

155 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Comanche Trail Pipeline, LLC

Docket No. CP15-503-000

ORDER ISSUING PRESIDENTIAL PERMIT AND GRANTING AUTHORIZATION
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued May 19, 2016)

1. On May 29, 2015, Comanche Trail Pipeline, LLC (Comanche Trail) filed an application requesting a Presidential Permit and authorization pursuant to section 3 of the Natural Gas Act (NGA)¹ and Part 153 of the Commission's regulations² to site, construct, and operate a border-crossing facility (the San Elizario Crossing Project) to export natural gas to, and import natural gas from, Mexico. The border-crossing facility will be located at the international boundary between the United States, near the City of San Elizario in El Paso County, Texas, and Mexico, near San Isidro, in the State of Chihuahua.³

¹ 15 U.S.C. § 717b (2012).

² 18 C.F.R. 153 (2015).

³ Authorization under section 3 of the NGA is necessary for the siting, construction, or operation of facilities to import or export natural gas. In addition, pursuant to Executive Order No. 10485, dated September 3, 1953 (18 Fed. Reg. 5397), as amended by Executive Order No. 12038, dated February 3, 1978 (43 Fed. Reg. 4957), a Presidential Permit also must be obtained for the portion of an import or export facility crossing one of the United States' international borders. In Delegation Order No. 00-004.00A, effective May 16, 2006, the Secretary of the U.S. Department of Energy (DOE) renewed the delegation of authority to the Commission to grant or deny authorization under section 3 of the NGA and, if applicable, a Presidential Permit for the construction, operation, maintenance, or connection of import and export facilities. The Commission has no authority to approve or disapprove applications to import or export natural gas.

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2. For the reasons discussed below, the Commission will grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Comanche Trail is a limited liability company organized under the laws of Texas. Comanche Trail is owned by Energy Transfer Mexicana, LLC, a subsidiary of Energy Transfer Partners, L.P (Energy Transfer).⁴ Comanche Trail currently does not own any pipeline facilities or engage in any natural gas transportation services.

4. Comanche Trail proposes to construct and operate a border-crossing facility consisting of 1,086 feet of 42-inch-diameter pipeline extending from a point approximately 2.2 miles south-southeast of San Elizario in El Paso County, Texas, to the middle of the Rio Grande River at the international boundary with the State of Chihuahua, Mexico. The pipeline will be installed using a horizontal directional drill (HDD) under the Rio Grande River. It will have a design capacity of approximately 1.1 billion cubic feet per day (Bcf/day) and a maximum allowable operating pressure of 1,440 pounds per square inch gauge. The border-crossing pipeline will cost approximately \$2.5 million.⁵ Comanche Trail states that a Mexican affiliate will complete the HDD on the Mexican side of the border and construct pipeline to an interconnection with Mexico's pipeline grid. Comanche Trail states that the principal use of the proposed border-crossing pipeline will be to transport exported domestic gas for use as fuel in electric generation plants and industrial facilities in Mexico.

5. Comanche Trail contemplates owning, constructing, and operating an intrastate pipeline in Texas, the Comanche Trail Pipeline, that would be subject to the jurisdiction of the Railroad Commission of Texas. Comanche Trail's intrastate pipeline will transport gas southwest from the Waha Hub in Pecos County, Texas, to the proposed border-crossing facility. The intrastate pipeline will consist of approximately 195 miles of 42-inch-diameter pipeline with a total capacity of 1.1 Bcf/day. Comanche Trail anticipates that its intrastate pipeline will interconnect with other Texas intrastate pipelines, as well as processing plants, and that it may later interconnect with interstate

The Secretary of Energy has delegated such authority to DOE's Assistant Secretary for Fossil Energy.

⁴ Energy Transfer owns and operates approximately 35,000 miles of natural gas and natural gas liquids pipelines in the United States.

⁵ Comanche Trail states that it will enter into an agreement under which Energy Transfer or another affiliate will operate Comanche Trail's border-crossing facility.

pipelines. Comanche Trail also states that while it will initially provide only intrastate service on its contemplated upstream pipeline, it may at a later time provide interstate transportation services under section 311 of the Natural Gas Policy Act of 1978 (NGPA).⁶

II. Public Notice, Interventions, and Comments

6. Notice of Comanche Trail's application was issued on June 12, 2015, and published in the *Federal Register* on June 19, 2015.⁷ The due date for interventions, comments, and protests was July 6, 2015. El Paso Natural Gas Company, L.L.C. and the City of San Elizario (San Elizario) filed timely, unopposed motions to intervene, which were granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁸ On February 3, 2016, Bill Addington, a resident of the Big Bend region of Texas, filed an untimely motion to intervene. We will grant Mr. Addington's late-filed motion to intervene, since to do so at this state of the proceeding will not delay, disrupt, or unfairly prejudice any other party to the proceeding.⁹

7. San Elizario's motion to intervene included a protest. Comanche Trail filed an answer to San Elizario's protest.¹⁰ Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹¹ our rules provide that we may, for good cause, waive this provision.¹² We will accept Comanche Trail's answer because it has provided information that assisted us in our decision-making process.

8. San Elizario and numerous other commenters raised concerns about the environmental impacts of Comanche Trail's construction of 195 miles of pipeline in Texas upstream of the proposed border-crossing facility. San Elizario and several commenters claim that Comanche Trail's planned 195-mile-long upstream pipeline has

⁶ 15 U.S.C. § 3371(a)(2) (2012).

⁷ 80 Fed. Reg. 35,345-35,346.

⁸ 18 C.F.R. § 385.214(c) (2015).

⁹ See 18 C.F.R. § 385.214(d) (2015).

¹⁰ See Comanche Trail July 21, 2015 Motion for Leave to Answer.

¹¹ 18 C.F.R. § 385.213(a)(2) (2015).

¹² 18 C.F.R. § 385.101(e) (2015).

been improperly classified as an intrastate pipeline. These concerns are addressed below and in the Environmental Assessment (EA).

III. Consultation with Secretaries of State and Defense

9. On June 26, 2015, the Commission sent copies of Comanche Trail's application and a draft Presidential Permit to the Secretaries of State and Defense for their recommendations. Replies on behalf of the Secretary of State, dated October 7, 2015, and the Secretary of Defense, dated August 7, 2015, indicate no objection to the issuance of the requested Presidential Permit.¹³

IV. Discussion

A. Public Interest

10. Because the proposed facilities will be used to import and export natural gas across the international boundary between the United States and Mexico, the siting, construction, and operation of the proposed facilities is subject to the Commission's jurisdiction under section 3 of the NGA.

