

164 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Texas Eastern Transmission, LP

Docket No. CP18-10-000

ORDER ISSUING CERTIFICATE

(Issued July 19, 2018)

1. On October 19, 2017, Texas Eastern Transmission, LP (Texas Eastern) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate the Texas Industrial Market Expansion Project (Texas Project) and Louisiana Market Expansion Project (Louisiana Project), together the TX – LA Markets Project, which are intended to provide 157,000 dekatherms per day (Dth/day) of incremental firm transportation service from receipt points on Texas Eastern's interstate pipeline system in the West Louisiana Access Area to delivery points in Texas Eastern's West Louisiana Access Area and South Texas Access Area. Texas Eastern also seeks authorization: (1) to use existing system rates as initial recourse rates for firm service on the projects (and a predetermination that it may roll project costs into its system rates in its next NGA section 4 rate case); and (2) to establish and charge an initial incremental electric power cost rate for firm service on the Texas Project. As discussed below, the Commission will grant the requested authorizations, subject to conditions.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2017).

I. Background and Proposal

2. Texas Eastern is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. It is a limited partnership organized and existing under Delaware law and an indirect, wholly-owned subsidiary of Spectra Energy Partners, LP, an indirect subsidiary of Enbridge, Inc. Texas Eastern's system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio, West Virginia, Maryland, Delaware, Pennsylvania, and New Jersey, to its principal terminus in the New York City metropolitan area.
3. Texas Eastern proposes to construct and operate the proposed projects to provide 157,500 Dth/day of incremental firm transportation service on its existing mainline facilities from receipt points in Evangeline and Calcasieu Parishes, Louisiana. Specifically, Texas Eastern proposes to construct, install, operate, and maintain the following facilities at its existing Gillis Compressor Station: (1) two replacement impellers to increase the flow rate for existing compressors; and (2) two gas cooling bays to address increased discharge temperature. Texas Eastern estimates that the projects will cost approximately \$16,205,681.⁴
4. Texas Eastern held an open season from February 15, 2017, to March 3, 2017, and, as a result, executed precedent agreements with Natgasoline LLC for 82,500 Dth per day on the Texas Project and with Entergy Louisiana, LLC for 75,000 Dth per day on the Louisiana Project. The precedent agreements are for firm transportation service under Texas Eastern's Rate Schedule FT for initial 20-year terms, beginning on August 1, 2019. Both shippers will pay a discounted rate.
5. Texas Eastern proposes to use its existing system rates as initial recourse rates for firm service on the projects and requests a predetermination that it may roll project costs into its system rates in its next general section 4 rate proceeding. Texas Eastern also requests authorization to establish and charge an initial incremental Electric Power Cost (EPC) rate and charge its system Applicable Shrinkage Adjustment (ASA) percentage for firm service on the Texas Project. Texas Eastern proposes to apply its generally applicable EPC rate and ASA percentage for firm service on the Louisiana Project and to

³ 15 U.S.C. § 717a(6) (2012).

⁴ \$7,716,991 for the Louisiana Project and \$8,488,690 for the Texas Project.

provide any interruptible service using the expansion capacity at its generally applicable rate.

II. Notice, Interventions, Comments, and Answer

6. Notice of Texas Eastern's application was published in the *Federal Register* on November 7, 2017,⁵ with a November 21, 2017 deadline for filing comments and interventions. Many parties filed timely, unopposed motions to intervene, which were granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure.⁶ Entergy Services, Inc. (Entergy Services) filed a comment supporting the proposals. The Indicated Shippers filed a comment requesting the Commission to condition rolled-in rate authorization on the absence of significantly changes circumstances and to require Texas Eastern to account for costs and revenues of the proposed projects separately.

III. Discussion

7. Texas Eastern's construction and operation of the proposed facilities to transport natural gas in interstate commerce are subject to the jurisdiction of the Commission pursuant to the requirements of subsections (c) and (e) of NGA section 7.

A. Certificate Policy Statement

8. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁷ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁵ 82 Fed. Reg. 51,624.

⁶ 18 C.F.R. § 385.214(c)(1) (2017).

⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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

10. As noted above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, appropriately calculated incremental recourse rates for Texas Eastern's proposed projects would be lower than its existing system rate. Therefore, we will require Texas Eastern to charge its existing system rates as the initial recourse rates for firm service using the expansion capacity.⁸ With this condition, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

11. We find the proposed expansion will have no effect on service to Texas Eastern's existing customers. Further, no pipelines or their captive customers filed adverse comments regarding Texas Eastern's proposal. Thus, we find that Texas Eastern's proposed projects will not adversely affect its existing customers or other pipelines and their captive customers.

