projects that pipeline companies would be able to undertake under the blanket certificates. *Interstate Pipeline Blanket Certificates for Routine Transactions; Proposed Rulemaking*, ¶ 32,117 FERC Stats. & Regs., at 33,039 (1981).

115. As a holder of a blanket construction certificate, EGT is authorized to undertake various routine activities, subject only to certain reporting, notice, and protest requirements. The blanket certificate procedures are intended to increase flexibility and reduce regulatory and administrative burdens. It is expected that activities to construct

¹²³ *Minisink v. FERC*, 762 F.3d 97, 114 (D.C. Cir. 2014) (citing *Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010)).

¹²⁴ *Id.* (quoting *Cajun Elec. Power Coop, Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994)).

facilities that are eligible for purposes of the blanket certificate regulations and can satisfy those regulations' environmental requirements and cost limits will have minimal impact, such that the close scrutiny involved in considering applications for case-specific certificate authorization is not necessary to ensure compatibility with the public convenience and necessity.¹²⁵

116. Because interested parties might have valid concerns about individual activities eligible to proceed under the prior notice procedures, the regulations provide an opportunity for protest and a more thorough review and potential adjudication of the issues raised in any protest.¹²⁶ Here, the Landowners' protest resulted in EGT's prior notice request being treated as an application for case-specific certificate authorization under section 7 of the NGA.¹²⁷ As detailed by the April 16 Order, we denied the Landowner's protest and determined that EGT had satisfied all of the blanket certificate regulations' conditions. Consequently, consistent with Commission policy against granting redundant case-specific authority,¹²⁸ we authorized EGT to proceed with construction of the Bradley Pipeline Lateral under its Part 157 blanket certificate, which includes the right of eminent domain authority under section 7(h) of the NGA.¹²⁹

I. Request for Stay

117. The Landowners' request for rehearing also includes a motion for stay of the April 16 Order pending rehearing and further judicial review, claiming the project will cause irreparable environmental harm if EGT is permitted to begin tree-clearing or other

¹²⁵ See *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368 (1982); 18 C.F.R. § 157.205(f) (2015).

¹²⁶ *Transcontinental Gas Pipe Line Corporation*, 98 FERC ¶ 61,094, at 61,288 (2002).

¹²⁷ 18 C.F.R. § 157.205(f) (2015).

¹²⁸ See *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138 (2014); *Kinder Morgan Gas Transmission, LLC*, 133 FERC ¶ 61,044 (2010).

¹²⁹ See 15 U.S.C. § 717f(h) (2012); also *Columbia Gas Transmission, LLC v. 1.01 Acres*, 768 F.3d 300, 314 (3rd Cir. 2014) (finding that the plain meaning of the Commission's Part 157 blanket certificate regulations grants the holder of a blanket certificate the right of eminent domain over the easements it seeks from landowners).

ground disturbing activities, as well as irreparable financial harm from opposing a condemnation proceeding in Oklahoma state district court.

118. The Commission reviews requests for stay under the standard established by the Administrative Procedure Act,¹³⁰ and grants a stay when “justice so requires.”¹³¹ In addressing a request for stay, we consider several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without a stay; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.¹³² Our general policy is to refrain from granting stays in order to ensure the definiteness and finality in our proceedings.¹³³ If the party requesting the stay is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.¹³⁴

119. As explained above, we have reviewed the Landowners’ request for rehearing and find no merit to their challenges to the April 16 Order or the EA prepared for EGT’s proposal and, therefore, find that the Landowners have not demonstrated that they will suffer irreparable injury from tree-clearing or other ground disturbing activities in the absence of a stay. Further, monetary losses incurred while opposing a condemnation proceeding in state court do not constitute irreparable harm for purposes of justifying a stay.¹³⁵ Consequently, we deny the Landowners’ request for stay.

¹³⁰ 5 U.S.C. § 705 (2012).

¹³¹ See, e.g., *Millennium Pipeline Company, LLC*, 141 FERC ¶ 61,022, at P 13 (2012) (*Millennium*); *Ruby Pipeline, LLC*, 134 FERC ¶ 61,103, at P 17 (2011) (*Ruby*); *AES Sparrows Point LNG, L.L.C.*, 129 FERC ¶ 61,245, at P 18 (2009) (*AES*); *Columbia Gas Transmission, LLC*, 129 FERC ¶ 61,021, at P 6 (2009) (*Columbia*); *Guardian Pipeline, L.L.C.*, 96 FERC ¶ 61,204, at 61,869 (2001) (*Guardian*).

¹³² *Id.*

¹³³ See, e.g., *Sea Robin Pipeline Co.*, 92 FERC ¶ 61,217, at 61,710 (2000)

¹³⁴ See, e.g., *Millennium*, 141 FERC ¶ 61,022 at P 14; *Ruby*, 134 FERC ¶ 61,103 at P 18; *AES*, 129 FERC ¶ 61,245 at P 18; *Columbia*, 129 FERC ¶ 61,021 at P 6; *Guardian*, 96 FERC ¶ 61,204 at 61,869.

¹³⁵ See, e.g., *Turlock Irrigation District and Modesto Irrigation District*, 144 FERC ¶ 61,051, at P 23 (2013) (denying a request for stay, finding that “[e]conomic loss alone does not constitute irreparable harm”) (citing *Guardian*, 96 FERC ¶ 61,204 at

(continued...)

The Commission orders:

Susie Purcell's, Gilbert Purcell's, and Susan Perine's May 18, 2015 requests for rehearing, clarification, and stay of the April 16, 2015 order authorizing EGT's pipeline and route across their property are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

61,870)); *Puget Sound Energy, Inc.*, 82 FERC ¶ 61,142, at 61,156 (1998) (denying a request for stay, finding that “[p]ecuniary losses are not considered irreparable harm”), *reh’g denied*, 83 FERC ¶ 61,022 (1998).