11. Section 3 provides for the Commission's approval of an application under that section "unless . . . it finds that the proposed exportation or importation will not be consistent with the public interest."¹⁴ Consistent with its jurisdiction under section 3, the Commission may also apply terms and conditions as necessary and appropriate to ensure that the proposed siting, construction, and operation are not inconsistent with the public interest.¹⁵

12. NGA section 3 further provides that the exportation and importation of natural gas between the United States and "a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation and exportation shall be granted without modification or delay."¹⁶ The United States and Mexico are

¹³ Executive Order No. 10485, 18 Fed. Reg. 5397 (1953), requires that the Commission obtain favorable recommendations of the Secretaries of State and Defense prior to issuing a Presidential Permit authorizing the construction of facilities at the borders of the United States for the exportation or importation of natural gas.

¹⁴ 15 U.S.C. § 717b(a) (2012).

¹⁵ *Id.*

¹⁶ 15 U.S.C. § 717b(c) (2012).

signatories to the North American Free Trade Agreement.¹⁷ The border-crossing facilities are needed to export gas that is being produced in the United States for sale to expanding energy and industrial markets in Mexico. Authorization for construction of the San Elizario Crossing Project will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Mexico, implementing a gas import/export arrangement that has been authorized by the Department of Energy's (DOE) Office of Fossil Energy.¹⁸

13. Many commenters argue that approval of the San Elizario Crossing Project is not in the public interest because Comanche Trail's construction of the non-jurisdictional upstream pipeline facilities will result in harm to the environment and gas exports are detrimental to domestic energy markets. A number of commenters also contend that Comanche Trail fails to show a need for its project because the combined capacity of its facilities and two other proposed projects to export gas would exceed the needs of the Comisión Federal de Electricidad, the indicated customer for all three of the projects.¹⁹

14. Section 3(a) of the NGA provides, in part, that "no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so."²⁰ In 1977, the DOE Organization Act transferred the regulatory functions of section 3 of the NGA to the Secretary of Energy.²¹ Subsequently, the Secretary of

¹⁷ Pub. L. No. 103-182, 107 Stat. 2057 (1993); Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (1993).

¹⁸ On May 28, 2015, in Docket No. 15-74-NG, DOE's Office of Fossil Energy granted Comanche Trail authorization to export and import up to a combined volume of 450 Bcf of natural gas to and from Mexico at any point on the international border.

¹⁹ The commenters identified the applications filed by Trans-Pecos Pipeline, LLC (Trans-Pecos) on May 28, 2015, in Docket No. CP15-500-000, and Roadrunner Gas Transmission, LLC (Roadrunner) on April 9, 2015, in Docket No. CP15-161-000. The Commission issued orders approving Roadrunner's and Trans-Pecos's applications for section 3 authorization and Presidential Permits on October 15, 2015, and May 5, 2016, respectively. *Roadrunner Gas Transmission, LLC*, 153 FERC ¶ 61,041 (2015); *Trans-Pecos Pipeline, LLC*, 155 FERC ¶ 61,140 (2016).

²⁰ 15 U.S.C. § 717b(a) (2012).

²¹ *See* 42 U.S.C. § 7151(b) (2012).

Energy delegated to the Commission authority to “[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.”²² The Secretary of Energy, however, has not delegated to the Commission any authority to approve or disapprove the import or export of the commodity of natural gas, as part of the Commission’s public interest determination under NGA section 3(a).²³ Thus, the claims by commenters that the capacity of this project, along with the capacity of the Trans-Pecos and Roadrunner projects, exceeds the Comisión Federal de Electricidad’s demand are beyond the Commission’s purview and are not appropriately addressed here. Moreover, as described below, the three proposed projects will interconnect with the different facilities in Mexico; the interconnection with the Trans-Pecos facilities is approximately 250 miles away from the proposed San Elizario Crossing Project. The multiple projects will presumably facilitate Comisión Federal de Electricidad, Mexico’s dominant electric company, in serving diverse segments of its national market. Further, there is no basis for us to conclude that any features of the jurisdictional border-crossing facilities would be affected by considerations associated with near term under-subscription on the upstream intrastate pipeline.

15. The construction and operation of the border-crossing facility will have minimal impact on landowners because while the construction activities in the United States will temporarily disturb approximately 4.2 acres of agricultural land, Comanche Trail will maintain only 1.3 acres permanently for operation and maintenance.²⁴ After construction, Comanche Trail will restore the disturbed areas to their preconstruction condition in accordance with the Commission’s guidelines. As discussed below and in the EA, Comanche Trail’s border-crossing facility will not have significant direct or indirect impacts on the environment if constructed and operated in compliance with the conditions in Appendix A to this order.

16. In view of the above considerations, the Commission finds that the approval of the proposed border-crossing facility for the importation and exportation of natural gas is not inconsistent with the public interest. Therefore, the Commission will issue an NGA section 3 authorization to site, construct, operate, and maintain the border-crossing facility and a Presidential Permit, attached as Appendix B to this order. However, the

²² DOE Delegation Order No. 00-004.00A (effective May 16, 2006).

²³ See, e.g., *National Steel Corp.*, 45 FERC ¶ 61,100, at 61,332-33 (1988).

²⁴ We note that authorization under section 3 of the NGA does not convey the right of eminent domain.

Commission will exercise its discretion under section 3 of the NGA to make its grant of section 3 authorization “upon such terms and conditions as the Commission may find necessary or appropriate.” Comanche Trail’s authorization is subject to the environmental conditions in Appendix A to this order.

B. Jurisdictional Status of Comanche Trail’s Upstream Pipeline Facilities

17. San Elizario and other commenters emphasize that the 195 miles of upstream pipeline that Comanche Trail plans to build will be used primarily to export gas to Mexico. Commenters also point to Comanche Trail’s acknowledgement that it plans to also use its pipeline to transport gas produced in states other than Texas for export to Mexico. In view of these considerations, San Elizario and other commenters challenge Comanche Trail’s assumption that its pipeline facilities will be non-NGA jurisdictional intrastate pipeline facilities, except for a relatively short segment of pipeline at the border subject to the Commission’s section 3 jurisdiction over import/export facilities.

18. Section 1(b) of the NGA provides, among other things, that the NGA “shall apply to the transportation of natural gas in interstate commerce . . . and to the importation or exportation of natural gas in foreign commerce.”²⁵ As the NGA provides separate treatment of these subjects, interstate commerce and foreign commerce are distinct terms and one is not inclusive of the other.²⁶ The legislative history of the NGA similarly demonstrates that the definition of interstate commerce does not include foreign commerce.²⁷

19. When a company constructs a pipeline to import or export volumes of natural gas, only a small segment of the pipeline close to the border is deemed to be the import or export facility for which section 3 authorization is necessary; the rest of the pipeline may be jurisdictional under section 7, if it will be used to transport gas in interstate commerce, or it may be NGA-exempt, if it will be used to gather gas or for intrastate transportation

²⁵ 15 U.S.C. § 717 (2012).