12. We also find that Texas Eastern has designed the projects to have minimal adverse impact on landowners and communities. The new construction will occur within the fenced property line of Texas Eastern's existing Gillis Compressor Station, thereby limiting new disturbance to the environment during construction and operation.

13. The proposed projects will enable Texas Eastern to provide 157,500 Dth/day of incremental firm bi-directional transportation service to connect diverse supply basins with emerging Gulf Coast markets. In view of the benefits that will result from the projects, with no adverse impacts on either Texas Eastern's existing customers or other pipelines and their captive customers, and minimal impacts on landowners and surrounding communities, the Commission finds, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity require

⁸ See *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015) and *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 30 (2013).

approval and certification of the Texas and Louisiana Projects, subject to the environmental and other conditions in this order.

B. Rates

Recourse Rates

14. Texas Eastern proposes to charge its existing system recourse rates under Rate Schedule FT-1 as initial rates for Louisiana Project service (from a primary receipt point in Zone WLA in Calcasieu Parish, Louisiana, to a primary delivery point in Zone WLA in Beauregard Parish, Louisiana). The recourse reservation charge is \$1.8400 per Dth, and the Usage-1 charge is \$0.0019 per Dth.⁹ Texas Eastern also proposes to charge its existing system recourse rates under Rate Schedule FT-1 for Texas Project service (from Zone WLA to Zone STX). The recourse reservation charge for this service is \$5.6760 per Dth, and the Usage-1 charge is \$0.0040 per Dth.¹⁰ Texas Eastern proposed Year 1 costs of service of \$1,664,763 for the Louisiana Project and \$2,111,193 for the Texas Project.¹¹ The rate of return and other cost factors used in Exhibit N were derived from Texas Eastern's cost of service settlement as amended in Docket Nos. RP98-198-000, *et al.*¹²

15. In its December 26, 2017 response to a staff data request, Texas Eastern identified non-labor Operating and Maintenance (O&M) costs for FERC account numbers 857 and 865 of \$2,254 for the Louisiana Project, and \$2,480 for the Texas Project. Although Texas Eastern classified these costs as fixed costs, they should be classified as variable costs. Consistent with Commission regulations requiring the use of straight fixed-

⁹ Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, 2, Rate Schedule FT-1, 57.0.0. Texas Eastern's tariff has a Usage-1 charge, which reflects variable costs. For purposes of this discussion, the term "usage" refers to the Usage-1 charge.

¹⁰ Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, 2, Rate Schedule FT-1, 57.0.0.

¹¹ Application at Exhibit N Schedules 2 and 9.

¹² *Texas Eastern Transmission Corp.*, 84 FERC ¶ 61,200 (1998).

variable (SFV) rate design,¹³ variable costs should be recovered through the usage charge, not the reservation charge.¹⁴

16. In a January 26, 2018 response to a staff data request, Texas Eastern adjusted its costs of service to reflect changes in the federal tax code, as per the Tax Cuts and Jobs Act of 2017,¹⁵ which became effective January 2018. Texas Eastern's work papers show that the tax code change reduces the estimated cost of service to \$1,501,881 for the Louisiana Project and \$1,932,022 for the Texas Project.¹⁶

17. After removing the improperly classified variable costs and updating the cost of service to reflect the change in the federal tax code,¹⁷ it appears that illustrative incremental reservation and usage charges calculated to recover the projects costs would be lower than the existing system reservation and usage charges. Where, as here, the existing system recourse rate is higher than the illustrative incremental recourse rate, the Commission has found it appropriate to establish the existing system recourse rate as the initial rate.¹⁸ Therefore, the Commission approves Texas Eastern's proposal to charge its existing system recourse rates as the initial rates for the projects.

¹³ 18 C.F.R. § 284.7(e) (2017).

¹⁴ *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214, at P 20 (2015); *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382, at P 33 (2015).

¹⁵ Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

¹⁶ In the January 12, 2018 response to a staff data request, Texas Eastern stated that it inadvertently based its Allowance for Funds Used During Construction (AFUDC) estimates on an erroneous calculation, and submitted a revised Exhibit K. Texas Eastern states that the corrected AFUDC calculations reduce the facilities' costs less than 0.05 percent of the amount originally filed in Exhibit K. However, Texas Eastern, in its January 26, 2018 response, did not use the revised cost of facilities from its January 12, 2018 data response to recalculate its cost of service. This error, however, does not significantly affect the cost of service or change the Commission's determinations.

