175 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Gas Transmission, LLC	Docket Nos. CP20-68-000
Enable Gulf Run Transmission, LLC	CP20-70-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT

(Issued June 1, 2021)

1. On February 28, 2020, Enable Gas Transmission, LLC (Enable) filed an application in Docket No. CP20-68-000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA)[1] and Parts 157 and 284 of the Commission's regulations,[2] for authorization to modify existing compression facilities and construct new meter stations along portions of its existing Line CP (Line CP Modifications) in Red River and Jackson Parishes, Louisiana. Enable also requests authority to abandon its Line CP assets (excluding Line CP-3) by sale to Enable Gulf Run Transmission, LLC (Gulf Run) and to reacquire by lease capacity on Line CP from Gulf Run (Lease Agreement). The Lease Agreement will allow Enable to continue to provide 445,000 dekatherms per day (Dth/d) of firm transportation service for its existing Line CP customers. Enable also requests pre-granted authority to abandon a portion of the leased capacity upon the expiration of the related transportation service agreements.

2. Also on February 28, 2020, Gulf Run filed an application in Docket No. CP20-70-000, under sections 7(b) and 7(c) of the NGA, and Parts 157 and 284 of the Commission's regulations, requesting authorization to: (1) construct and operate approximately 134 miles of new natural gas transmission pipeline and ancillary facilities (Gulf Run Pipeline) to provide up to approximately 1,650,000 Dth/d of natural gas transportation service from Enable's existing Westdale Compressor Station in Red River Parish to a delivery point near Starks, Louisiana; (2) acquire certain Line CP assets from Enable; and (3) lease a portion of the capacity on the acquired Line CP back to Enable. Gulf Run also seeks pre-granted

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[1] 15 U.S.C. §§ 717f(b), (c).

[2] 18 C.F.R. pts. 157, 284 (2020).

authority to re-acquire a portion of the leased capacity. In addition, Gulf Run requests a blanket certificate, pursuant to Part 157, Subpart F of the Commission's regulations, authorizing Gulf Run to construct, operate, acquire, and abandon certain facilities, and a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations authorizing Gulf Run to provide open-access firm and interruptible interstate natural gas transportation services. With the construction and operation of the Gulf Run Pipeline, Gulf Run will be capable of providing 1,650,000 Dth/d of firm natural gas transportation service from the existing Westdale Compressor Station to the interconnect with Golden Pass Pipeline, LLC (Golden Pass Pipeline) near Starks, Louisiana,[3] and 1,940,0000 Dth/d of firm transportation service on Line CP.

3. For the reasons discussed below, the Commission grants the requested certificate and abandonment authorizations, subject to conditions. However, we deny Enable's request for pre-granted authority to abandon the lease capacity and Gulf Run's request for pre-granted authority to reacquire the lease capacity, as discussed below.

I. Background and Proposal

4. Enable, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA engaged in the transportation of natural gas in interstate commerce.[4] Enable operates its existing pipeline system within Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. Enable is a wholly owned subsidiary of Enable Midstream Partners, LP (Enable Midstream).[5]

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[3] In 2005, the Commission authorized, pursuant to section 3 of the NGA, the construction and operation of the Golden Pass import terminal and associated facilities (Golden Pass Terminal) near the town of Sabine Pass, Texas, and issued Golden Pass Pipeline LP a certificate of public convenience and necessity pursuant to section 7 of the NGA to construct and operate the Golden Pass Pipeline. *Golden Pass LNG Terminal LP*, 112 FERC ¶ 61,041 (2005). In 2016, the Commission authorized the construction and operation of export facilities adjacent to and integrated with the Golden Pass Terminal. *Golden Pass Products LLC*, 157 FERC ¶ 61,222 (2016). The order also authorized expansion of the Golden Pass Pipeline to enable the transportation of domestically-sourced natural gas southward to the LNG terminal for liquefaction and export.

[4] 15 U.S.C. § 717a(6).

[5] Enable Midstream is controlled equally by CenterPoint Energy, Inc. and OGE Energy Corp., with each having 50% of the management rights of Enable GP, LLC, the general partner of Enable Midstream. Enable Midstream is a midstream company with complementary transmission, gathering, processing, compression, and storage assets.

5. Gulf Run, a Delaware limited liability company, is also a wholly owned subsidiary of Enable Midstream. Gulf Run is not presently engaged in the transportation of natural gas in interstate commerce; however, upon acceptance of a certificate of public convenience and necessity and commencement of pipeline operations, Gulf Run will become a natural gas company subject to the Commission's jurisdiction, as defined by section 2(6) of the NGA.[6]

A. Enable

6. Enable states that its existing Line CP system includes approximately 172 miles of 42-inch-diameter natural gas pipeline; four mainline compressor stations: Panola Compressor Station, Westdale Compressor Station, Vernon Compressor Station, and Alto Compressor Station; 13 receipt and delivery lateral pipelines totaling approximately 30.3 miles in length and ranging from 16 to 42 inches in diameter; and a total of 34 receipt or delivery meter stations.[7] Enable characterizes its system as reticulated with a postage-stamp rate design; thus shippers on the Enable system have the option to use receipt or delivery points on Line CP on a secondary basis.[8]

7. Enable proposes to modify Line CP to provide for bi-directional flow. Specifically, Enable proposes the following modifications to Line CP:

- restage the two existing natural gas turbine driven compressor units (totaling 30,000 hp), add up to six air-cooled heat exchangers, modify existing station piping, and add a motor control center building, fuel gas skid, power and control building, and standby generator at the Westdale Compressor Station in Red River Parish, Louisiana;

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[6] 15 U.S.C. § 717a(6).

[7] Enable February 28, 2020 Application at 6-7. Line CP also includes Line CP-3, which was constructed under the Part 157 blanket certificate program. Line CP-3 is an approximately 11-mile-long, 16-inch-diameter pipeline located in Harrison County, Texas, connecting PVR East Texas Gas Processing, LLC gas processing plant (Crossroads Plant) to Line CP. In 2009, the Commission authorized the sale of Line CP-3 to a non-jurisdictional owner, CrossPoint Pipeline, LLC and leaseback of Line CP-3 to Enable to allow Enable to ship processed gas from the Crossroads Plant to Line CP. *CenterPoint Energy Gas Transmission Co.*, 127 FERC ¶ 61,153 (2009). According to Enable, Line CP-3 will not be included in the Line CP assets acquired by Gulf Run. Enable February 28, 2020 Application at 7.

[8] Enable June 15, 2020 Data Response at 5.

- restage three existing natural gas-powered compressor units (totaling 35,604 hp) and modify existing station piping at the Vernon Compressor Station in Jackson Parish, Louisiana;

- modify the existing ANR Meter Station and Columbia Gulf Meter Station in Richland Parish, Louisiana, to allow bi-directional flow;

- modify the existing Midcontinent Express Pipeline Meter Station in Richland Parish, Louisiana, to increase capacity;

- construct a new receipt meter near Delhi, in Richland Parish, Louisiana, between the terminus of Line CP and the remainder of Enable's pipeline facilities (Enable Meter Station); and

- install a new receipt meter in Panola County, Texas, at the existing launcher/receiver site on Line CP to serve as a custody transfer point between Line CP-3, which will remain a part of the Enable system, and Line ST-1, which will be abandoned by sale to Gulf Run (Line CP-3 Meter Station).

8. Enable estimates the cost of the Line CP Modifications to be $46,613,773.[9] Enable will continue to charge its Line CP customers the existing rates pursuant to its FERC Gas Tariff. After completion of the Line CP Modifications, Enable proposes to abandon by sale its Line CP assets, with the exception of Line CP-3 to Gulf Run. Enable will continue to operate Line CP-3 as a part of its system.

B. Gulf Run

9. Gulf Run proposes to construct and operate the Gulf Run Pipeline to provide interstate transportation service from the existing Westdale Compressor Station to a delivery point near Starks, Louisiana, at an interconnection with Golden Pass Pipeline. Gulf Run proposes to construct and operate the following facilities:

- approximately 134 miles of 42-inch-diameter pipeline extending from the existing Westdale Compressor Station to a delivery point near Starks, Louisiana;

- one new meter station with a single delivery meter near the terminus of the Gulf Run Pipeline at milepost (MP) 134.0 in Calcasieu Parish, Louisiana (Golden Pass Pipeline Meter Station);

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[9] Enable February 28, 2020 Application at Exhibit K.

- a new pig launcher located inside the existing Westdale Compressor Station on Line CP, a new pig receiver located inside the Golden Pass Pipeline Meter Station, and an additional pig receiver at MP 97.1; and

- various mainline block valves along the pipeline's permanent easement, consisting of a below ground valve, sized to match the pipeline, with corresponding piping and valving extending above ground for blowdown and bypass.

10. In 2018, Gulf Run entered into a binding precedent agreement with Golden Pass LNG Terminal, LLC (Golden Pass LNG) for 1,100,000 Dth/d of firm transportation service. After executing a precedent agreement with Golden Pass LNG, Gulf Run held a non-binding open season from September 24 to October 26, 2018, to solicit interest from other potential shippers on the project. The open season resulted in six bids for an additional approximately 2,200,000 Dth/d of transportation service. Gulf Run states that to date no additional precedent agreements (besides the one with Golden Pass LNG) have been executed.

11. The total estimated cost of the Gulf Run Pipeline is $1,151,593,456.[10] Gulf Run and Golden Pass LNG have agreed to negotiated rates for service on the project. Gulf Run requests approval of its proposed *pro forma* tariff and proposes to offer firm transportation service under Rate Schedule FTS, interruptible transportation service under Rate Schedule IT, parking and loan service under Rate Schedule PALS, and pooling service under Rate Schedule PS.