²⁶ See *Border Pipe Line Co. v. FPC*, 171 F.2d 149, 150-151 (D.C. Cir. 1948) (*Border*) (explaining that “‘interstate commerce’ does not include foreign commerce, unless Congress by definition for the purpose of a particular statute includes them both in the single expression.”). See also *Distrigas Corp. v. FPC*, 495 F.2d 1057, 1062 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974).

²⁷ See *Border*, 171 F.2d at 151 (discussing the legislative history of the NGA and concluding that Congress intentionally excluded foreign commerce from the definition of interstate commerce).

service.²⁸ Comanche Trail's pipeline will be located entirely in Texas, and when it begins service all of the transportation volumes will be Texas gas production received from other Texas intrastate pipelines or processing plants, and none of the gas will enter jurisdictional interstate commerce. Thus, the pipeline will not be engaged in interstate commerce. While Comanche Trail's pipeline will be transporting gas being exported to Mexico in foreign commerce, only a small segment of Comanche Trail's pipeline close to the border is deemed under Commission precedent to be the import/export facility for which section 3 authorization is necessary.²⁹ Further, while Commission authorization under section 3 of the NGA and a Presidential Permit are required for the necessary facilities at the border to effectuate the gas exports, the border-crossing facilities will be

²⁸ See *Southern LNG Inc.*, 131 FERC ¶ 61,155, at n.17 (2010) (“[w]hen companies construct a pipeline to transport import or export volumes, only a small segment of the pipeline close to the border is deemed to be the import or export facility for which section 3 authorization is necessary; the rest of the pipeline may be jurisdictional under section 7 because it will be used to transport gas in interstate commerce or NGA-exempt because it will be used to gather gas or for intrastate transportation service.”). See also *Western Gas Interstate Company*, 59 FERC ¶ 61,022, at 61,048-49 (1992) (“In addition to our review of the site of exportation, a Presidential Permit and a section 3 application has always required an inquiry into the regulatory authority under which the gas will be transported from within the United States to the point of exportation. The scope of the Commission’s jurisdiction under section 7 of the NGA depends upon whether the gas is to be transported in interstate or foreign commerce or both. . . . If the gas is being transported in both interstate and foreign commerce, the Commission has section 3 jurisdiction over the point of export/importation and section 7 jurisdiction over the facilities up to or from the point of export/importation.”).

²⁹ See, e.g., *NET Mexico Pipeline Partners, LLC*, 145 FERC ¶ 61,112 (2013) (granting section 3 authorization and a Presidential Permit to applicant for 1,400 feet of pipeline at the Mexican border that would be part of a non-jurisdictional 120-mile-long intrastate pipeline that applicant also planned to use in the future for jurisdictional interstate service under section 311 of the NGPA). Similarly, when the Commission approves an application by a jurisdictional interstate pipeline to construct facilities to transport gas for export, the NGA section 3 authorization and Presidential Permit are for only a relatively short section of pipeline closest to the international border. See, e.g., *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360 (2002) (authorizing 9.28 miles of pipeline facilities to transport gas for export to Mexico under NGA section 7 certificate authority except for the 1,000 feet of pipeline closest to the international border which was authorized under NGA section 3 and a Presidential Permit as the border-crossing export facility.).

operated as part of Comanche Trail's NGA-exempt intrastate pipeline system on which the rates and terms and conditions of service for the transportation of non-commingled Texas production will be subject to regulation by the Railroad Commission of Texas, notwithstanding that the gas is being exported.

20. As San Elizario and other commenters point out, Comanche Trail acknowledges that, at some point, it anticipates using its pipeline to provide interstate transportation services under to section 311(a)(2) of the NGPA subject to the Commission's jurisdiction. However, Comanche Trail states that it will consider adding interstate service only after establishing itself as an intrastate pipeline transporting only non-commingled Texas production. Further, before Comanche Trail can receive gas supplies that are already being transported in jurisdictional commerce, it will have to construct additional facilities to establish grid connections. An expectation of future changes to a project's configuration or operation is not sufficient to confer NGA section 7 jurisdiction on facilities.³⁰ If Comanche Trail begins providing qualifying service under section 311(a)(2) of the NGPA at some point in the future to transport gas that includes interstate gas supplies, the Commission's jurisdiction under that Act will only apply to the service; such service will not subject Comanche Trail's pipeline facilities to the Commission's jurisdiction under either section 311 of the NGPA or section 7 of the NGA.³¹ The Commission has no authority to exercise jurisdiction over the construction

³⁰ *Georgia Strait Crossing Pipeline LP*, 100 FERC ¶ 61,280, at P 31 (2002) (*Georgia Strait*). *Georgia Strait* involved a proposed pipeline that would be used to import gas from Canada, move it across Washington State, and export it back into Canada. *Georgia Strait's* proposed project included the taps and meters along the pipeline in anticipation of later constructing lateral lines to facilitate deliveries to additional end users. The Commission agreed that "it would be inappropriate to claim jurisdiction over *Georgia Strait* based exclusively on the expectation that lateral lines eventually will be built." *Id.* However, *Georgia Strait's* proposed project configuration also included an interconnection with an interstate pipeline at which *Georgia Strait* would be able, either directly or by displacement, to receive interstate gas supplies for delivery to Canada as well as deliver gas into interstate commerce. Thus, the proposed interconnection with an interstate pipeline would establish a "physical and operational integration with the existing interstate gas grid," and the basis for the Commission's assertion of section 7 jurisdiction over *Georgia Strait's* proposed pipeline. *Id.*

³¹ See, e.g., *Egan Hub Partners, L.P.*, 73 FERC ¶ 61,334, at 61,930 -31 (1995):

NGPA sections 601(a)(1)(C) and (a)(2)(A) provide that intrastate pipelines do not become subject to the NGA by virtue of section 311 transactions. Moreover, in Order No. 46, the Commission explained

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and operation of Comanche Trail's pipeline facilities, except for the limited facilities that constitute export facilities at the point of export.³² Thus, while the applicant's overall

that "if a corporate entity qualifies as an intrastate pipeline under [NGPA] section 2(16), it will retain that identity for its entire system even if it constructs a new portion of its system to be used exclusively for section 311(a)(2) transportation." . . . When the NGPA was promulgated in 1978, substantial amounts of gas were locked into the intrastate market in the face of nationwide supply shortages. To advance the NGPA goal of alleviating this situation, Congress adopted policies to encourage sellers and transporters to provide service under section 311 of the NGPA as much as possible. . . . The ability to utilize existing intrastate facilities to move intrastate gas into interstate markets and the construction of additional facilities for section 311 services, when necessary, by intrastate pipelines without prior NGA authorization made it possible for interstate pipelines to avoid constructing duplicative facilities.

(footnotes omitted).