¹⁷ Texas Eastern is required to follow the procedures established in the Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate, Final Rule issued on July 18, 2018 in Docket No. RM18-11-000.

¹⁸ See, e.g., *Texas Gas Transmission*, 152 FERC ¶ 61,160 at P 30; *Millennium Pipeline*, 145 FERC ¶ 61,007 at P 30.

18. Texas Eastern proposes to charge its applicable mainline system interruptible transportation rate for any interruptible service rendered on additional Texas Eastern mainline capacity made available by the TX – LA Markets Project, which is consistent with Commission policy.¹⁹ The Commission will approve Texas Eastern’s proposal to use its existing interruptible transportation rate for the projects.

Request for Predetermination of Rolled-In Rates

19. Texas Eastern requests a pre-determination that it may roll the projects’ costs into its system-wide rates in its next NGA section 4 general rate proceeding. In Exhibit N, Texas Eastern states that each project shipper’s discounted Rate Schedule FT-1 reservation charge was used to calculate project revenues. As originally calculated, the Louisiana Project’s revenues would not have exceeded the cost of service in year one,²⁰ but, in its January 26, 2018 data response, Texas Eastern states that, with the reduction in the cost of service due to the Tax Cuts and Jobs Act of 2017, Louisiana Project revenues will now exceed the recalculated cost of service in each year.²¹ Texas Eastern also states that Texas Project revenues will exceed the cost of service.²²

20. On November 21, 2017, the Indicated Shippers filed a comment requesting that the Commission condition any rolled-in rate determination on the absence of a significant change in circumstances when Texas Eastern seeks rolled-in rate treatment in any future rate case. The Indicated Shippers also request that the Commission require Texas Eastern to account for construction and operating costs and revenues associated with the projects, consistent with section 154.309 of the Commission’s regulations.²³

21. On December 5, 2017, Texas Eastern filed an answer to the Indicated Shippers’ comments, stating that, while Commission precedent supports conditioning a pre-determination of rolled-in rate treatment on the absence of any significant change in

¹⁹ See, e.g., *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012) (*Texas Eastern*) and *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010) (*Gulf South*).

²⁰ Application at 16, n.17.

²¹ Texas Eastern January 26, 2018, Response to Data Request.

²² Application at 16.

²³ 18 C.F.R. § 154.309 (2017).

material circumstances,²⁴ the Commission should clarify that any such pre-determination will shift the burden of proof in a future rate proceeding to any party opposing rolled-in rate treatment. Texas Eastern also states that it does not oppose the Indicated Shippers' request that Texas Eastern separately account for the Louisiana Project since the differences between projected revenues and the cost of service for the first three years are sufficiently narrow to warrant separate accounting. Texas Eastern states, however, that Texas Project revenues will substantially exceed estimated costs of service in each of the first three years of service. Texas Eastern notes that, while the Commission had previously concluded that, due to the narrow difference between project revenues and cost of service, separate accounting was appropriate for Texas Eastern's Lebanon Lateral, since a cost overrun may constitute a significant change in circumstance,²⁵ the Commission did not require separate accounting for its Uniontown to Gas City Project because that project's revenues substantially exceeded the cost.²⁶

22. In requesting a pre-determination that a pipeline may roll the costs of a project into its system-wide rates in its next NGA general section 4 rate proceeding, a pipeline must demonstrate that rolling the costs associated with the construction and operation of new facilities into existing rates will not result in existing customers subsidizing the expansion.²⁷ A pipeline must show that the generated revenues from an expansion project will exceed the project costs. In determining this, we compare the cost of the project to the generated revenues using actual contract volumes and either the maximum recourse rate or the negotiated rate, if the negotiated rate is lower than the recourse rate.²⁸

²⁴ Texas Eastern Answer at 2, n.10 (citing *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,257, at P 20 (2013); *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013); and *Dominion Transmission, Inc.*, 144 FERC ¶ 61,182, at P 19 (2013)).

²⁵ *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at P 31 (2014).

²⁶ Texas Eastern Answer at 4, n.18.

²⁷ The Commission's Certificate Policy Statement recognizes, however, that increasing costs to existing customers to pay for a project designed to improve reliability or flexibility of service for existing customers is not a subsidy. *See, e.g., Texas Eastern*, 139 FERC ¶ 61,138 at P 31; *Gulf South*, 130 FERC ¶ 61,015 at P 23; and *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 313-14 and 326 (2006).