12. Gulf Run requests a Part 284, Subpart G blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations, authorizing Gulf Run to provide transportation service to customers requesting and qualifying for transportation service under its proposed FERC Gas Tariff, with pre-granted abandonment authorization.[11]

13. Gulf Run also requests a blanket certificate of public convenience and necessity, pursuant to section 157.204 of the Commission's regulations, authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.[12]

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[10] Gulf Run February 28, 2020 Application at Exhibit K.

[11] 18 C.F.R. § 284.221 (2020).

[12] 18 C.F.R. § 157.204 (2020).

C. Lease Agreement

14. As stated above, Enable proposes to abandon by sale certain Line CP assets, which will include the Line CP Modifications, to Gulf Run and to lease back a portion of the Line CP capacity in order to continue to provide 445,000 Dth/d of firm natural gas transportation service for its existing customers.

15. Under the Lease Agreement, Gulf Run (lessor) will lease a portion of the capacity on Line CP to Enable (lessee).[13] Enable states that the 445,000 Dth/d of leased capacity will extend from Delhi, Louisiana, to Panola, Texas,[14] and will be integrated into Enable's existing interstate pipeline system. Applicants state that the Lease Agreement will be effective on the date of closing of an asset transfer agreement, which will occur on the first business day of the month following the satisfaction of the closing conditions.

16. Applicants state that Enable will pay Gulf Run a monthly lease charge equal to the lesser of either (1) Gulf Run's currently effective maximum reservation charge for Rate Schedule FTS Zone 1 or (2) the weighted average rate paid by Enable's customers on Line CP. In addition, Enable will also provide fuel in-kind to Gulf Run for fuel consumed under the Lease Agreement in an amount equal to the tracked fuel rate paid by Gulf Run's shippers.[15]

17. Applicants state that under the Lease Agreement: (1) 380,000 Dth/d (Fixed-term Lease Capacity) will be used to provide service on four firm transportation contracts that are set to expire in 2027, of which 80,000 Dth/d will expire on June 30, 2027, and 300,000 Dth/d will expire on November 30, 2027; and (2) 65,000 Dth/d (Extendable-term Lease Capacity) will be used to continue to provide service under transportation service contracts that contain evergreen terms. Applicants state that upon the expiration of the service agreements related to the Extendable-term Lease Capacity, Applicants will file an application with the Commission seeking authorization for the remaining lease capacity to revert to Gulf Run.

18. Enable requests pre-granted authority to abandon the Fixed-term Lease Capacity upon the expiration of each of the four related agreements for transportation on Line CP. Gulf Run requests pre-granted authority to reacquire the Fixed-term Lease Capacity upon the expiration of each of the four related transportation service agreements on Line CP.

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[13] Gulf Run February 28, 2020 Application at Exhibit I. Applicants refers Gulf Run and Enable, collectively.

[14] *Id.* at 12-13.

[15] *Id.* at 13.

II. Notice and Interventions

19. Notice of Enable's and Gulf Run's applications in Docket Nos. CP20-68-000 and CP20-70-000, respectively, were published in the *Federal Register* on March 19, 2020.[16] The City of Winfield, Kansas, Hartree Cardinal Gas, LLC, Golden Pass LNG, Golden Pass Pipeline, and Atmos Energy Corporation filed timely, unopposed motions to intervene.[17] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[18] On May 26, 2021, the Natural Gas Supply Association and the Center for Liquefied Natural Gas (Industry Groups) filed a late motion to intervene. The Industry Group's untimely motion to intervene was denied.[19] No adverse comments or protests were filed.

III. Discussion

20. Because the proposed projects include the construction and operation of facilities to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (c), and (e) of section 7 of the NGA.[20] Further, Enable's proposed abandonment is subject to the requirements of section 7(b) of the NGA.[21]

A. Certificate Policy Statement

21. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[22] 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

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[16] 85 Fed. Reg. 15,774 (Mar. 19 2020).

[17] The City of Winfield, Kansas, and Atmos Energy Corporation intervened in Docket No. CP20-68-00. Golden Pass LNG, Golden Pass Pipeline, and Hartree Cardinal Gas, LLC, intervened in Docket Nos. CP20-68-00 and CP20-70-000.

[18] 18 C.F.R. § 385.214(c) (2020).

[19] May 28, 2021 Notice Denying Late Intervention.

[20] 15 U.S.C. §§ 717f(c), (e).

[21] *Id.* § 717f(b).

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

deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

1. <u>Enable – Line CP Modifications and Capacity Lease</u>

23. As stated, 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. Because Enable is proposing to recover the costs of the Line CP Modifications through the sale of the Line CP assets, the Line CP Modifications are financially viable without any adverse rate effect on, or subsidies from, Enable's existing customers. Further, Enable states that the lease back of capacity will be supported by existing contracts with customers using Line CP. Thus, we agree that there will be no subsidization of the Line CP Modification or lease back of capacity by any existing shippers not benefiting from the project.

24. We also find that there will be no adverse impact on existing customers or other existing pipelines and their captive customers. The Line CP Modifications and related sale and lease back of capacity will not have adverse effects on Enable's existing customers. Under the Lease Agreement, Enable will lease capacity from Gulf Run, allowing Enable to continue to provide uninterrupted service to its existing firm customers on Line CP for the remaining terms of their contracts, and Enable will continue to provide service under its FERC Gas Tariff. The Line CP Modifications will not displace service on any other system and no pipelines or their captive customers have objected to Enable's proposal.

25. Further, we find that Enable has taken sufficient steps to minimize adverse impacts on landowners and surrounding communities. Enable states that all work associated with the Line CP Modification will occur within the previously disturbed property of existing aboveground facilities.[23] Enable states that it held, in concert with Gulf Run, three open houses in May 2019.[24] Enable also participated in the Commission's pre-filing process, and states that it received permission to survey 100% of the land parcels associated with the Line CP Modifications and that it will continue to work cooperatively with all affected landowners and stakeholders to address any concerns raised and minimize adverse impacts.[25] We are satisfied that Enable has taken appropriate steps to minimize adverse impacts on landowners.

26. Accordingly, we find that Enable has demonstrated a need for the Line CP Modifications and the lease back of capacity and further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and landowners and surrounding communities. Therefore, we conclude that Enable's Line CP Modification and the proposed lease back of capacity is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.[26]

2. Gulf Run – Gulf Run Pipeline

27. As discussed 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 existing customers. As Gulf Run is a new company, it has no existing customers; therefore, there is no potential for subsidization.

28. Gulf Run is proposing to construct and operate a new pipeline, which will include 134 miles of greenfield pipeline and the existing Line CP, to meet new demand and it will not displace service on any other system. No pipelines or their customers have filed adverse comments regarding Gulf Run's proposal. The Gulf Run pipeline will not result in any adverse impact on competing pipelines or their captive customers since the new

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[23] Environmental Assessment at 90 (EA).

[24] Enable February 28, 2020 Application at 15.

[25] *Id.* at 16.

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

pipeline will be an open-access pipeline providing nondiscriminatory service in a competitive market.

29. We find that Gulf Run has taken sufficient steps to minimize adverse impacts on landowners and surrounding communities. Gulf Run states that the Gulf Run Pipeline location and design were selected to minimize impacts to the environment and to landowners to the greatest extent practicable from a pipeline safety and constructability perspective. Gulf Run states that approximately 47% of the Gulf Run Pipeline will be collocated with or adjacent to existing powerlines, roads, and pipelines.[27] The project will temporarily impact approximately 2,492 acres of land and permanently impact approximately 791 acres of land,[28] most of which will be pine plantation, agricultural, and upland forest types of land.[29] We are satisfied that Gulf Run has taken appropriate steps to minimize adverse impacts on landowners.

30. Gulf Run entered into a long-term precedent agreement for approximately 1,100,000 Dth/d of firm transportation service, representing approximately 67% of the Gulf Run Pipeline's capacity. Accordingly, we find that Gulf Run has demonstrated a need for the Gulf Run Pipeline, and further, that the project will not have adverse economic effects on existing shippers or other pipelines and their existing customers, and landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.[30]

B. Abandonment

31. Because the Line CP facilities have been used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, Enable's proposed abandonment of facilities is subject to the requirements of section 7(b) of the NGA. Section 7(b) of the NGA provides that an interstate pipeline company may abandon jurisdictional facilities

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[27] Gulf Run February 28, 2020 Application at 4.

[28] EA at 88.

[29] *Id.* at 89.

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

or services only if the Commission finds the abandonment is permitted by the present or future public convenience or necessity.[31]

32. When an applicant proposes to abandon facilities, the continuity and stability of existing services are the primary consideration in assessing whether the public convenience or necessity permit the abandonment.[32] We find Enable's proposal to abandon Line CP by sale to Gulf Run appropriate because, as discussed above, Enable will continue to provide service to existing customers through the terms of the transportation service agreements using the capacity acquired under the Lease Agreement.

C. Blanket Certificates

33. Gulf Run requests a Part 284, Subpart G blanket certificate in order to provide open-access transportation services. Under a Part 284 blanket certificate, Gulf Run will not require individual authorizations to provide transportation services to particular customers. Gulf Run filed a *pro forma* Part 284 tariff to provide open-access transportation services. Because a Part 284 blanket certificate is required for Gulf Run to participate in the Commission's open-access regulatory regime, we will grant Gulf Run a Part 284 blanket certificate, subject to the conditions imposed herein.