³² See *Valero Transmission, L.P.*, 57 FERC ¶ 61,299, at 61,955 (1991) (granting request by Texas intrastate pipeline for NGA section 311 authorization and Presidential Permit for a border-crossing facility to export gas to Mexico and explaining that only the border-crossing facility would be subject to the Commission's jurisdiction "[s]ince Valero and Vigas [the exporter holding the DOE license] only operate in intrastate commerce within the State of Texas, they are not regulated by the Commission under sections 4, 5, or 7 of the NGA. Therefore, the Commission has no occasion to exercise any jurisdiction over the pipeline itself, other than at the site of exportation."). Similarly, when local distribution companies and Hinshaw pipelines provide NGA-jurisdictional interstate services under blanket certificates issued under section 284.224 of the Commission's regulations, subject to the same conditions that govern intrastate pipelines' services under NGPA section 311, only the services are subject to regulation by the Commission; the facilities used to provide the services remain non-NGA jurisdictional and subject to state subject. See, e.g., *Panhandle Eastern Pipe Line Company*, 88 FERC ¶ 61,262, at 61,821 (1999) ("Market Center, a non-jurisdictional Hinshaw pipeline, will acquire the facilities and connect them to its system. A Hinshaw pipeline is by definition not subject to the Natural Gas Act, and thus does not need a certificate under the Natural Gas Act in order to add facilities to its system. Nor will Market Center's non-jurisdictional status be affected as long as it does not use the facilities in a way that is inconsistent with either its Hinshaw status or the conditions of its limited jurisdiction

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project will include approximately 195 miles of pipeline, the only portion subject to the Commission's jurisdiction is the 1,086 feet that will constitute the import/export border crossing facility for which authorization under section 3 of the NGA and a Presidential Permit are necessary. The remaining 195 miles of upstream pipeline facilities sited in Texas are subject to state jurisdiction. However, as discussed below, the Commission's environmental review did disclose impacts associated with construction of the non-jurisdictional pipeline and considered whether construction of the jurisdictional border-crossing facilities and the non-jurisdictional upstream pipeline facilities could have potential cumulative environmental impacts.

C. Environmental Analysis

21. On August 3, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed San Elizario Crossing Project and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; Native American tribes; local libraries and newspapers; and potentially affected property owners.

22. The Commission received over 100 individual stakeholder comments, filed prior to and in response to the NOI, including comments from interested individuals; state, county, and local elected officials; and the National Park Service's (NPS) National Trails Intermountain Region. The majority of the scoping comments requested that the Commission assume federal jurisdiction over Comanche Trail's planned 195-mile-long intrastate pipeline. Additionally, stakeholders commented that the Commission should prepare an environmental impact statement (EIS) to evaluate the San Elizario Crossing Project and Comanche Trail's planned intrastate pipeline in conjunction with the Trans-Pecos Presidio Border Crossing Project and its connected non-jurisdictional intrastate pipeline, and the Roadrunner Crossing Project and its connected non-jurisdictional intrastate pipeline.

23. Specific scoping comments were also received regarding potential impacts of both the intrastate pipeline and the border-crossing facilities on water resources; wildlife habitat; federal and state-protected species; vegetation and invasive plant species; cultural and archeological resources; pipeline safety; air quality; light pollution; environmental

certificate held under Section 284.224 of the Commission's regulations. [footnotes omitted]."). *See also Associated Natural Gas Company*, 56 FERC ¶ 61,108, at 61,412 (1991) ("Since Associated performs no other jurisdictional functions, with the exception of activities under its section 284.224 blanket certificate, there remains no basis for federal jurisdiction over Associated's facilities.").

justice; impacts on local and regional economies; cumulative impacts; tribal coordination; project alternatives; and project need.

24. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),³³ our staff prepared an environmental assessment (EA) for Comanche Trail's proposal to construct and operate the San Elizario Crossing Project. The EA addresses geology; soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, special interest areas and visual resources; cultural resources; air quality and noise; safety and reliability; alternatives; and cumulative impacts from other potential projects within a one-mile radius of Comanche Trail's border crossing. The EA also discloses available impact information related to the 195-mile-long intrastate pipeline that Comanche Trail plans to operate under the jurisdiction of the Railroad Commission of Texas. All substantive comments received in response to the NOI were addressed in the EA.

25. The EA was placed into the public record on January 4, 2016, and issued for a 30-day comment period. Following issuance of the EA, the Commission received five comments letters from concerned citizens and the El Paso County Water Improvement District No. 1 (the District) and a late motion to intervene. The comments addressed Comanche Trail's proposed San Elizario Crossing Project as well as its planned non-jurisdictional upstream intrastate pipeline facilities and raised concerns about segmentation and potential impacts on water supply, cultural resources, and safety. As they raise concerns with the scope and substance of the EA, these comments will be addressed below.³⁴

1. Scope of Proposed Action

26. As discussed above, only the small segment of Comanche Trail's planned pipeline that is close to the international border with Mexico is deemed to be the import or export facility and subject to the Commission's jurisdiction under section 3 of the NGA. Additionally, Comanche Trail does not need certificate authorization under section 7 of the NGA for its 195 miles of upstream pipeline because when it begins service all of the transportation volumes will be Texas gas production received from other Texas intrastate pipelines or processing plants, and none of the gas will enter jurisdictional interstate commerce. However, commenters assert that in order to satisfy NEPA requirements, the Commission must perform a single environmental review that includes both the

³³ 42 U.S.C. §§ 4321 *et seq.* (2012).

³⁴ On February 17, 2016, Comanche Trail filed a response to concerns raised related to the scope of the Commission's NEPA review for the project.

jurisdictional border-crossing facility and the 195 miles of upstream intrastate pipeline that will transport gas to the border-crossing facility for export.

27. Under NEPA, federal agencies are required to consider the environmental consequences of “major *Federal* actions significantly affecting the quality of the human environment.”³⁵ While NEPA does not offer a definition, CEQ defines “major Federal action” to include “actions with effects that may be major and which are potentially subject to Federal control and responsibility.”³⁶ Impermissible segmentation arises when an agency divides connected, cumulative, or similar federal actions into separate projects to avoid compliance with NEPA.³⁷

28. Since Comanche Trail’s construction of the upstream pipeline facilities will be a non-jurisdictional project, it does not constitute a federal action. Therefore, the Commission did not engage in impermissible segmentation by focusing its environmental review on the potential impacts of the jurisdictional border-crossing facility. However, as discussed below, the EA did address potential cumulative impacts of Comanche Trail’s construction of the border-crossing facility and upstream pipeline,³⁸ as well as other environmental impacts likely to be associated with construction and operation of the upstream intrastate pipeline facilities using the best available data, including documents generated by Comanche Trail for submission to the Railroad Commission of Texas.³⁹

2. Scope of Review – Segmentation

29. The Council on Environmental Quality (CEQ) regulations require the Commission to include “connected actions,” “cumulative actions,” and potentially, “similar actions” in its NEPA analyses.⁴⁰ “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and

³⁵ See 42 U.S.C. § 4332(2)(C) (2012) (emphasis added); 40 C.F.R. § 1502.4 (2015).