²⁸ *See S. Nat. Gas Co., L.L.C.*, 162 FERC ¶ 61,122, at P 21 (2018); *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219 at P 22.

23. Texas Eastern projects that Louisiana Project Year 1 revenues will be \$1,642,500,²⁹ and cost of service will be \$1,501,881,³⁰ indicating that revenues are expected to exceed costs by \$140,619. Since the projected revenues exceed the updated cost of service, we will grant Texas Eastern's request for a pre-determination of rolled-in rate treatment for the Louisiana Project costs in its next NGA general section 4 rate proceeding, absent a significant change in circumstances.

24. Texas Eastern projects that Texas Project Year 1 revenues will be \$5,119,290³¹ and cost of service will be \$1,932,022,³² indicating that revenues are expected to exceed costs by \$3,187,268. Since the projected revenues exceed the updated cost of service, we will grant Texas Eastern's request for a pre-determination of rolled-in rate treatment for the Texas Project costs in its next NGA general section 4 rate proceeding, absent a significant change in circumstances.

Reporting Incremental Costs

25. Consistent with recent Commission precedent,³³ the Commission will require Texas Eastern to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by both the projects in the same manner as required by section 154.309 of the Commission's regulations.³⁴ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁵

Fuel, Lost and Unaccounted for Gas, and EPC

26. Texas Eastern proposes to recover fuel use and lost and unaccounted for gas, as well as EPC, associated with providing service on the Louisiana Project facilities through

²⁹ Application at Exhibit N Schedule 2.

³⁰ Texas Eastern January 26, 2018, Response to Data Request.

³¹ Application at Exhibit N Schedule 9.

³² Texas Eastern January 26, 2018, Response to Data Request.

³³ *Kinder Morgan Louisiana Pipeline, LLC*, 161 FERC ¶ 61,205, at P 28 (2017).

³⁴ 18 C.F.R. §154.309 (2017).

³⁵ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

the system Applicable Shrinkage Adjustment percentage and system EPC rates, respectively. As reflected in Exhibit Z-2, Texas Eastern states that no EPC are allocated to the Louisiana Project. The Commission will approve Texas Eastern's proposal to charge its generally-applicable system fuel and EPC rates for the Louisiana Project.

27. Texas Eastern proposes to recover fuel use and lost and unaccounted for gas, as well as EPC, associated with providing service on the Texas Project facilities through the system ASA percentage and incremental EPC rates, respectively. Texas Eastern states that, consistent with the Commission-approved Texas Eastern incremental fuel methodology, it will track changes in electric power costs through the EPC mechanisms in section 15.1 of the General Terms and Conditions of its tariff. The Commission will approve Texas Eastern's proposal to charge its generally-applicable system fuel rate and an incremental EPC rate for the Texas Project.

Pro Forma Tariff Records

28. Texas Eastern included in Exhibit P, *pro forma* tariff records incorporating incremental rates for the Texas Project. As discussed above, the Commission is approving the use of Texas Eastern's incremental EPC rate for the Texas Project. Texas Eastern must file tariff records consistent with findings above no later than 60 days before the project's in-service date.

C. Environmental Analysis

29. On December 6, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed TX-LA Markets Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register and mailed to interested parties including federal, state, and local officials; agency representatives; Native American tribes; local libraries and newspapers in the project area. We received no responses to the NOI.

30. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an Environmental Assessment (EA) for Texas Eastern's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives.

31. The EA was placed into the public record on May 31, 2018. No comments were filed on the EA.

Greenhouse Gas Emissions (GHG) and Climate Change

32. Section B.7 of the EA identifies the total estimated GHG emissions resulting from construction and operation of the project, expressed in terms of carbon dioxide (CO₂) equivalents (CO_{2e}).³⁶ GHG emissions are typically used as a proxy to evaluate impacts on climate change. Entergy Services filed comments on behalf of itself and Entergy Louisiana, LLC (ELL) stating that ELL would receive up to 75,000 Dth/d of natural gas on a firm basis from a receipt point in Zone WLA in Calcasieu Parish, Louisiana to a delivery point in Zone WLA in Beauregard Parish, Louisiana. Entergy Services explains that the natural gas would fuel the Lake Charles Power Station, a natural gas-fired combined cycle power plant being developed in Westlake, Louisiana.³⁷ The potential downstream emissions from combustion of 75,000 Dth/d of natural gas would be 1.5 million metric tons of CO₂ per year. This represents an upper-bound estimate, assuming combustion during peak use of the gas volume at the Lake Charles Power Station. We note that it is unlikely that the full capacity of the power station would be utilized annually.