34. Gulf Run also requests a Part 157, Subpart F blanket certificate. A Part 157 blanket certificate gives an interstate pipeline NGA section 7 authority to perform a restricted number of routine activities related to the construction, acquisition, abandonment, and replacement and operation of existing pipeline facilities, either automatically or after prior notice, provided the activities comply with constraints on costs and environmental impacts.[33] Because the Commission has previously determined through a rulemaking that these blanket-certificate eligible activities are in the public convenience and necessity,[34] it is the Commission's practice to grant new natural gas companies a Part 157 blanket certificate if requested.[35] Accordingly, we will grant Gulf Run a Part 157 blanket certificate, subject to the conditions imposed herein.

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[31] 15 U.S.C. § 717f(b).

[32] *See, e.g.*, *El Paso Nat. Gas Co., L.L.C.*, 148 FERC ¶ 61,226, at P 12 (2014).

[33] 18 C.F.R. § 157.203 (2020).

[34] *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 117 FERC ¶ 61,074, at P 9 (2006), *order on reh'g*, Order No. 686-A, 119 FERC ¶ 61,303, *order on reh'g*, Order No. 686-B, 120 FERC ¶ 61,249 (2007).

[35] *See, e.g.*, *Jordan Cove Energy Project L.P.*, 170 FERC ¶ 61,202, at P 103

D. Lease Agreement

35. Historically, the Commission views lease arrangements and the pricing for lease capacity differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[36] To enter into a lease agreement, the lessee generally is required to be a natural gas company under the NGA and is required to obtain NGA section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[37]

36. The Commission's practice is to approve a lease if it finds that (1) there are benefits from using a lease agreement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease agreement does not adversely affect existing customers.[38] The proposed Lease Agreement between Enable and Gulf Run satisfies these requirements, subject to clarification, as discussed below.

1. Lease Benefits

37. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, minimize environmental impacts, and result in administrative efficiencies for shippers.[39] Here, Gulf Run proposes to lease capacity sufficient to provide 445,000 Dth/d of firm transportation service to Enable pursuant to the terms of the Lease Agreement. The Lease Agreement between Gulf Run and Enable will ensure Enable's customers continue to receive service without an adverse impact. In addition, the sale of Line CP to

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(2020); *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 52 (2019).

[36] *See Tex. E. Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[37] *See Tex. Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

[38] *See id.*; *Islander E. Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002).

[39] *See, e.g.*, *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 58 (2017); *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199, at P 37 (2014); *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander E. Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 at P 70.

Gulf Run and the lease of capacity to Enable will contribute to Gulf Run's shippers receiving transportation service at lower costs without the need for Gulf Run to construct infrastructure that would duplicate the Line CP path. Accordingly, approval of the Lease Agreement provides benefits for customers of both Enable and Gulf Run.

2. Lease Payments

38. Commission policy generally requires parties to demonstrate that the lease payments are less than or equal to the lessor's firm recourse transportation rates for comparable transportation service over the term of the lease. Historically, leases have principally been used to solve an operational need for a pipeline[40] or as part of an expansion where leasing capacity was a less expensive alternative than constructing new pipeline facilities.[41] However, here Enable proposes to sell part of its pipeline system to Gulf Run and then lease back capacity from Gulf Run to allow it to continue to serve its existing customers on Line CP that still require service and who are currently paying for the costs of Line CP in their current rates. Therefore, in approving the proposed lease payment, we will consider whether it could result in Enable's current Line CP shippers paying a higher rate as a result of lease arrangement than they are currently paying for service on Line CP.

39. Under the Lease Agreement, Enable will pay Gulf Run a monthly lease charge equal to the lesser of either (1) Gulf Run's maximum reservation charge pursuant to Rate Schedule FTS for Zone 1, or (2) the weighted average rate paid by Enable's current firm Line CP customers. Enable will also provide fuel in-kind to Gulf Run for fuel consumed under the Lease Agreement in an amount equal to the tracked fuel rate applicable to Gulf Run's shippers in Zone 1. Gulf Run's proposed maximum reservation charge pursuant to Rate Schedule FTS for Zone 1 is $3.1648 per Dth per month and $0.0020 per Dth for the usage charge.[42] Enable's June 15, 2020 data response indicates that most of its firm customers currently on Line CP are paying a rate at or slightly below Enable's current maximum rate of $7.4257 per Dth per month for the reservation charge and $0.0104 per Dth for the usage charge. Therefore, Enable avers that its lease payment payable to Gulf Run will always be at or below the rate paid by Enable's firm customers on Line CP.[43]

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[40] *See, e.g.*, *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028 (2013).

[41] *See, e.g.*, *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022 at PP 58-63.

[42] Gulf Run June 5, 2020 Supplemental Filing, Exhibit N and Exhibit P, Statement of Rates.

[43] Enable June 15, 2020 Data Response at 6-8.

40. Under these circumstances, we find that the lease will not have an adverse rate impact on Enable's existing Line CP customers. The instant proposal will not change Enable's tariff rates and Enable's Line CP customers will continue to receive service under their existing contracts. Should Enable file a future NGA section 4 rate case in which it sought to reflect the cost of the lease in its rates, it would also have to remove the costs associated with the abandoned Line CP facilities from its rates. Because the lease payment is the lesser of either (1) Gulf Run's maximum reservation charge pursuant to Rate Schedule FTS for Zone 1, or (2) the weighted average rate paid by Enable's firm customers (currently) on Line CP, the inclusion of the lease payments will not increase rates for Enable's existing Line CP customers. In fact, as discussed above, because Gulf Run's maximum reservation rates pursuant to Rate Schedule FTS for Zone 1 are less than what Enable's customers are currently paying for service on Line CP, Enable will likely pay the maximum reservation rates pursuant to Gulf Run's Rate Schedule FTS for Zone 1 under the Lease Agreement with Gulf Run, meeting the standard criteria for approval of lease payment. Further, because this rate is currently less than what Enable's customers are currently paying for service on Enable's system, the inclusion of the lease payments in the calculation of rates would likely lower rates for Enable's Line CP customers.

3. Lease Impacts on Existing Customers

41. The third prong of the Commission's capacity lease analysis considers whether a proposed lease agreement would have an adverse effect on existing customers, such that the impact would outweigh the positive benefits identified. The Lease Agreement will not adversely affect existing customers. Enable explains that pursuant to the Lease Agreement, Enable will continue to provide uninterrupted service to its existing firm customers on Line CP pursuant to its tariff for the remaining terms of their contracts. Further, as explained above, the lease will not have an adverse impact on the rates of those existing customers. Accordingly, the Lease Agreement will not result in adverse effects to Enable's existing customers.

4. Accounting

42. We will require Enable to treat the capacity lease with Gulf Run as an operating lease for accounting purposes, and record the monthly lease payments in Account 858, Transmission and Compression of Gas by Others, consistent with Enable's and Gulf Run's proposal and the accounting treatment for other similar capacity lease agreements approved by the Commission.[44]

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[44] *See*, *e.g.*, *Tenn. Gas Pipeline Co., L.L.C.*, 163 FERC ¶ 61,123, at P 16 (2018).

5. **Determination**

43. As discussed above, we find that the lease payments are satisfactory, there are significant benefits to the lease arrangement, and as explained above, the lease will have no adverse effects on Enable's existing customers. Based on our consideration of all factors, we conclude that the proposed Lease Agreement is required by the public convenience and necessity. Accordingly, we approve the Lease Agreement and grant Enable's request to acquire by lease the leased capacity from Gulf Run and offer service on the leased capacity under its tariff.

44. However, we deny Enable's request for pre-granted abandonment authority and Gulf Run's request for pre-granted authority to reacquire the Fixed-term Lease Capacity upon the expiration of the related transportation service agreements on Line CP. While the Commission has granted pre-granted abandonment authority for short-term transactions, or in situations involving special circumstances, the general policy of the Commission disfavors such requests.[45] The Commission has explained it is not possible for the Commission to make a determination now that such an abandonment would be in the public interest many years into the future.[46] Therefore, it will be necessary for Enable to file for abandonment under NGA section 7(b) and Gulf Run to file for certificate authorizations under NGA section 7(c), to effectively modify or terminate the lease agreement.[47]

45. We will require Gulf Run to file with the Commission a notification in the Gulf Run docket, within 10 days of the abandonment of the capacity leased to Enable. Enable and Gulf Run must continue to meet their individual responsibilities regarding the leased capacity until they obtain Commission authority to abandon those responsibilities.

46. In addition, as stated above, we note that once a pipeline acquires capacity through a lease, the lessee owns that capacity, and the capacity is subject to the lessee's tariff. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity. Therefore, to the extent the lease provides Gulf Run any rights to schedule service on the leased capacity, those provisions are in violation of Commission policy and must be deleted. Finally, before service begins Gulf Run and Enable are directed to file a public version of the lease.

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[45] *See S. Nat. Gas Co.*, 124 FERC ¶ 61,058, at P 48 (2008).

[46] *See Colo. Interstate Gas Co.*, 76 FERC ¶ 61,291, at 62,476 (1996).

[47] *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022.