³⁶ 40 C.F.R. § 1508.18 (2015).

³⁷ See *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Del. Riverkeeper*).

³⁸ EA at 26-29.

³⁹ EA at 29-33.

⁴⁰ 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

thereby fails to address the true scope and impact of the activities that should be under consideration.”⁴¹

30. Commenters contend that Comanche Trail’s proposed border-crossing facility in this docket, Trans-Pecos’s border-crossing facility in Docket No. CP15-500-000, and Roadrunner’s border-crossing facility in in Docket No. CP15-161-000 and the upstream non-jurisdictional pipeline facilities that the three companies plan to construct in Texas are all part of a larger project to export gas to Mexico and that separate environmental review of these facilities constitutes impermissible segmentation.⁴² As discussed below, the Comanche Trail’s, Trans-Pecos’s, and Roadrunner’s projects to construct border-crossing facilities and upstream intrastate pipeline facilities are not connected, cumulative, or similar actions. Therefore, the Commission is not required to consider all of the facilities in a single NEPA analysis.

a. Connected Actions

31. “Connected actions” include federal actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.⁴³

32. In evaluating whether connected federal actions are improperly segmented, courts apply a “substantial independent utility” test. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”⁴⁴ For proposals

⁴¹ *Del. Riverkeeper*, 753 F.3d at 1313. Unlike connected and cumulative actions, analyzing similar actions is not always mandatory. See *San Juan Citizens’ Alliance v. Salazar*, CIV.A.00CV00379REBCBS, 2009 WL 824410, at *13 (D. Colo. Mar. 30, 2009) (citing 40 C.F.R. § 1508.25(a)(3) for the proposition that “nothing in the relevant regulations compels the preparation of a single EIS for ‘similar actions.’”).

⁴² As previously noted, the Commission issued orders approving Roadrunner’s and Trans-Pecos’s applications for section 3 authorization and Presidential Permits on October 15, 2015, and May 5, 2016, respectively. *Roadrunner Gas Transmission, LLC*, 153 FERC ¶ 61,041 (2015); *Trans-Pecos Pipeline, LLC*, 155 FERC ¶ 61,140 (2016).

⁴³ 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

⁴⁴ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); see also *O’Reilly v. Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring

(continued ...)

that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”⁴⁵

33. In *Del. Riverkeeper Network v. FERC*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four NGA-jurisdictional pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.⁴⁶ The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.⁴⁷ Subsequently, the same court has indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.⁴⁸ Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.⁴⁹

34. Commenters contend that Trans-Pecos’s jurisdictional border-crossing facility that was approved in Docket No. CP15-500-000 and its non-jurisdictional upstream intrastate pipeline facilities must be included in a single, comprehensive environmental review with Comanche Trail’s proposed jurisdictional border-crossing facility and planned non-jurisdictional upstream pipeline facilities. Emphasizing that Comanche Trail and Trans-Pecos share the same parent company, Energy Transfer Partners, the commenters assert

construction of the other [projects] either in terms of the facilities required or of profitability.”).

⁴⁵ *Coal. on Sensible Transp.*, 826 F.2d at 69.

⁴⁶ *Del. Riverkeeper*, 753 F.3d at 1314,1316.

⁴⁷ *Id.*

⁴⁸ *See Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 113, n.11 (D.C. Cir. 2014).

⁴⁹ *See Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015).

that the two border-crossing facilities and their upstream intrastate pipeline facilities will comprise one large system designed to deliver as much as 2.5 Bcf/day of natural gas to the same customer in Mexico, the Comisión Federal de Electricidad. Additionally, a few commenters further asserted that Roadrunner's jurisdictional border-crossing facility that was approved in Docket No. CP15-161-000, its upstream intrastate pipeline facilities, and all of Comanche Trail's and Trans-Pecos's facilities should be combined into a comprehensive environmental review all contained within a single environmental document. By failing to consider the environmental impacts of all of these pipeline facilities together, the commenters allege that the Commission has impermissibly segmented its environmental review of the jurisdictional portions of the projects.

35. As discussed above, impermissible segmentation arises when an agency divides connected, cumulative, or similar federal actions into separate projects to avoid compliance with NEPA.⁵⁰ For the same reasons that the pipeline facilities that Comanche Trail constructs upstream of its border-crossing facility will be a non-jurisdictional project and not a federal action, the pipeline facilities that Trans-Pecos and Roadrunner construct upstream of their border-crossing facility will likewise be non-jurisdictional projects and not federal actions. Therefore, the Commission has not engaged in impermissible segmentation by focusing its environmental review in these proceedings on the potential impacts of the jurisdictional border-crossing facilities.

36. Further, the San Elizario Crossing Project and Trans-Pecos's project to construct a border-crossing facility have independent utility as each is intended to facilitate the transfer of natural gas across the international boundary to serve two geographically-distinct markets in Mexico. The San Elizario Crossing Project will connect with a Mexican pipeline at a point on the international boundary in El Paso County, Texas, near the City of San Isidro, in the State of Chihuahua. Nearly 250-miles to the southeast, Trans-Pecos's Presidio border-crossing facility will connect with a Mexican pipeline at a point on the international boundary in Presidio County, Texas, near the City of San Manuel Ojinaga, State of Chihuahua. Although both projects originate at the Waha Hub in Texas and may transport gas for the same customer in Mexico (the Comisión Federal de Electricidad, the state-owned electric utility of Mexico), Comanche Trail's and Trans-Pecos's border-crossing projects are not directly related to one another, nor is either contingent on the other's success or failure – the projects have no functional or financial interdependence and are not connected actions.

37. Similarly, Comanche Trail's San Elizario border-crossing project and Roadrunner's border-crossing project each have independent utility. Although both border-crossing facilities will be located along the international boundary in El Paso

⁵⁰ See *Del. Riverkeeper*, 753 F.3d at 1313.