33. The TX – LA Markets Project’s GHG emissions would contribute to the overall amount of atmospheric GHG. This combustion will result in about a 0.7 percent increase of GHG emissions in Louisiana and a 0.03 percent increase of national GHG emissions, based upon 2015 state and national inventories. The Commission has not identified a suitable method to determine how a project’s contribution to GHG emissions would translate into physical effects on the environment. Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment and how that impact would contribute to climate change.³⁸

³⁶ Emissions of GHGs are typically expressed in terms of CO_{2e}, where the potential of each gas to increase heating in the atmosphere is expressed as a multiple of the heating potential of CO₂ over a specific timeframe, or its global warming potential (GWP). The GWP is a ratio relative to CO₂ of a particular GHG’s ability to absorb solar radiation as well its residence time within the atmosphere (Intergovernmental Panel on Climate Change, 2007). The 100-year GWP of CO₂ is 1, methane (CH₄) is 25 and nitrous oxide (N₂O) is 298. The 100-year GWP is used because this is the value EPA currently uses for reporting of GHG emissions.

³⁷ Texas Eastern November 21, 2017 Motion to Intervene and Comments in Support of and Answer of Entergy Services, Inc. at 3.

³⁸ See *National Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at P 187 (2017).

IV. Conclusion

34. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Texas Eastern's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Commission staff will only issue a notice to proceed with an activity when satisfied that the applicant has complied with all applicable conditions. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

35. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁹

36. At a hearing held on July 19, 2018, 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 comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Eastern authorizing it to construct and operate the TX – LA Markets Project, as described in the application and conditioned herein.

³⁹ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(B) The certificate issued in ordering paragraph (A) is conditioned on Texas Eastern's:

- (1) completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the Appendix to this order; and
- (4) filing a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(C) Texas Eastern's proposal to use its existing system recourse rates for the projects as its initial rates is approved.

(D) Texas Eastern's request for a pre-determination supporting rolled-in rate treatment of the projects' costs is granted, barring a significant change in circumstances, as discussed in the body of this order.

(E) Texas Eastern's request to charge its generally-applicable system fuel and EPC rates for the Louisiana Project is approved.

(F) Texas Eastern's request to charge its generally-applicable system fuel rate and incremental EPC rate for the Texas Project is approved.

(G) Texas Eastern shall file actual tariff records with the incremental EPC rate no later than 60 days before the Texas Project facilities go into service.

(H) Texas Eastern shall keep separate books and accounting of costs attributable to the incremental services using the expansion capacity created by the projects, as discussed herein.

(I) Texas Eastern shall notify the Commission's environmental staff by telephone and/or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Texas Eastern. Texas

Eastern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

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

1. Enbridge – Texas Eastern Transmission, LP (Texas Eastern) 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 EA, unless modified by the Order. Texas Eastern 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 Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP, or the Director’s designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation activities.

3. **Prior to any construction**, Texas Eastern 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**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not

smaller than 1:6,000 with station positions for the facility 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. Texas Eastern 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**, Texas Eastern shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Texas Eastern will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;

- b. how Texas Eastern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern 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. Texas Eastern shall employ at least one EI for the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Texas Eastern shall file updated status reports with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status

reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Texas Eastern's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that 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 Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
9. Texas Eastern must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Texas Eastern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Eastern must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Texas Eastern 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 would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Texas Eastern 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. Texas Eastern shall conduct a noise survey at the Gillis Compressor Station to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above a day-night sound level of 55 decibels on the A-weighted scale at the nearby noise sensitive areas (NSAs). The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If any of these noise levels are exceeded, Texas Eastern shall, **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise level at the NSAs to or below the previously existing noise level. Texas Eastern shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

Docket No. CP18-10-000

(Issued July 19, 2018)

LaFLEUR, Commissioner, *dissenting*:

Today's order grants Texas Eastern's request for authorization to construct and operate the Texas Industrial Market Expansion Project (Texas Project) and the Louisiana Market Expansion Project (Louisiana Project), together the TX-LA Markets Project. I believe the fact pattern presented in this case, a pipeline designed to serve a specific known downstream powerplant, falls squarely within the precedent of *Sierra Club v. FERC*.¹ Given that the majority's analysis here suffers from the same flaws as its decision on remand in *Sabal Trail*,² I respectfully dissent.