E. Enable – Rates

47. Enable states that it is not proposing any changes to its existing cost of service, rate design, or fuel rates. Enable states that upon the in-service date of the Gulf Run Pipeline, Enable will complete the sale of Line CP to Gulf Run at a price equal to the depreciated net book value of the Line CP assets calculated as of the date of the sale using the Generally Accepted Accounting Principles, plus the cost of construction for the Line CP Modifications and existing inventory, which is estimated to be $586,650,133.[48] Enable suggests the Line CP Modifications are financially viable without any adverse rate effect on, or subsidies from, Enable's existing customers because Enable will recover the costs of the Line CP Modification through its sale of Line CP assets to Gulf Run.[49]

48. Enable's proposal involves no additional costs to its current customers; therefore, as Enable affirms, existing shippers will not subsidize the Line CP Modifications and those costs will be recovered when Enable completes the sale of Line CP to Gulf Run.[50]

F. Gulf Run – Rates

1. Recourse Rates

49. Gulf Run proposes, under its *pro forma* tariff, to offer cost-based firm (Rate Schedule FTS) and interruptible (Rate Schedules ITS and PALS) open-access transportation service on a non-discriminatory basis under Part 284 of the Commission's regulations. Gulf Run states that the proposed rates reflect a straight fixed-variable rate design.

50. Gulf Run proposes initial maximum and minimum recourse reservation and commodity charges for two separate rate zones (Zone 1 and Zone 2)[51] for firm and interruptible transportation service under Rate Schedules FTS and ITS, and park and loan

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[48] Enable February 28, 2020 Application at 9.

[49] *Id.* at 13.

[50] Certificate Policy Statement, 88 FERC at 61,747-48; *see also Islander E. Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 at P 69; *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order on reh'g and clarification*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155, at PP 4, 13-17 (2011).

[51] Zone 1 encompasses the Line CP facilities, not including the Westdale Compressor Station. Zone 2 consists of the new Gulf Run Pipeline and the Westdale Compressor Station.

and pooling services under Rate Schedules PALS and PS.[52] Gulf Run proposes an initial monthly maximum recourse reservation charge of $3.1648 per Dth and an initial usage charge of $0.0020 for Rate Schedule FTS Zone 1, and an initial monthly maximum recourse reservation charge of $5.1411 per Dth and an initial usage charge of $0.0022 for Rate Schedule FTS Zone 2.[53] Gulf Run proposes an interruptible transportation revenue credit of $100,000 per zone to the system cost of service.[54] Gulf Run's maximum initial interruptible recourse charges for Rate Schedule ITS were calculated based on a 100% load factor derivative of the firm rates. Gulf Run proposes an initial interruptible charge for Zone 1 of $0.1061 per Dth and for Zone 2 of $0.1712 per Dth.[55]

51. Gulf Run's cost of service is based on a total capital cost of $1,151,593,456.[56] Gulf Run states that the initial recourse rates reflect a depreciation rate of 2.5%, based on a 40-year life of the facilities and a negative net salvage rate of 0.25%.[57] Further, Gulf Run states that the initial recourse rates do not include any allowance for federal income taxes as Gulf Run is owned by a master limited partnership. Gulf Run states that the derivations of its rates reflect a proposed overall rate of return of 10.25%, based on an expected 50% debt and 50% equity capital structure with a debt cost of 6.5% and a return on equity of 14%.[58]

52. We have reviewed Gulf Run's proposed cost of service and initial recourse rates for each zone and find that they reasonably reflect current Commission policy. Therefore, we approve Gulf Run's proposed rates as the initial recourse rates for the project.

2. Fuel

53. Gulf Run proposes to establish an in-kind system fuel retainage percentage using a tracking mechanism as provided in the General Terms and Conditions (GT&C) section 21.2

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[52] Gulf Run February 28, 2020 Application, Exhibit P.

[53] Gulf Run June 5, 2020 Supplemental Filing, Exhibit N and Exhibit P, Statement of Rates.

[54] Gulf Run Application, Exhibit N, page 1.

[55] Gulf Run June 5, 2020 Supplemental Filing, Exhibit N at 2, 11.

[56] Gulf Run Application, Exhibit K.

[57] *Id.* at Exhibit O.

[58] *Id.* at Exhibit N.

of it *pro forma* tariff.[59] Gulf Run's proposed tracking mechanism is designed to recover fuel use and lost and unaccounted-for gas (L&U) on a system-wide basis, as a percentage of scheduled receipts. Gulf Run proposes to use an initial Transporter's Use percentage of 0.4% for Zone 1 and 2, plus 0.1% for L&U.[60] Gulf Run states that it will make an annual fuel tracker filing pursuant to section 4 of the NGA to adjust the Transporter's Use percentage and it will annually true-up any differences between the fuel retained from shippers and the actual fuel consumed and L&U. Gulf Run states that pursuant to its *pro forma* tariff, Gulf Run may file interim Transporter's Use filings between the annual filings, subject to approval by the Commission. We approve Gulf Run's proposal to charge an initial Transporter's Use percentage of 0.4% for Zones 1 and 2 and 0.1% for L&U.

3. Negotiated Rates

54. Gulf Run proposes to provide service to the project's shipper under a negotiated rate agreement pursuant to negotiated rate authority provided under section 19 of the GT&C of its *pro forma* tariff.[61] Gulf Run must file either its negotiated rate agreement or tariff record setting forth the essential terms of the agreement associated with the project, in accordance with the *Alternative Rate Policy Statement*[62] and the Commission's negotiated rate policies.[63] Gulf Run must file the negotiated rate agreement or tariff records at least 30 days, but not more than 60 days before the proposed effective date of such rates.[64]

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[59] *Id.* at Exhibit P, GT&C section 21.2.

[60] *Id*. at Exhibit G.

[61] Gulf Run states that Golden Pass was offered the opportunity to pay a recourse rate for service on the Gulf Run Pipeline and has elected to pay a negotiated rate.

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

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

[64] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a

4. Three-Year Filing Requirements

55. Consistent with Commission precedent, Gulf Run is required to file a cost and revenue study no later than three months after its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.[65] In its filing, the projected units of service should be no lower than those upon which Gulf Run's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.[66] Gulf Run's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Gulf Run is advised to include as part of the eFiling description a reference to Docket No. CP20-70-000 and the cost and revenue study.[67] After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. In the alternative, in lieu of that filing, Gulf Run may make an NGA general section 4 rate filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

5. Pro Forma Tariff

56. Gulf Run filed a *pro forma* open-access tariff for the Commission's approval. Gulf Run's proposed tariff generally conforms to the Commission's requirements. We will approve the tariff, as conditioned below.

a. Currently Effective Rates – Minimum Rates

57. Gulf Run submitted proposed rates for Rate Schedules FTS, ITS, PALS, and PS. However, Gulf Run did not submit all the minimum rates for Rate Schedules FTS and PALS. The Commission directs Gulf Run to revise its tariff to include the minimum rates for Rate Schedule FTS and Rate Schedule PALS when it makes its compliance filing.

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precedent agreement that survives the execution of the service agreement. *See* 18 C.F.R. § 154.112(b) (2020); *see also, e.g.*, *Tex. E. Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

[65] *See Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at P 44 (2019); *Bison Pipeline, LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 57 (2009); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 34 (2008).

[66] 18 C.F.R. § 154.313 (2020) .

[67] *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

b. <u>GT&C Section 35: North American Energy Standards Board Standards (NAESB)</u>

58. Gulf Run submitted proposed tariff provisions to comply with the requirements established in Order No. 587-Y[68] issued in Docket No. RM96-1-041. The proposed tariff provisions implement the NAESB Wholesale Gas Quadrant's (WGQ) Version 3.1 business practice standards the Commission incorporated by reference in that rule.[69]

59. While Gulf Run's Application is largely compliant with the directives in Order No. 587-Y,[70] we find that certain modifications to Gulf Run's tariff are required.[71] Accordingly, we require Gulf Run make the following modifications when it files actual tariff records before the Project goes into service:

a. Revise GT&C Section 2.1(a)(2), Nominations, to change the reference from "Sections 2.1(a)(1) and 2.1(a)(2)" to "Section 2.1(a)(2);"

b. Revise GT&C Section 16.1(g)(3), Capacity Release Provisions – For non-biddable releases, to change the reference from "[p]ursuant to NAESB WGQ Standard No." to "[p]ursuant to NAESB WGQ Standard No. 1.3.2;" and

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[68] *Standards for Bus. Practices of Interstate Nat. Gas Pipelines*, Order No. 587-Y, 165 FERC ¶ 61,109 (2018).

[69] The revisions made by NAESB in this version of the standards are designed to clarify the processing of certain business transactions. Notably, NAESB adopted two substantive revisions to its Nominations Related Standards, one to establish a standard rounding process for elapsed-prorated-scheduled quantity calculations and a second to revise the specifications for the information to be included in a nomination request. Standard 1.2.12 of the Nominations Related Standards defines the elapsed-prorated-scheduled quantity to mean: "[t]hat portion of the scheduled quantity that would have theoretically flowed up to the effective time of the intraday nomination being confirmed, based upon a cumulative uniform hourly quantity for each nomination period affected."

[70] In its Application, Gulf Run states that any changes to the latest version of the NAESB WGQ Standards prior to the proposed Project's in-service date will be incorporated into its FERC NGA Gas Tariff when Gulf Run files to make its FERC NGA Gas Tariff effective.

[71] *See* Order No. 587-Y, 165 FERC ¶ 61,109 at P 23, n.16 (explaining that all interstate natural gas pipelines are to file their tariff records in conformance with the sample tariff record on the Commission's website).

c. Revise GT&C Section 35, North American Energy Standards Board Standards, to change the reference from "© 1996 – 2014 NAESB" to either "© 1996 – 2017 NAESB," or "© 1996 – [*pipeline inserts the effective date of the latest version of the NAESB WGQ Standards incorporated by reference by the Commission in a Final Rule*] NAESB."