County, Texas, near the City of San Isidro, in the State of Chihuahua, the two border-crossing facilities have no functional or financial interdependence. Furthermore, Roadrunner's border-crossing facility is already in operation, having been placed into service on April 1, 2016, and is currently being used to export gas to Mexico.⁵¹ Because Comanche Trail's San Elizario border-crossing project and Roadrunner's border-crossing project are financially and functionally independent and have independent utility, they are not connected actions.

b. Cumulative Actions

38. "Cumulative actions" are those "which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."⁵²

39. In the EA's cumulative impacts section, Commission staff identified the project's region of influence (i.e., the project's area of direct effect plus the area where impacts on a resource, such as air emissions, may extend beyond the disturbance area). Due to the limited scope and minor ground disturbing activities of Comanche Trail's planned construction that is subject to the Commission's jurisdiction (i.e., the 1,086 feet of pipeline that will constitute the border-crossing and import/export facility), staff concluded that the appropriate region of influence for cumulative impacts analysis should be limited to the areas within a one-mile radius from any point along the 1,086-foot-long border-crossing facility.⁵³ Besides the first mile of Comanche Trail's planned upstream intrastate pipeline facilities and an associated fiber optics cable to be co-located in the pipeline right-of-way, staff did not identify other reasonably foreseeable development projects within the border-crossing project's region of influence.⁵⁴ Neither Roadrunner's border-crossing project, which has already been completed, nor Trans-Pecos's border-crossing project are expected to have impacts within the region of influence for Comanche Trail's border-crossing project, and therefore are not expected to result in any cumulatively significant impacts. In view of these considerations, Comanche Trail's San Elizario Crossing Project, Trans-Pecos's Presidio Border Crossing Project, and

⁵¹ See Affirmative Statement of Roadrunner Gas Transmission, LLC filed on April 13, 2016 in Docket No. CP15-161-000.

⁵² 40 C.F.R. § 1508.25(a)(2) (2015).

⁵³ EA at 23.

⁵⁴ EA at 24.

Roadrunner's border-crossing project are not cumulative actions requiring joint review in a single environmental document.

c. Similar Actions

40. Actions are similar if they, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁵⁵ Unlike connected and cumulative actions, analyzing similar actions is not always mandatory.⁵⁶ An agency may wish to analyze these actions in the same impact statement, but it should do so when “the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”⁵⁷

41. While Comanche Trail's San Elizario Crossing Project and Trans-Pecos's recently approved Presidio Border Crossing Project were both pending before the Commission simultaneously, the two proposed border-crossing facilities are geographically distinct from one another, being located nearly 250 miles apart along the international boundary with Mexico. While Comanche Trail's San Elizario Crossing Project and Roadrunner's border-crossing project will be relatively close to each other, being located slightly more than one mile apart along the Mexican border, the two projects have different timing, and the Commission's environmental reviews had different timing. Roadrunner's border-crossing project was authorized by the Commission on October 15, 2015,⁵⁸ constructed by March 9, 2016,⁵⁹ and placed it into service on April 1, 2016.⁶⁰ Moreover, the San Elizario Crossing Project and Roadrunner's border-crossing project are not expected to impact the same resources. Thus, there will be no construction timing or impact overlap between the two projects. Given the limited scope of each of the three border-crossing

⁵⁵ 40 C.F.R. § 1508.25(a)(3) (2015).

⁵⁶ *See supra* note 41.

⁵⁷ 40 C.F.R. § 1508.25(a)(3) (2015).

⁵⁸ *Roadrunner Gas Transmission, LLC*, 153 FERC ¶ 61,041 (2015).

⁵⁹ *See* Roadrunner March 14, 2016 Biweekly Construction Activities Report in Docket No. CP15-161-000.

⁶⁰ *See* Roadrunner April 13, 2016 Affirmative Statement in Docket No. CP15-161-000.

projects and the projects' disparate geography or timing, a single EA was neither required nor the best way to assess these projects.

42. For the reasons discussed above, Comanche Trail's, Trans-Pecos's, and Roadrunner's border-crossing projects are not connected, cumulative, or similar actions. Therefore, the Commission was not required to jointly consider these three unrelated border-crossing projects in a single environmental document.

3. Scope of Review – EIS Not Required

43. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.⁶¹ If, however, an agency determines that a federal action is not likely to have significant adverse effects, it may prepare an EA for compliance with NEPA.⁶² In addition, CEQ regulations state that one of the purposes of an EA is to determine whether an EIS is required.⁶³ Thus, based on the Commission's experience with NEPA implementation for pipeline projects, the Commission's environmental staff determines upfront whether to prepare an EIS or an EA for each new proposed project, pursuant to the Commission's regulations.⁶⁴

44. While CEQ regulations do not define "significant," they do explain that whether an impact is "significant" depends on both "context" and "intensity."⁶⁵ Context means that the "significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality."⁶⁶ Intensity is determined by considering the unique characteristics of the geographic area, the degree to which the

⁶¹ See 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. § 1502.4 (2015).

⁶² See 40 C.F.R. §§ 1501.3-1501.4 (2015). An EA is meant to be a "concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact." *Id.* § 1508.9(a). Pursuant to the Commission's regulations, if an EA is prepared first, "[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared." 18 C.F.R. § 380.6(b) (2015).

⁶³ 40 C.F.R. § 1501.4(c) (2015).

⁶⁴ See 18 C.F.R. § 380.6(b) (2015).

⁶⁵ 40 C.F.R. § 1508.27 (2015).

⁶⁶ *Id.* § 1508.24(a).

effects are highly controversial or highly uncertain or unknown, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect threatened and endangered species.⁶⁷

45. Guided by the CEQ's regulations, the Commission will typically issue a finding of no significant impact, rather than prepare an EIS, in cases where staff is able to determine that the proposed action will not have a significant effect on the human environment following preparation of an EA.⁶⁸ Several commenters assert that the Commission should have prepared an EIS to evaluate Comanche Trail's, Trans-Pecos's, and Roadrunner's pipeline projects in Texas to export gas to Mexico. However, an EIS is required under NEPA for major federal actions that may significantly impact the environment and, as discussed above, only the border-crossing facilities constitute federal actions. The construction of the non-jurisdictional intrastate pipeline facilities is not a federal action.

46. Here, Commission staff determined that an EA was appropriate for Comanche Trail's proposed border-crossing facility because the project would only involve a 1,086-foot-long pipeline segment to be installed by horizontal directional drill beneath the Rio Grande River to a point on the international boundary with Mexico. Since the proposed project does not include any aboveground facilities, the only permanent environmental impacts expected to result from the project would be the conversion of 1.3 acres of cultivated cropland land to a permanent right-of-way. The EA concluded that if Comanche Trail's border-crossing project is constructed and operated in compliance with the recommended environmental conditions, it will have no significant adverse impacts on any federally or state-listed wildlife species or associated critical habitat.⁶⁹ Staff also concluded that any cumulative impacts resulting from construction and operation of Comanche Trail's San Elizario Crossing Project would represent a negligible contribution to the overall cumulative impacts in the project area.⁷⁰

47. For the above reasons, we find that the Commission's approval of the project will not result in a significant adverse effect on the human environment. Therefore, preparation of an EIS was not warranted.

⁶⁷ *Id.* § 1508.24(b).

⁶⁸ *See* 40 C.F.R. § 1501.4(e) (2015).

⁶⁹ EA at 15.

⁷⁰ EA at 33.