As I articulated in my dissent in *Sabal Trail*, I believe that, given the Court's finding that downstream greenhouse gas (GHG) emissions in that case were indirect impacts, the Commission must now quantify and consider those impacts as part of its National Environmental Policy Act (NEPA) review.³ In this case, the Commission quantified and disclosed the upper-bound estimate of the downstream GHG emissions associated with the Louisiana Project, which is fueling the Lake Charles Power Station, a natural gas-fired combined cycle power plant in Westlake, Louisiana.⁴ The volume of

¹ 867 F.3d 1357 (D.C. Cir. 2017) (*Sierra Club*).

² *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*) (*Sabal Trail*)

³ *Id.*

⁴ The order includes an estimate that if all 75,000 dekatherms per day (Dth/d) of natural gas were transported to combustion end uses, downstream end-use would result in the emissions of about 1.5 metric tpy of CO_{2e}. *Texas Eastern Transmission, LP*, 164 FERC ¶ 61,037 at PP 32-33 (2018) (Texas Eastern Certificate Order). The Commission should have sought more precise information to develop the record in this proceeding, to allow the Commission to more accurately assess the indirect impacts of

GHG emissions associated with this downstream use would result in about 0.7 percent increase in GHG emissions in Louisiana and a 0.03 percent increase of national GHG emissions, based upon 2015 state and national inventories. The majority states that it cannot “make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment and how that impact would contribute to climate change.”⁵ I disagree.

While the Commission appropriately calculated the GHG emissions from the Lake Charles Power Station, as required by *Sabal Trail*, I am troubled by the manner in which today’s order addresses the significance of the downstream GHG emissions. NEPA requires us to include discussion of indirect effects and their significance in our environmental review. I reject the contention that the Commission is unable to discern the significance of GHG emissions. We are required by NEPA to reach a determination regarding the significance of all environmental impacts, including downstream GHG emissions. It is our responsibility to use the best information we have to make that determination. One way we could assess the significance of a given rate or volume of GHG emissions is to compare the downstream GHG emissions associated with an individual project to the total state, regional, and/or national emission inventories.⁶ The fact that consideration of climate change is difficult does not alleviate our responsibilities under the Natural Gas Act (NGA) and NEPA to determine the significance of GHG emissions.

The majority also asserts that it cannot “determine how a project’s contribution to GHG emissions would translate into physical effects on the environment.”⁷ But that is precisely the use for which the Social Cost of Carbon was developed—it is a scientifically-derived metric to translate tonnage of carbon dioxide or other GHGs to the cost of long-term climate harm.⁸ By translating the emissions into monetized climate

downstream GHG emissions by calculating gross and net GHG emissions.

⁵ Texas Eastern Certificate Order at P 33.

⁶ Though the majority does disclose the state and national comparison data, it does not ascribe significance to the percent increase in GHG emissions, and instead concludes that it cannot making a finding on whether a particular amount of GHG emissions is significant. Texas Eastern Certificate Order at P 33.

⁷ *Id.*

⁸ https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf; *See also*, United States Environmental Protection Agency (EPA), Comments, *Certification of New Interstate*

damages, the Commission could provide context to the quantified rate or volume of GHG emissions of a pipeline project and could ascribe significance as part of our NEPA review.⁹ We can account for changes in GHG emissions resulting from the combustion of the transported gas by applying the Social Cost of Carbon, which more accurately reflects the climate change impacts of a particular project.¹⁰ I believe the Social Cost of Carbon metric would more readily apply to a proposed pipeline project if we developed a fuller record to support a quantified cost-benefit approach to our pipeline reviews. I believe we should discuss how the Commission could effectively use the Social Cost of Carbon, and more broadly, how the Commission should consider climate change impacts in our environmental reviews as part of the notice of inquiry on the Certificate Policy Statement.¹¹

I also note that the Commission did not quantify and disclose the downstream GHG emissions associated with the Texas Project because there is no identified end-use in the record. If I were to vote for this order, I would need to compute the other downstream emissions estimates and consider them as part of my public interest determination.

Natural Gas Facilities, Notice of Inquiry, 163 FERC ¶ 61,042 (2018) (NOI on the Certificate Policy Statement), Docket No. PL18-1-000 (filed June 21, 2018) (The EPA explains that estimates of the Social Cost of Carbon allow an agency to “incorporate the societal value of changes in carbon dioxide and other GHG emissions into benefit-cost analyses of actions that have small, or marginal, impacts on cumulative global emissions.”).

⁹ Social Cost of Carbon is meant to measure the physical, incremental impacts from a project including changes in net agricultural productivity, human health, property loss and damages from increased flood risk, and energy demand changes.