G. Gulf Run – Accounting

60. Allowance for Funds Used During Construction (AFUDC) is a component of the overall construction cost for Gulf Run's facilities. Gas Plant Instruction No. 3(17) of the Commission's accounting regulations prescribes a formula for determining the maximum amount of AFUDC that may be capitalized.[72] However, that formula is not applicable here as it uses prior year book balances and cost rates of borrowed and other capital that either do not exist or could produce inappropriate results for initial construction projects of newly created entities such as Gulf Run.

61. Accordingly, to ensure that AFUDC is properly capitalized for this project, we will require Gulf Run to capitalize the actual costs of borrowed and other funds for construction purposes, not to exceed the amount of AFUDC that would have been capitalized using the approved overall rate of return.[73]

H. Environmental Analysis

62. On April 12, 2019, the Commission staff began its environmental review of the Enable's Line CP Modifications Project and Gulf Run's Gulf Run Pipeline by granting requests to use the pre-filing process under assigned Docket No. PF19-3-000.[74] As part of the pre-filing review, staff participated in three open houses sponsored by Enable and Gulf Run in Coushatta, Leesville, and DeQuincy, Louisiana on May 6, 7, and 8, 2019, respectively, to explain the Commission's environmental review process to interested stakeholders.

63. On June 12, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Gulf Run Pipeline and Line CP Modifications Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI). The NOI was published in the *Federal Register* on June 18, 2019,[75] and mailed to interested parties including federal, state, and local

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[72] *See* 18 C.F.R. pt. 201 (2020).

[73] *See Mill River Pipeline, L.L.C.*, 112 FERC ¶ 61,070, at PP 69-72 (2005).

[74] *See* 18 C.F.R. § 157.21(b) (2020).

[75] 84 Fed. Reg. 28,293 (Jun. 18, 2019).

officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments in response to the NOI from the Osage Nation Historic Preservation Office, the Louisiana Department of Wildlife and Fisheries (Louisiana DWF), the Rice-Land Timber Company, and six individuals. We also received a comment from Louisiana State Senator Neil Riser expressing support for the project.

64. Commission staff conducted public scoping sessions in Natchitoches, Louisiana, on June 26, 2019, and in DeRidder, Louisiana, on June 27, 2019, to provide the public with an opportunity to learn more about the project and comment on environmental issues that should be addressed in the planned environmental impact statement. In total, three individuals provided oral or written comments on the project at the scoping sessions. Transcripts of the scoping sessions were entered into the public record in Docket No. PF19-3-000.

65. Commenters raised the following issues during scoping: potential impacts on rare, threatened, and endangered species (including the Habitat Conservation Plan for the red-cockaded woodpecker), natural and scenic rivers, Wildlife Management Areas, and timber operations; public safety from project use of existing roads; and potential sediment run-off affecting Vernon Lake and Anacoco Bayou.

66. With the filing of its application on February 28, 2020, Enable and Gulf Run notified the Commission that they were reducing the overall size of the project because they determined that certain pipeline and compression facilities considered during the pre-filing review were no longer necessary.[76] Upon review of Enable's and Gulf Run's proposed facilities in the applications and the nature of the comments received, Commission staff determined that an environmental assessment (EA) was the appropriate means to evaluate the project's potential environmental impacts, rather than an environmental impact statement. Staff announced this determination in the *Notice of Schedule for Environmental Review of the Gulf Run Pipeline and Line CP Modifications Project* issued for the project on April 28, 2020, and published in the *Federal Register* on May 4, 2020.[77] Following Enable's and Gulf Run's removal of certain facilities in the pre-filing process, many of the comments received in response to the NOI were no longer germane to the projects as presented in the applications before the Commission.

67. To satisfy the requirements of the National Environmental Policy Act of 1969,[78] staff prepared an EA for Enable's proposal. The EA was prepared with the cooperation

[76] Gulf Run Application at 24-28; Enable Application at 22-25.

[77] 85 Fed. Reg. 26,453 (May 4, 2020).

[78] 42 U.S.C. §§ 4321 *et seq*. *See also* 18 C.F.R. pt. 380 (2020) (Commission's regulations implementing NEPA). On July 16, 2020, the Council on Environmental

of the U.S. Army Corps of Engineers (Army Corps), New Orleans, Fort Worth, Galveston, and Vicksburg Districts. 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, socioeconomics, cumulative impacts, and alternatives. All substantive comments raised during the scoping process were addressed in the EA.

68. The EA was issued for a 30-day comment period and placed into the public record on October 29, 2020. The Commission received comments on the EA from the U.S Environmental Protection Agency (EPA) Region 6 concerning environmental justice and air quality, and from Louisiana DWF Permit Coordinator Mr. Dave F. Butler, concerning water resources, noise, vegetation, and special status species.[79] The Choctaw Nation of Oklahoma and the Quapaw Nation Historic Preservation Office also provided comments expressing their general interest in the project effects on cultural resources. Enable and Gulf Run jointly filed a response to the comments. On May 26, 2021, Laborers International Union of North America Local 692 (Local 692) commented on the socioeconomic impacts related to hiring local labor from the surrounding environmental justice communities.

1. <u>Environmental Justice</u>

69. In its comments, EPA recommends that the Commission's environmental justice analysis include the following information to determine whether the project would have an adverse and disproportionate impact to minority and low-income populations or communities for the project: (1) the percentage of the total proposed project that will encroach upon or impact minority and low-income populations (individually and collectively); (2) the percentage of active, private drinking water wells identified and associated with minority and low-income populations; (3) the percentage of the project's overall land requirements, including both temporary and permanent impacts, in areas of minority or low-income populations and; (4) the percentage of minority and low-income populations impacted by the construction right-of-way and access roads crossing within

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Quality (CEQ) issued a final rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Final Rule, 85 Fed. Reg. 43,304 (Jul. 16, 2020), which was effective as of September 14, 2020; however, the NEPA review of this project was in process at that time and was prepared pursuant to CEQ's 1978 NEPA regulations.

[79] The comments provided by Louisiana DWF are similar to its comments filed during the scoping period conducted as part of the pre-filing process. Louisiana DWF July 11, 2019 Comments in Docket No. PF 19-3-000.

50 feet of residences, and mitigation measures implemented to reduce or eliminate effects on these communities.

70. The EA analyzed environmental justice communities at the census block group level using EPA guidance, and concluded that the project would not have disproportionately high or adverse environmental effects on minority or low-income communities.[80] The 134-mile-long Gulf Run Pipeline will cross through 39.5 miles of census blocks identified as low-income areas (29% of the pipeline) and through 31.4 miles of census blocks identified as minority areas (23% of the pipeline). Of the more than 200 non-public roads, totaling approximately 185 miles, to be used by Gulf Run during construction and operation of the Gulf Run Pipeline, approximately 19.9 miles of road (11%) are within census blocks identified as low-income and 12.6 miles of road (7%) are within census blocks identified as minority. For both the pipeline right-of-way and the roads, no minority census blocks identified were outside of the low-income census blocks identified.

71. The Line CP Modifications at the Westdale Compressor Station will occur in one census block identified as a low-income and minority area. The Line CP Modifications at the Midcontinent Express Pipeline Meter Station, the Columbia Gulf Meter Station, the Line CP-3 Meter Station, and the Enable Meter Station will occur in census blocks identified as low-income areas. However, the Line CP modifications will occur within the existing fence line of these facilities.[81]

72. The Gulf Run Pipeline Project will impact approximately 2,492 acres during construction for workspaces, access roads, contractor and pipe yards, and aboveground facilities, and of this approximately 706 acres of (28%) are in census blocks identified as low-income and 539 acres (22%) are in census blocks identified as minority. Operation of the pipeline will result in permanent easements and associated facilities on approximately 791 acres of land, of which 221 acres (28%) are located in census blocks identified as low-income and 182 acres (23%) of those census blocks are identified as minority.

[80] EA at 113.

[81] Gulf Run proposes to expand an existing pig receiver facility in Panola County, Texas to construct the new Line CP-3 Meter Station, which, as mentioned above, is located in a census block group identified as low income. This facility will temporarily disturb approximately 0.4 acres of land outside the existing facility fence line and 0.1 acres of that will be permanently disturbed. Enable and Gulf Run December 15, 2020 Response to EA Comments at 7.

73. The EA identifies six residences, two occupied and four abandoned, that are within 50 feet of a proposed construction workspace for the Gulf Run Pipeline.[82] One of the occupied residences (located near milepost 26.5) is within a census block identified as an environmental justice community. The EA also identified nine residences, seven occupied and two unoccupied, within 50 feet of an access road that Gulf Run will use to reach the project right-of-way. One occupied residence (located near temporary access road TAR-31) is within a census block identified as an environmental justice community.

74. Regarding water wells, the EA identifies 12 private water wells designated for domestic use within 150 feet of a construction work area for the Gulf Run Project.[83] No private drinking water wells were identified within 150 feet of the Line CP Modifications facility sites. Five of the 12 private water wells are in census blocks identified as environmental justice communities. As stated in its application,[84] and as required by Environmental Condition 16 in the appendix to this Order, Gulf Run will conduct pre- and post-construction monitoring for well yield and water quality for any private wells within 150 feet of the construction work areas, with landowner permission.[85] If the project affects the well quality or yield, Environmental Condition 16 requires Gulf Run to provide an alternative water supply and repair or replace the damaged supply.[86]

75. Having considered the areal extent of project impacts, the number of residences that would be affected by construction and operation, and the number of drinking water wells that might be affected by the Gulf Run Pipeline and the Line CP Modifications, we agree with the conclusion in the EA that the project would not result in an adverse and disproportionate effect on environmental justice populations/communities.[87]

76. In its comments, Local 692 states that the Commission should require the Applicants to use a greater percentage of local labor to construct the pipeline. The EA states that Enable estimates that 85% of its construction workforce would be non-local and would temporarily relocate to the project area, while up to 15% of the required

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[82] EA at 94-95.