4. Scope of Review – Non-Jurisdictional Intrastate Pipeline

48. In addition to the 1,086-foot-long border-crossing and import/export facility that will be subject to the Commission's jurisdiction, Comanche Trail will also construct 195 miles of 42-inch-diameter upstream pipeline in Texas to transport Texas gas production to the border-crossing facility for export. For the reasons discussed above, the construction and operation of the upstream intrastate pipeline facilities will not be subject to the Commission's jurisdiction. In addition, the Commission's approval of the border-crossing facility and Comanche Trail's construction of the upstream non-jurisdictional intrastate pipeline facilities are not connected, similar, or cumulative federal actions. Therefore, the EA was not required, as many commenters asserted, to attempt a thorough evaluation of the potential environmental impacts of Comanche Trail's construction of the 195 miles of non-jurisdictional upstream intrastate pipeline.

49. However, the EA did address the potential impacts from construction of a 10-acre custody meter station and the first mile of immediately upstream pipeline that could reasonably be expected to have impacts on the same area impacted by construction of the border-crossing facility,⁷¹ as well as environmental impacts likely to be associated with construction and operation of the upstream intrastate pipeline facilities using the best available data, including documents generated by Comanche Trail for submission to the Railroad Commission of Texas, which will have jurisdiction over Comanche Trail's operation of the pipeline.⁷² Potential environmental impacts from construction of the non-jurisdictional intrastate pipeline facilities described in the EA included impacts to geology, soils, water resources, wildlife, vegetation, land use, cultural resources, air quality, and noise.⁷³ The EA concluded that construction of the border-crossing facility and the first mile of immediately upstream non-jurisdictional intrastate pipeline facilities would not contribute significantly to the cumulative impacts on resources in the border-crossing project area.⁷⁴

50. Some commenters continue to argue that the Commission is required to conduct a thorough environmental review of the potential impacts of Comanche Trail's construction of its planned non-jurisdictional upstream pipeline facilities. We do not agree, as the jurisdictional portion of Comanche Trail's 195-mile-long pipeline project to transport

⁷¹ EA at 23-29.

⁷² EA at 6, 29-33.

⁷³ EA at 29-33.

⁷⁴ EA at 33.

Texas gas production is limited to the 1,086 feet of pipeline that will constitute the border-crossing and import/export facility at the international boundary between the United States and Mexico. Construction of the 195 miles of intrastate pipeline will be subject to Texas jurisdiction and state law on eminent domain, and the Railroad Commission of Texas will have jurisdiction over Comanche Trail's pipeline services. The Commission's jurisdiction over Comanche Trail's border-crossing facility is insufficient to warrant "federalizing" the much larger intrastate pipeline system.

51. In view of the above considerations, the Commission finds on balance that it was not required to consider Comanche Trail's non-jurisdictional intrastate pipeline facilities as part of our action authorizing Comanche Trail's border-crossing facility for purposes of NEPA. The EA's consideration of potential cumulative impacts from construction and operation of the border-crossing facility and the non-jurisdictional intrastate pipeline facilities within the region of influence was sufficient to satisfy our NEPA responsibility.

5. Water District Comments

52. The District provided comments on the EA in which it expressed specific concerns related to the San Elizario Crossing Project. In its comments, the District raised concerns regarding cultural resource consultation; potential impacts on District canals, laterals, and drains; the Hueco Bolson aquifer; and alternative crossing locations. These comments are addressed below.

a. Consultation with Native American Tribes and the SHPO

53. The District contends that neither it, nor the State Historic Preservation Officer (SHPO), nor the Ysleta del Sur Pueblo Indian Tribe (Ysleta del Sur Pueblo) were made aware of the project's potential impact on the San Elizario Lateral, a historic irrigation canal. The District further asserts that the Ysleta del Sur Pueblo were never made aware that disruption of flow in the Riverside Canal could impact the District's ability to deliver water used by the tribe during religious ceremonies. Finally, the District contends that the Commission failed to consult with the District and SHPO on protecting the San Elizario Lateral from harm.

54. As noted in the EA, on May 22, 2015, Comanche Trail contacted the Apache Tribe of Oklahoma, the Comanche Nation of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, the Tonkawa Tribe of Oklahoma, the Ysleta del Sur Pueblo, the Fort Sill Apache Tribe of Oklahoma, and the White Mountain Apache Tribe to request their comments on the proposed project.⁷⁵ The Ysleta del Sur Pueblo responded

⁷⁵ EA at 17.

by letter that they did not have any comments on the project and were not opposed to it.⁷⁶ The Ysleta del Sur Pueblo further stated that they believed the project would not affect traditional, religious, or culturally significant sites of the Pueblo, but requested that they be consulted in the event that any human remains or artifacts are unearthed during the project.⁷⁷ On August 3, 2015, Commission staff sent the NOI to the same tribes. To date, Commission staff has received no response to the NOI or the EA from these tribes. Therefore, in consultation with the SHPO and the tribes, staff concluded that the proposed project would not affect any properties listed in, or eligible for listing in, the National Register of Historic Places.⁷⁸ The District has no provided no information that might change this finding.

b. Proposed Canal Crossings and Possibility of Pipeline Failure

55. The District expresses concerns related to the project's potential impacts on the Riverside Canal, River Drain, San Elizario Lateral, and Franklin Canal. The District states that Comanche Trail submitted engineering drawings to the District, showing 16 proposed shallow crossings of the pipeline under the Franklin and Riverside Canals. The District notes that these canals supply water to the City of El Paso and over 50,000 acres of irrigable land, and cautions that canal failure during peak water use period could potentially cause millions of damage to crops and force the City of El Paso to take emergency water conservation measures. The District also contends that the Commission failed to consider the safety implications of a pipeline failure,⁷⁹ and the potential for disruption of water deliveries to District water users.

56. The Riverside Canal would be crossed at only one location by the border-crossing project using HDD, which would avoid any direct impacts. Although the River Drain and the San Elizario Lateral are located within additional temporary workspace needed to

⁷⁶ Comanche Trail September 30, 2015 Response to Data Request, Attachment B at 3.

⁷⁷ *Id.*

⁷⁸ EA at 18.

⁷⁹ We note that Adrienne Evans-Stark filed a comment on the EA raising safety concerns related to Comanche Trail's 195-mile-long intrastate pipeline. The non-jurisdictional upstream pipeline will be subject to the jurisdiction of the Railroad Commission of Texas. However, safety concerns related to the proposed border-crossing project are addressed in this section.

complete the HDD, the border-crossing project pipeline would not be placed through the River Drain or the San Elizario Lateral. The Franklin Canal would not be affected by the project to construct the border-crossing pipeline. Although the Franklin Canal would be crossed by the non-jurisdictional intrastate pipeline, those construction activities are not subject to the Commission's jurisdiction.⁸⁰ Prior to crossing the canal, Comanche Trail would need to obtain and meet the requirements of any applicable local, state, or federal permits.