¹⁰ See, e.g., *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm’r, *dissenting in part*) (*Sabal Trail* Remand Order); *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm’r, *dissenting in part*); *Florida Southeast Connection, LLC*, 163 FERC ¶ 61,158 (2018) (LaFleur, Comm’r, *concurring*); and *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm’r, *concurring*).

¹¹ 163 FERC ¶ 61,042 (2018).

For all of these reasons, I dissent.

Cheryl A. LaFleur
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

Docket No. CP18-10-000

(Issued July 19, 2018)

GLICK, Commissioner, *dissenting in part*:

Today, the Commission issues a certificate to Texas Eastern Transmission, LP to construct and operate the Texas Industrial Market Expansion Project and the Louisiana Market Expansion Project (Projects), concluding that the Projects are required by the public convenience and necessity.¹ The Commission also finds that the Projects will not have a significant effect on the environment.² In reaching these conclusions, the Commission maintains that it need not consider the harm caused by the Projects' contribution to climate change. The Commission's refusal to do so falls well short of our obligations under the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA).⁴ Because I disagree with these conclusions and believe the Commission cannot find that the Projects are in the public interest without first considering the significance of the Projects' contribution to climate change,⁵ I dissent in part from the Commission's action today.

¹ *Texas Eastern Transmission, LP*, 164 FERC ¶ 61,037 (2018) (Certificate Order).

² *Id.* P 33.

³ 15 U.S.C. 717f (2012).

⁴ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852.

⁵ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). While I cannot support today's order because it fails to meet these standards, I agree with the Commission's conclusion that Texas Eastern has adequately demonstrated a need for the Projects.

In today's order, the Commission once again adopts a definition of indirect effects for purposes of analyzing upstream and downstream greenhouse gas (GHG) emissions that is overly narrow and circular.⁶ The Commission quantifies a portion of the Projects' downstream GHG emissions,⁷ but nonetheless fails to recognize that the harm caused by the Projects' contribution to climate change is an indirect effect that the Commission must evaluate and consider under NEPA and the NGA.⁸ The Commission also contends, without further explanation, that it "has not identified a suitable method" for determining the impact from the Projects' contribution to climate change and, absent such a method, it simply "cannot make a finding whether a particular quantity of [GHG] emissions poses a significant impact on the environment and how that impact would contribute to climate change."⁹

As I have stated previously,¹⁰ NEPA does not permit agencies to so easily shirk

⁶ See *San Juan Citizens All. et al. v. United States Bureau of Land Mgmt.*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10 (D.N.M. June 14, 2018) (holding that it was arbitrary for the Bureau of Land Management to conclude "that consumption is not 'an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption'" as "this statement is circular and worded as though it is a legal conclusion"). In adopting this narrow and circular definition, the Commission disregards the Projects' central purpose—to facilitate natural gas consumption by providing new supplies to two identified end-use customers. See EA at 1 (describing the purpose and need for the Project as "provid[ing] an additional 157,500 dekatherms per day of firm capacity . . . to meet its contractual obligations with Entergy Louisiana, LLC and Natgasoline, LLC").

⁷ Certificate Order, 164 FERC ¶ 61,037 at P 32.

⁸ *Id.* P 33. The Commission also ignores the other half of the Projects' incremental transportation capacity, even though Natgasoline LLC, a "greenfield world scale methanol production complex," has subscribed for the entire remainder. Natgasoline LLC, *Fertilizer & Chemicals, Our Facilities*, OCI (July 17, 2018), <http://www.oci.nl/oci-fcg/our-facilities/natgasoline-llc>.

⁹ Certificate Order, 164 FERC ¶ 61,037 at P 33.

¹⁰ See *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at 7 (2018) (Glick, Comm'r, *dissenting*); *Tennessee Gas Pipeline Company, L.L.C.*, 163 FERC ¶ 61,190, at 2 (2018) (Glick, Comm'r, *dissenting in part*); *Florida Southeast Connection, LLC*, 163 FERC ¶ 61,158, at 1–2 (Glick, Comm'r, *dissenting in part*); *Gulf South Pipeline Company, LP.*, 163 FERC ¶ 61,124, at 1–2 (Glick, Comm'r, *dissenting in part*); *Florida Southeast Connection, LLC*, 162 FERC ¶ 61,223, at 6 (2018) (Glick, Comm'r,

their responsibilities to consider environmental consequences; instead, it requires that the Commission engage in reasonable forecasting and estimation where doing so would further the statute's two-fold purpose of ensuring that the relevant agency will "have available, and will carefully consider, detailed information concerning significant environmental impacts" and that this information will be "available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."¹¹