[83] EA at 43-44. The wells were identified from the Louisiana Department of Natural Resources water well registry database.

[84] Gulf Run Application Resource Report 2 at 2-12 to 2-13.

[85] Environmental Condition 16.

[86] *Id.*

[87] EA at 113.

workforce would be local labor.[88] Local 692 notes that the pipeline will traverse environmental justice communities, but will provide limited employment opportunities to those communities. Local 692 asks that the Commission require reporting of the hiring from within the low-income communities along the pipeline and that the Applicants should seek to hire at least 50% of the workers from the local unions. The Commission cannot require Enable or Gulf Run to hire union contractors and takes no position on a company's choice regarding any specific service provider; Enable and Gulf Run have the discretion to determine whether to use union contractors.[89] We recognize the considerable benefits that local labor requirements may have on the surrounding community, and for environmental justice communities in particular. Nevertheless, the Commission generally lacks the authority to proscribe requirements governing labor practices under its public interest authority.[90] That said, we strongly encourage Enable and Gulf Run to consider measures that would benefit the communities affected by the Project, including, as appropriate, local labor goals or requirements.

2. <u>Air Quality</u>

77. EPA comments that all non-road engines should be certified as in compliance with EPA Tier 4 regulations,[91] any open burning should be coordinated with the Louisiana Department of Environmental Quality (Louisiana DEQ) and Texas Commission on Environmental Quality (Texas CEQ) to avoid impacts on Class I Federal Areas, and any natural gas venting during pigging (i.e., internal pipeline cleaning or inspection) activities should be included in appropriate air permit applications.

78. In responses to comments on the EA, Enable and Gulf Run state that all non-road engine equipment used for project construction will meet EPA's applicable emission standards for such equipment in place at the date of engine manufacture.[92]

79. As stated in the EA, Enable and Gulf Run are required to comply with all applicable regulations, including any air permits issued for the project. The EA described

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[88] EA at 106-107 (2020).

[89] *See Southern Star Central Gas Pipeline, Inc.*, 169 FERC ¶ 61,214, at P 27 (2019); *Columbia Gas Transmission, LLC*, 166 FERC ¶ 61,037, at P 35 (2019).

[90] *Cf. NAACP v. FERC*, 425 U.S. 662, 671 (1976) (explaining that the Commission's public interest authority does not extend to "processing of charges of unfair labor practices on the part of its regulatees").

[91] *See* 40 C.F.R. pts 89, 1039 (2020).

[92] Enable and Gulf Run December 15, 2020 Response to EA Comments at 9.

the potential for open burning and the open burning restrictions contained in local ordinances and in the Louisiana State Implementation Plan.[93] In its response to comments on the EA, Enable and Gulf Run confirmed that no open burning is planned within Texas, and any open burning conducted in Louisiana will be coordinated with the Louisiana DEQ, the Louisiana Department of Agriculture, and each parish. Enable and Gulf Run state that they will obtain any applicable open burning permits.[94] Open burning is not expected to impact any Federal Class I areas,[95] as the nearest Class I area is the Caney Creek Wilderness Area in Arkansas over 150 miles away.

80. Any venting necessary during pipeline pigging will be accounted for in applicable stationary source air permits. Specifically, Enable states that venting from pigging operations is included in the air permit application for modifications at the Westdale Compressor Station, and will include venting operations in any other permits as required by the Texas CEQ and Louisiana DEQ for the remainder of the project's facilities.[96]

3. Water Resources

81. Louisiana DWF comments that in order to preserve riparian habitat and avoid impacts on wetlands, it requests that Gulf Run install the pipeline using the horizontal directional drill (HDD) method at Rocky Creek (milepost 73.9) and Bear Head Creek (milepost 125.3). These two crossings were analyzed in the EA as open-cut methods, which the EA concluded to be acceptable.[97]

82. The EA analyzed all project waterbody and wetland crossings and the proposed installation methods, including 7 HDDs to cross 17 waterbodies and associated wetlands.[98] The EA describes how Gulf Run would construct its facilities in accordance with the best management practices in the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction*

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[93] EA at 122-25.

[94] Enable and Gulf Run December 15, 2020 Response to EA Comments at 10.

[95] Under the Clean Air Act, the U.S. EPA Administrator, in consultation with the Secretary of the Interior, establishes areas (including national wilderness areas and national parks) where visibility is determined to be an important value. *See* 40 C.F.R. § 81.400 (2020).

[96] Enable and Gulf Run December 15, 2020 Response to EA Comments at 10.

[97] EA at 49-52.

[98] EA at 52.

and Mitigation Procedures (Procedures), as well as with the regulations and requirements of applicable permits including the Army Corp's authorization under section 404 of the Clean Water Act and the State of Louisiana's Water Quality Certification under section 401 of the Clean Water Act. The EA concluded that with implementation of the best management practices and mitigation measures identified for each of the waterbody and wetlands, impacts would be short-term and minor.

83. In its response to comments on the EA, Gulf Run states it will conduct geotechnical investigations to assess the feasibility of using the HDD method to cross Bear Head Creek, rather than using the open-cut method.[99] With regard to the pipeline crossing of Rocky Creek, Gulf Run states that it will continue to coordinate with the Louisiana DWF and the Army Corps regarding the state agency's request that it use the HDD crossing method. After completing the geotechnical investigation, engineering analysis, and coordination with the Louisiana DWF and the Army Corps, Gulf Run states that it will file HDD feasibility reports and other supporting information with the Commission. Should Gulf Run want to change the open-cut crossing methods of Bear Head Creek or Rocky Creek, as approved in this order, to the HDD crossing methods, it must file a variance request in accordance with the requirements of Environmental Condition 5 in the appendix to this order.

4. Noise

84. To account for the entry or exit site of a potential HDD at the crossing of Rocky Creek and Bear Head Creek, which may result in noise impacts at nearby noise-sensitive areas (NSA), we are modifying Environmental Condition 14 in the appendix to this order. This condition requires Gulf Run to develop an HDD noise mitigation plan to reduce the projected noise level attributable to the drilling operations at NSAs. Should Gulf Run use the HDD crossing method at Rocky Creek or Bear Head Creek, Gulf Run will be required to implement the approved plan, monitor noise levels, document the noise levels in its bi-weekly status reports, and restrict the noise attributable to any HDD operations at the crossings of Rocky Creek and Bear Head Creek to no more than a day-night sound level (L_{dn}) of 55 A-weighted decibels at NSAs.

5. Special Status Species

85. Louisiana DWF generally comments that suitable habitat for the red-cockaded woodpecker, a federally listed species, may occur within 1 mile of the project, and if pine trees over 30 years old and at least 10 inches diameter at breast height are to be removed, a survey for woodpecker habitat should be conducted. As noted in the EA, Gulf Run conducted field surveys and found that no suitable habitat existed for the red-cockaded

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[99] Enable and Gulf Run December 15, 2020 Response to EA Comments at 11-12.

woodpecker.[100] The EA evaluated potential impacts on the red-cockaded woodpecker, acknowledged that the species has the potential to exist within the area, and noted that during field surveys Gulf Run found that no suitable habitat existed for the red-cockaded woodpecker.[101] In addition, Gulf Run adopted a route variation to avoid construction across property subject to a Habitat Conservation Plan intended to stabilize a population of red-cockaded woodpecker.[102] Due to the absence of suitable habitat and the adoption of the route variation, the EA determined the project would have no effect on the species.[103] Therefore, this order does not require additional surveys for woodpecker habitat.

86. Louisiana DWF also comments that Bachman's sparrow (a Migratory Bird of Conservation Concern) may be found in the project area, such that extensive ground disturbance and drum-chopping of clear cuts[104] should be avoided. The EA identified the Bachman's sparrow as a migratory bird known to occur in the areas affected by the Gulf Run Pipeline,[105] but determined that nesting habitat is not likely present in the project area; and that with the implementation of the Commission's Plan and Procedures, Enable's and Gulf Run's adherence to timing restrictions for clearing of vegetation, and Enable's and Gulf Run's commitment to consult with the U.S. Fish and Wildlife Service if adherence to timing restrictions cannot be met, project-related impacts on the Bachman's sparrow would not be significant.

87. Louisiana DWF states that various aquatic species, including the eastern tiger salamander, suckermouth minnow, and Sabine fencing crawfish, and aquatic species habitats such as flatwoods ponds and western hillside seepage bogs may be impacted by

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[100] EA at 82.

[101] *Id.* at 81-83. Pine trees were found to be either too young/small to be suitable for foraging or nesting habitat. *Id.* at 82.

[102] *Id.* at 82-83. The EA noted that during the pre-filing process Louisiana DWF agreed that the use of roads within the Habitat Conservation Plan property would not affect the red-cockaded woodpecker if tree clearing and road widening is avoided. Although the Gulf Run Pipeline would require the use of two existing temporary access roads, no trees are to be cleared or roads improved.

[103] *Id.* at 83.