57. The EA concludes that Comanche Trail's use of the HDD method to traverse the Rio Grande River with its border-crossing pipeline would result in no significant impacts on water resources, and that Comanche Trail's construction and mitigation measures would adequately ensure these resources are protected. Additionally, a pipeline failure would be highly unlikely to affect the integrity of the District's canals. The border-crossing pipeline will be placed at a depth of 50 feet below the Rio Grande River. At this depth, a pipeline failure would be unlikely to significantly affect overlying resources. Additionally, as explained in the EA, the border-crossing pipeline must be designed, constructed, operated, and maintained in accordance with the Department of Transportation's (DOT) Minimum Federal Safety Standards set forth in 49 CFR Part 192.⁸¹ These regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures. For these reasons, the EA correctly concluded that the border-crossing project would be constructed and operated safely.

c. Hueco Bolson Aquifer

58. The District asserts that although the EA stated that the border-crossing facility pipeline "is within the Hueco Bolson" aquifer, the majority of the project is actually being constructed above the Hueco Bolson and in the Rio Grande Alluvium aquifer. The District states that the Alluvium aquifer has several hundred active wells that produce groundwater for crop irrigation and can easily be contaminated during pipeline construction.

59. While it is unclear whether the District's dissatisfaction with the EA's description of the local aquifer system is directed at the location of the border-crossing facility or the upstream pipeline, we reiterate that the Commission's jurisdiction is constrained to the 1,086-foot-long border-crossing facility and does not extend to the construction of the

⁸⁰ The Franklin Canal connects to a network of irrigation canals in the Upper Rio Grande Valley, and is managed by the Bureau of Reclamation as part of its Rio Grande Project.

⁸¹ EA at 22.

195-mile-long intrastate upstream pipeline.⁸² To the extent that the District takes issue with the EA's description of the border-crossing facility's location, the EA previously addressed these concerns and explained that the border-crossing facility is underlain by the Hueco Bolson and Rio Grande Alluvium aquifers.⁸³ The EA concluded that impacts on groundwater resources would not be significant.⁸⁴

d. Alternative Crossings

60. The District recommends that the location of the border-crossing be moved to a location that does not cross the District's Riverside Canal. The District expressed preference for an alternate pipeline route that would be located outside of the District's boundaries.

61. As discussed in the EA, Comanche Trail selected the siting of the proposed HDD route to traverse the shortest distance necessary across the Rio Grande River.⁸⁵ Although the proposed route will cross beneath the Riverside Canal, the use of HDD would avoid any direct impacts to the canal. No substantial adverse impacts were identified during the scoping process or in staff's analysis of the project. Therefore, the EA does not identify any crossing location or other alternatives that could provide a significant environmental advantage over the project as proposed.

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

63. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

⁸² See *supra* PP 17-20, 26-28.

⁸³ EA at 10-13.

⁸⁴ EA at 13.

⁸⁵ EA at 34.

local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.⁸⁶

64. At a hearing held on May 19, 2016, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A Presidential Permit and NGA section 3 authorization are issued authorizing Comanche Trail to site, construct, operate, and maintain border-crossing facilities to import and export natural gas, as described and conditioned in this order, subject to the conditions of the Presidential Permit and compliance with the environmental conditions in Appendix A to this order.

(B) Comanche Trail shall sign and return the testimony and acceptance of all provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission (Secretary) within 30 days of the issuance of this order.

(C) The authorized import and export facilities shall be completed and placed in service within one year of the date of issuance of this order.

(D) Comanche Trail shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Comanche Trail. Comanche Trail shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

⁸⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Bill Addington's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Environmental Conditions
Comanche Trail Pipeline's San Elizario Border Crossing Project
Docket No. CP15-503-000

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

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

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with the construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

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

4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Comanche Trail shall file with the Secretary any revised construction workspace configuration drawings at a

scale not smaller than 1:6,000 with station positions for all activities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Comanche Trail shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins,** Comanche Trail shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Comanche Trail must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Comanche Trail would implement construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Comanche Trail would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses

- and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Comanche Trail would give to all personnel involved with construction activities and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Comanche Trail's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Comanche Trail will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Comanche Trail shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Comanche Trail's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Comanche Trail from other federal, state or local permitting agencies concerning instances of noncompliance, and Comanche Trail's response.
8. Comanche Trail shall employ at least one EI. The EI shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies and responsible for maintaining status reports.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Comanche Trail shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Comanche Trail must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of all areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Comanche Trail shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Comanche Trail has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. **Prior to construction**, Comanche Trail should file with the Secretary for review and written approval by the Director of OEP a revised *Directional Drilling Contingency Plan* that includes:
 - a. measures to be implemented for collection and disposal of an inadvertent release of drilling mud into the Rio Grande River; and
 - b. notification to the International Boundary and Water Commission of any release of drilling mud into the Rio Grande River.

13. **Prior to commencing any drilling operations**, Comanche Trail shall file with the Secretary, for the review and written approval by the Director of OEP, a horizontal directional drill (HDD) noise analysis identifying the existing and projected noise levels at each Noise Sensitive Area (NSA) within 0.5 mile of the HDD entry site; and an HDD noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at all NSAs with predicted day-night sound level (L_{dn}) above 55 decibels on the A-weighted scale (dBA). During drilling operations, Comanche Trail shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than a L_{dn} of 55 dBA at the NSAs.

APPENDIX B**PERMIT AUTHORIZING COMANCHE TRAIL PIPELINE, LLC
TO SITE, CONSTRUCT, AND OPERATE
NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP15-503-000**

(Issued May 19, 2016)

Comanche Trail Pipeline, LLC (Comanche Trail), a limited liability company organized under the laws of the State of Texas, filed on May 29, 2015, in Docket No. CP15-503-000, an application pursuant to Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 00-004.00A, requesting that the Commission issue an order under section 3 of the Natural Gas Act and a Presidential Permit authorizing Comanche Trail to site, construct, and operate certain natural gas pipeline facilities to import and export natural gas at a point on the international boundary between the United States and Mexico.

By letter dated October 7, 2015, the Secretary of State, and by letter dated August 7, 2015, the Secretary of Defense, favorably recommend that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, and the Commission's regulations, permission is granted to Comanche Trail (Permittee) to site, construct, and operate the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission, upon proper application therefore.

Article 2. The following facilities are subject to this permit:

Approximately 1,086 feet of 42-inch-diameter natural gas pipeline that will commence in El Paso County, Texas, and extend beneath the Rio Grande River, terminating in the middle of the river bed at the international boundary with Mexico.

Article 3. The natural gas facilities subject to this Permit, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas between the United States and Mexico only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future, it should appear to the Secretary of the Defense that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of Defense, to remove or alter the same so as to render navigation through such water free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefore. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permittee nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain

the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____, 2016, has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ___ day of _____, 2016, a certified copy of the record of which is attached hereto.

Comanche Trail Pipeline, LLC

By _____

(Attest)

Executed in triplicate