As the U.S. Court of Appeals for the District of Columbia Circuit explained in *Sierra Club v. FERC (Sabal Trail)*, in the face of indefinite variables, "agencies may sometimes need to make educated assumptions about an uncertain future."¹² The Commission cannot point to the mere presence of uncertainty over upstream and downstream GHG emissions to excuse it from considering the harm from the Projects' contribution to climate change. In the case of new natural gas pipelines, it is reasonable to assume that building incremental transportation capacity will spur additional production and result in some level of combustion of natural gas, even if the exact details of the method or location are not definite. As the United States Court of Appeals for the Eighth Circuit explained in *Mid States*—a case that also involved downstream GHG emissions from new infrastructure for transporting fossil fuels—when the "nature of the

dissenting).

¹¹ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). In order to evaluate circumstances in which downstream impacts of a pipeline facility are reasonably foreseeable results of constructing and operating the proposed facility, I am relying on precisely the sort of "reasonably close causal relationship" that the Supreme Court has required in the NEPA context and analogized to proximate cause. *See id.* at 767 ("NEPA requires a 'reasonably close causal relationship' between the environmental effect and the alleged cause. The Court [has] analogized this requirement to the 'familiar doctrine of proximate cause from tort law.'") (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)); *see also Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014) ("Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct."); *Staelens v. Dobert*, 318 F.3d 77, 79 (1st Cir. 2003) ("[I]n addition to being the cause in fact of the injury [the but for cause], the plaintiff must show that the negligent conduct was a proximate or legal cause of the injury as well. To establish proximate cause, a plaintiff must show that his or her injuries were within the reasonably foreseeable risks of harm created by the defendant's negligent conduct.") (internal quotation marks and citations omitted).

¹² 867 F.3d 1357, 1374 (D.C. Cir. 2017).

effect” (end-use emissions) is reasonably foreseeable, but “its extent is not” (specific consumption activity producing emissions), an agency may not simply ignore the effect.¹³

Based on the record here, it is entirely foreseeable that a portion of the natural gas transported through the Projects will be combusted, emitting GHGs that contribute to climate change. As noted above, the Projects are designed to provide firm natural gas transportation capacity to fuel Lake Charles Power Station and to serve Natgasoline, LLC, a new methanol production complex.¹⁴ Under these circumstances, the Commission must consider the harm from the Projects’ contribution to climate change.¹⁵

Quantifying the Projects’ GHG emissions, including reasonably foreseeable upstream and downstream emissions, is a necessary—but not sufficient—step in meeting the Commission’s obligations to consider the Projects’ environmental effects associated with climate change. NEPA and the NGA’s public interest standard require the Commission to consider not the GHG emissions themselves but the resulting environmental impact. The Commission not only refuses to consider the significance of the Projects’ climate-change impact, but also maintains that it lacks the means to do so.¹⁶

The Commission is incorrect insofar as it concludes that there is no “suitable method” to consider the harm caused by the Projects’ contribution to climate change.¹⁷ That is precisely what the Social Cost of Carbon provides. It translates the long-term damage done by a ton of carbon dioxide into a monetary value, thereby providing a meaningful and informative approach for satisfying an agency’s obligation to consider how its actions contribute to the harm caused by climate change. The U.S. Environmental Protection Agency recommended this approach in its comments on the Commission’s pending review of the natural gas certification process, explaining that estimates of the Social Cost of Carbon “may be used for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in GHG emissions provides useful information in its environmental

¹³ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

¹⁴ *See supra* note 6 (EA at 1).

¹⁵ *Sabal Trail*, 867 F.3d at 1371–72; *id.* at 1374.

¹⁶ Certificate Order, 164 FERC ¶ 61,037 at P 33. Notably, the Environmental Assessment lacks any discussion of climate change.

¹⁷ *See supra* note 9.

review or public interest determination.”¹⁸ Furthermore, the U.S. Council on Environmental Quality regulations themselves outline a framework for determining whether a project’s impacts on the environment will be considered significant.¹⁹

* * *

Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest.²⁰ This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to the existential threat of climate change.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

¹⁸ United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018).

¹⁹ 40 C.F.R. § 1508.27 (2017) (setting forth a list of factors agencies should rely on when determining whether a project’s environmental impacts are “significant” considering both “context” and “intensity.”).

²⁰ 15 U.S.C. 717f(c)(1)(A).