[104] Drum chopping is a method to clear vegetative cover from a tract of land by pulling a large metal drum fitted with cutting blades across the landscape. This will knock down trees and vegetation, clearing the tract of land.

[105] EA at 79-80.

the project and generally recommends avoiding significant disturbance of these habitats. The EA evaluated these aquatic species and habitats.[106] As stated in the EA, impacts on aquatic species would not be significant through the implementation of the Commission's Plan and Procedures, a project-specific Spill Prevention Control and Countermeasure Plan, and the use of HDD and dry-ditch crossing waterbody methods. The EA reports that flatwoods ponds and western hillside seepage bogs are known to occur within the general project area; however, no impacts on these vegetation communities are expected because the flatwoods pond is adjacent to a temporary access road that would not be improved for the project and no western hillside seepage bogs intersect with the project footprint.[107] We agree that with implementation of the measures above, the species will be adequately protected.

6. <u>Vegetation</u>

88. Louisiana DWF comments that there is the presence of a small-stream forest within 1 mile of the project, and that several plant species (bloodroot, Drummond's nailwort, silver croton, Southern lady's slipper, and spreading pygmyleaf) that are critically imperiled in Louisiana occur in the general project area.

89. As stated in the EA, the Gulf Run Pipeline route does not intersect the small-stream forest habitat identified in Louisiana DWF's December 1, 2020 comments.[108] The EA also evaluated the rare plants and vegetation communities listed by Louisiana DWF and determined that based on each species' habitat requirements and results of Gulf Run's field surveys, occurrence of these species in the project area is not likely.[109] On December 13, 2019, the Louisiana DWF confirmed that none of the species were documented within the project workspaces.[110] Therefore, no impacts on these plant species or habitat are expected.

7. <u>Cultural Resources</u>

90. On December 2 and December 7, 2020, the Choctaw Nation of Oklahoma filed comments on the EA stating that the project lies in the historical area of interest and requesting that the Commission provide GIS shapefiles of the project area, a map of the

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[106] *Id.* at 62-63.

[107] *Id.* at 69-70.

[108] *Id.* at 69-70.

[109] *Id.* at 67, appendix B table 4.

[110] Gulf Run Application Resource Report 3 at appendix C.

project area showing all cultural resources within a 1-mile radius, and a copy of the cultural resources report. The December 2 comments request that the Choctaw Nation of Oklahoma be a consulting party on this project and the December 7 comments request that the Commission provide a copy of the EA. Gulf Run provided the Choctaw Nation of Oklahoma with the requested GIS shapefiles, mapping, and the cultural resources survey reports.[111] Gulf Run also stated that it transmitted via electronic mail a copy of the EA to the Choctaw Nation on December 9, 2020.[112] The Choctaw Nation of Oklahoma has been consulted throughout the project and has provided comments at various stages of the proceeding. The EA discussed the tribal consultation process, and documents communications with the Choctaw Nation of Oklahoma.[113] As noted in the EA, on July 1, 2020, the Choctaw Nation of Oklahoma concurred with a finding of no historic properties affected.

91. On February 17, 2021, the Quapaw Nation Historic Preservation Office filed comments stating that the Quapaw Nation has a vital interest in protecting its historical and cultural resources and requested a copy of all State Historic Preservation Office correspondence received for the project. During the pre-filing process the Quapaw Nation submitted comments on January 14, 2019, requesting a copy of all State Historic Preservation Office correspondence.[114] Gulf Run provided the draft Phase I Cultural Resources Survey on January 16, 2019, and an addendum for a route variation on February 21, 2020.[115] The EA includes a summary of correspondence between the Quapaw Nation and Gulf Run.[116]

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[111] Gulf Run Application Resource Report 4 at appendix 4.A.

[112] Enable and Gulf Run December 15, 2020 Response to EA Comments at 19.

[113] EA at 104-05. On December 9, 2020, Gulf Run emailed the Choctaw Nation to clarify past engagement and coordination efforts for the project. Enable and Gulf Run December 15, 2020 Response to EA Comments at 18-19.

[114] Gulf Run Application Resource Report 1 appendix 1.D at 69.

[115] *Id.* at 125-29.

[116] EA at 105.

8. <u>Greenhouse Gas Emissions and Climate Change</u>

92. The EA estimates that the maximum potential GHG emissions from operation of the project to be 1,808 metric tons per year of carbon dioxide equivalent (CO2e).[117]

93. Although, we conservatively estimate the downstream emissions from projects assuming all the gas to be transported is eventually combusted where, as here, the majority of the gas being transported by the project's shipper will be exported,[118] the Commission need not consider the downstream effects of that gas such as downstream transportation, consumption, and combustion.[119] Further, the use of gas provided by the unsubscribed portion of the new transportation capacity is wholly unknown.[120] The proposed project can transport up to 1,650,000 dekatherms per day of new volumes, which can produce 31.865 million metric tons per year of CO2e from end-use combustion.[121] The downstream GHG emissions associated with the unsubscribed

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[117] EA at 127 (Table B-22) (converted to metric tons). We note that this calculation does not include the total estimated construction-related emissions of 5,739 metric tons of CO2e in 2021 and 2022. *See* EA at 126 (Table B-21).

[118] Golden Pass LNG has signed a precedent agreement for 1,100,000 Dth/day of the project's capacity. *See supra* P 10 (project's sole shipper, Golden Pass LNG plans to export the natural gas transported by Gulf Run through its LNG terminal).

[119] *Sierra Club v. FERC*, 827 F.3d 36, 48 (D.C. Cir. 2016) (*Freeport*) (explaining that the Department of Energy's "independent decision to allow exports . . . breaks the NEPA causal chain and absolves the Commission of responsibility to include [these considerations] in its NEPA analysis"); *see also id.* at 47 (holding that the Commission does not have to address the indirect effects of the anticipated export of natural gas, because the Department of Energy, not the Commission, has sole authority to license and consider the environmental impacts of the export of any natural gas going through LNG facilities); *Sierra Club v. FERC*, 827 F.3d 59, 68-69 (D.C. Cir. 2016) (same); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir 2016) (same); *Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2017) (explaining *Freeport*).

[120] The D.C. Circuit stated in *Birckhead v. FERC* that "emissions from downstream gas combustion are [not], as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project." 925 F.3d 510, 519 (D.C. Cir. 2019).

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

portion of the project capacity (550,000 Dth/day) is 10.622 million metric tons per year of CO2e. We note that this CO2e estimate represents an upper bound amount of end-use combustion that could result from the gas transported by this project.[122]

94. Next, we will compare the project's GHG emissions to the total GHG emissions of the United States as a whole. This comparison allows us to assess the project's share of contribution to GHG emissions at the national level. The annual GHGs from operation of the project, including the downstream combustion of the gas transported by the project but not accounted for by the precedent agreement signed by Golden Pass LNG,[123] are 10.623 million metric tpy CO2e. To provide context to the GHG estimate, 5.769 billion metric tons of CO2e were emitted at a national level in 2019 (inclusive of CO2e sources and sinks).[124] Construction of this project could potentially increase CO2e emissions based on the 2019 levels by 0.000099% in 2021 and 2022; in subsequent years, the project operations and downstream combustion of gas transported by the project could potentially increase U.S. GHG emissions by 0.18%.[125] When states have GHG emissions reduction targets we will also endeavor to consider the GHG emissions of a project as compared to those state goals. Louisiana set an executive target of a reduction of GHG emissions by

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issuance.

[122] This estimate assumes that the maximum capacity is transported 365 days per year, which is rarely the case. In addition, the transported gas may also displace other fuels, which could further lower total CO2 emissions.

[123] As stated above, 550,000 Dth/day is unsubscribed.

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

[125] Although the national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, *EPA,* Repeal of the Clean Power Plan*;* Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations, 84 Fed. Reg. 32,520, 32,522-32 (July 8, 2019), the Paris Climate Accord has been rejoined, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Jan. 27, 2021). On April 21, 2021, the U.S. announced a goal of reducing its net greenhouse gas emissions by 50 to 52% below 2005 levels in 2030. Reducing Greenhouse Gases in the United States: A 2030 Emissions Target (Apr.21, 2021), https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20 States%20of%20America%20First/United%20States%20NDC%20April%2021%202021 %20Final.pdf.

26-28% of 2005 levels by 2015, 40-50% of 2005 levels by 2040, and net zero by 2050.[126] The emissions from the project would represent 7.0% and 8.6 % of Louisiana's 2025 and 2030 GHG inventory goals, respectively.[127]

95. We acknowledge that GHG emissions, such as those emitted from the project's operations, will contribute incrementally to climate change and we have previously disclosed the various effects of climate change in the United States and Louisiana Gulf Coast Region.[128] The foregoing analysis of greenhouse gas emissions is offered for informational purposes only, does not inform any part of this order's holding, and shall not serve as precedent for any future order.

9. Environmental Conclusion

96. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Enable's and Gulf Run's applications and supplements, and in compliance with the environmental conditions in the appendix to this Certificate Order, our approval of these proposals would not constitute a major federal action significantly affecting the quality of the human environment.

I. Conclusion

97. Based on our Certificate Policy Statement determination and our environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of the projects, subject to the conditions in this order.[129]

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[126] Louisiana Executive Order No. JBE 2020-18, Climate Initiatives Task Force, https://gov.louisiana.gov/assets/ExecutiveOrders/2020/JBE-2020-18-Climate-Initiatives-Task-Force.pdf

[127] Louisiana's 2005 CO2 emissions were 205.1 million metric tons. U.S. Energy Information Administration, *Energy-Related CO2 Emission Data Tables* (Table 1 - State energy-related carbon dioxide emissions by year, unadjusted (1990-2018)), https://www.eia.gov/environment/emissions/state/. Therefore, we consider the 2025 GHG emission target to be 151.8 million metric tons (26%) and the 2040 GHG emission target to be 123.1 million metric tons.

[128] *See, e.g.*, Final Environmental Impact Statement, Driftwood LNG, LLC and Driftwood Pipeline, LLC, Docket Nos. CP17-117-000 and CP17-118-000, at 4-294 (Section 4.14.2.12) (Jan. 18, 2019).

[129] This certificate will be granted without a stay, and we note for informational purposes that granting the certificate without a stay is consistent to the rule announced in Order No. 871-B, because no landowner party contested this proceeding. That rule will

98. 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 analysis. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

99. 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.[130]

100. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, and exhibits thereto, and all comments and upon consideration of the record,

<u>The Commission orders</u>:

(A) A certificate of public convenience and necessity is issued to Enable authorizing it to construct and operate the proposed Line CP Modifications, as described herein, and as more fully described in the applications and subsequent filings by the applicant, including any commitments made therein.

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go into effect on June 14, 2021. *See*, *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871-B, 86 Fed. Reg. 26150 (May 13, 2021).

[130] *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); *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) A certificate of public convenience and necessity is issued to Gulf Run, authorizing it to construct and operate the proposed Gulf Run Project, as described and conditioned herein, and as more fully described in the application and subsequent filings, including any commitments made therein.

(C) Enable is granted permission and approval of the abandonment of Line CP, as described in this order and in the application.

(D) The certificate authority issued in Ordering Paragraphs (A) and (B) is conditioned on the following:

(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 Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(3) Compliance with the environmental conditions listed in the appendix to this order.

(E) Gulf Run shall file a written statement affirming that it has executed a firm service agreement for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

(F) A blanket construction certificate is issued to Gulf Run under Subpart F of Part 157 of the Commission's regulations.

(G) A blanket transportation certification is issued to Gulf Run under Subpart G of Part 284 of the Commission's regulations.

(H) Gulf Run's initial recourse rates, fuel retainage percentages, and *pro forma* tariff are approved, as conditioned and modified above.

(I) Gulf Run is required to file actual tariff records reflecting the proposed rates and tariff provisions applicable to services provided on its proposed Gulf Run Pipeline at least 30 days and not more than 60 days prior to the in-service date the proposed project.

(J) Gulf Run must file any negotiated rate agreement or tariff record, as described in the body of this order, setting forth the essential terms of the agreement associated with the project at least 30 days, but not more than 60 days before the proposed effective date of such rates.

(K) Gulf Run's request to abandon by lease capacity on the Line CP facilities to Enable is granted, as described in this order. Gulf Run shall notify the Commission within ten (10) days of the date of abandonment of the capacity leased to Enable.

(L) Enable's requests for pre-granted authority to abandon the Fixed-term Lease Capacity upon the expiration of the agreements is denied.

(M) Gulf Run's requests for pre-granted authority to reacquire the Fixed-term Lease Capacity upon the expiration of the agreements is denied.

(N) Within three months after its first three years of actual operation, as discussed herein, Gulf Run must make a filing to justify its existing cost-based firm and interruptible recourse rates. Gulf Run's cost and revenue study should be filed through the eTariff portal using a Type of Filing Code 580. In addition, Gulf Run is advised to include as part of the eFiling description, a reference to Docket No. CP20-70-000 and the cost and revenue study.

(O) A certificate of public convenience and necessity is issued to Enable authorizing it to lease capacity from Gulf Run, as described herein.

(P) Enable shall account for the proposed transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts.[131] Enable shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(Q) Enable is required to treat the capacity lease of 445,000 Dth/d with Gulf Run as an operating lease for accounting purposes, and record the monthly lease payments in Account 858, Transmission and Compression of Gas by Others, consistent with the accounting treatment for other similar capacity lease agreements approved by the Commission.[132]

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[131] *See* 18 C.F.R. pt. 201.

[132] *See, e.g.*, *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320 (1995); *TriState Pipeline LLC*, 88 FERC ¶ 61,328 (1999); *Gulf Crossing Pipeline Co. LLC*,

(R) Gulf Run shall account for the proposed transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts.[133] Gulf Run shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

(S) Gulf Run is directed to record the lease receipts associated with the 445,000 Dth/d of capacity lease to Enable in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities.[134]

(T) Enable and Gulf Run shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Enable and Gulf Run. Enable and Gulf Run shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

(S E A L)

Kimberly D. Bose,
Secretary.

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123 FERC ¶ 61,100 (2008); *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028; *Constitution Pipeline Co.*, 149 FERC ¶ 61,199.

[133] *See* 18 C.F.R. pt. 201.

[134] *See, e.g.*, *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320; *TriState Pipeline LLC*, 88 FERC ¶ 61,328; *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100; *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028; *Constitution Pipeline Co.*, 149 FERC ¶ 61,199.

Appendix

Environmental Conditions

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

1. Enable Gas Transmission, LLC (Enable) and Enable Gulf Run Transmission, LLC (Gulf Run) 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. Enable and Gulf Run must:

    a. request any modification to these procedures, measures, or conditions in a filing with the 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), or the Director's designee, **before using that modification.**

2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:

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

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

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Enable shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

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

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

    a. how Enable and Gulf Run 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 Enable and Gulf Run 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 Enable and Gulf Run 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 Enable's and Gulf Run's organization having responsibility for compliance;
    g. the procedures (including use of contract penalties) Enable and Gulf Run 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. Gulf Run shall employ at least one EI for each Gulf Run Pipeline spread. The EI shall be:

    a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

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

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

    a. an update on Enable's and Gulf Run's efforts to obtain the necessary federal authorizations;
    b. the construction status of the project, work planned for the following reporting period and any scheduled changes for stream crossings or work in other environmentally sensitive areas;
    c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
    d. a description of the corrective actions implemented in response to all instances of noncompliance;
    e. the effectiveness of all corrective actions implemented;
    f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
    g. copies of any correspondence received by Enable and Gulf Run from other federal, state, or local permitting agencies concerning instances of noncompliance, and Enable's and Gulf Run's response.

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

10. Enable must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Enable and Gulf Run 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 with which Enable and Gulf Run have complied or will comply. 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 Gulf Run's use of any herbicides within 100 feet of waterbodies or wetland areas along the Gulf Run Pipeline,** Gulf Run shall file with the Secretary a statement from the Louisiana Department of Wildlife and Fisheries that U.S. Environmental Protection Agency-approved herbicides for use in aquatic environments is acceptable project-wide.

13. **Prior to construction,** Enable and Gulf Run shall file with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, a plan for handling any unanticipated discoveries of contaminated material.

14. **Prior to construction at horizontal directional drill (HDD) Nos. 1, 3, 4, 6, 8, and any HDD crossings of Rocky Creek and Bear Head Creek,** Gulf Run shall file with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, an HDD noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at nearby noise sensitive areas (NSA) within 0.5 mile of each HDD's entry or exit site. During drilling operations, Gulf Run shall implement the approved plan, monitor noise levels, document the noise levels in the bi-weekly status reports, and restrict the noise attributable to the drilling operations to no more than a day-night sound level (L_{dn}) of 55 A-weighted decibels (dBA) at the NSAs.

15. Enable shall file noise surveys with the Secretary **no later than 60 days** after placing the modified Columbia Gulf/EGT and Midcontinent Express Pipeline

Meter Stations in service. If a full load condition noise survey is not possible, Enable shall provide an interim survey at the maximum possible horsepower load and/or operational load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at any station under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Enable shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Enable shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

16. Gulf Run shall conduct, with the well-owner's permission, pre- and post-construction monitoring of well yield and water quality for all private water wells within 150 feet of construction work areas. If the project affects the well quality or yield Gulf Run must provide an alternative water supply and repair or replace the damaged supply. **Within 30 days** of placing the facilities in service, Gulf Run shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Enable Gas Transmission, LLC	Docket No.	CP20-68-000
Enable Gulf Run Transmission, LLC		CP20-70-000

(Issued June 1, 2021)

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

1 We dissent in part on the Commission's consideration of the greenhouse gas (GHG) emissions from the Line CP Modifications and the Gulf Run Pipeline (Projects). The Commission should have prepared a supplemental environmental impact statement (EIS) to examine the effect that the GHG emissions caused by the Projects will have on climate change.

2 The National Environmental Policy Act[1] (NEPA) requires the Commission to prepare an EIS when issuing a certificate of public convenience and necessity unless the Commission can determine either that the project will not cause any significant adverse impacts or that such impacts will be mitigated.[2] In other words, when there are any "arguably significant" environmental impacts, the Commission must address them in an EIS.[3]

3 Unlike the Commission's recent order in *Northern Natural*,[4] we do not believe that we confidently answer that question one way or another on the present record. As a result, NEPA requires us to perform a supplemental EIS to determine whether the Projects' adverse effects on climate change are significant—just as we would any other

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

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

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

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

environmental impact. Nevertheless, instead of performing a supplemental EIS, the Commission relies on an environmental assessment that does not assess the significance of the Projects' GHG emissions or their effect on climate change. Because we believe that is insufficient to satisfy our responsibilities under NEPA, we have no choice but to dissent.

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

For these reasons, we dissent in part.

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Richard Glick
Chairman

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Allison Clements
Commissioner

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

Document Content(s)