

185 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
Allison Clements, and Mark C. Christie.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-501-000

ORDER ISSUING CERTIFICATE

(Issued November 16, 2023)

1. On August 22, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP22-501-000, under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to construct and operate new pipeline and compression facilities in Chilton and Coosa Counties, Alabama (Southeast Energy Connector Project or SEC Project). The project is designed to provide 150,000 dekatherms per day (Dth/d) of year-round firm transportation service from existing supply points in Mississippi and Alabama to an existing electric power generator located in Shelby County, Alabama. For the reasons discussed below, we grant the requested authorization subject to certain conditions.

I. Background and Proposal

2. Transco, a limited liability company formed and existing under the laws of the State of Delaware, is a natural gas company as defined by section 2(6) of the NGA³ and operates natural gas transportation facilities that extend from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. The SEC Project will enable Transco to provide 150,000 Dth/d of year-round incremental firm transportation service to the existing Gaston delivery meter station adjacent to Transco's Compressor Station 105 in Coosa County, Alabama. The project will serve Unit 5 (Gaston Unit 5) of the Earnest C. Gaston Electric Generating Plant, a

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2022).

³ 15 U.S.C. § 717a(6). Transco is an indirect, wholly owned subsidiary of The Williams Companies, Inc.

2,015-megawatt power station in Shelby County, Alabama. The Gaston Plant includes Units 1 – 4, owned by Southern Electric Generating Company (Southern), and Gaston Unit 5,⁴ owned by Alabama Power Company (Alabama Power), Southern’s wholly owned subsidiary. Transco states that the SEC Project will enable Alabama Power to continue to meet the retail electricity needs of its customers and to satisfy certain environmental compliance requirements by transitioning Gaston Unit 5’s fuel source from coal to natural gas.

4. Specifically, Transco proposes to:

- construct approximately 1.90 miles of 42-inch-diameter pipeline loop in Chilton and Coosa Counties, Alabama;
- remove pig traps⁵ located at milepost (MP) 909.63 and MP 911.53 on Transco’s Mainline E;
- install a new Solar Taurus 70 gas-fired, turbine-driven compressor unit with 11,110 nominal horsepower (HP); and
- re-wheel three existing compressor units at Compressor Station 105 in Coosa County, Alabama.

5. Transco executed a precedent agreement with unaffiliated shipper Southern Company Services, Inc. (SCS), as an agent for Alabama Power, for the proposed project’s full capacity. Following execution of the precedent agreement, Transco held an open season and request for turnback capacity from November 8, 2021, to November 29, 2021, and from August 9, 2022, to August 16, 2022, respectively. Transco received no conforming bids and no offers to relinquish capacity.

6. Transco estimates the cost of the SEC Project to be \$154,907,369 and proposes to charge an incremental recourse reservation rate designed to cover the full cost of the project.

⁴ Gaston Unit 5 is an 895-megawatt unit with a total generating capacity of 1,880,000 kilowatts.

⁵ A “pig” is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes. A “trap” is the pipeline component used to launch or receive pigs.

II. Notice and Interventions

7. The Commission issued public notice of Transco's application on August 30, 2022⁶ establishing September 20, 2022, as the deadline for filing comments and interventions. Fifteen entities filed timely, unopposed motions to intervene,⁷ all of which were granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁸ Coosa Riverkeeper, Inc. filed a late motion to intervene, which was granted.⁹

8. SCS¹⁰ filed comments in support of the project, asserting that its commitment to the project shows the specific market need for the capacity to be created, and that by facilitating Gaston Unit 5's transition from coal to natural gas, the project will enable Alabama Power to comply with the U.S. Environmental Protection Agency's (EPA) effluent limitations guidelines rule, while providing reliable service to its retail customers at lower costs.¹¹

9. Energy Transfer LP filed comments requesting that the Commission rely on the Certificate Policy Statement and its established precedent when considering Transco's application instead of on the draft policy statements issued on February 18, 2022.¹² As discussed in the March 24, 2022 Order on Draft Policy Statements, we will not apply the

⁶ Notice of the application was published in the *Federal Register* on September 6, 2022. 87 Fed. Reg. 54,489 (Sept. 6, 2022).

⁷ The intervenors are: Duke Energy Carolinas, LLC; Atlanta Gas Light Company and Virginia Natural Gas, Inc. jointly; Symmetry Energy Solutions, LLC; National Grid Gas Delivery Companies; New Jersey Natural Gas Company; NJR Energy Services Company; Natural Gas Supply Association; Center for LNG; Energy Transfer LP; Municipal Gas Authority of Georgia and Transco Municipal Group jointly; Piedmont Natural Gas Company, Inc.; Philadelphia Gas Works; and Southern Company Services Inc.

⁸ 18 C.F.R. § 385.214(c) (2022).

⁹ See Secretary's April 7, 2023 Notice Granting Late Intervention.

¹⁰ SCS filed a motion to intervene and comments in support of the project as agent for Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Southern Power Company.

¹¹ Southern Company Services, Inc. Sept. 20, 2022 Motion to Intervene and Comment at 4.

¹² Energy Transfer LP Sept. 16, 2022 Motion to Intervene and Comment at 4.

Updated Draft Policy Statement or the Draft GHG Policy Statement to pending applications or applications filed before any final guidance is issued.¹³

III. Discussion

10. Because the proposed facilities for the SEC Project will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities and capacity are subject to the requirements of sections (c) and (e) of section 7 of the NGA.¹⁴

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether and under what terms to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities. If residual adverse effects on these interest groups are identified after

¹³ See *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (Order on Draft Policy Statements) (changing the Updated Policy Statement and Interim GHG Policy Statement to draft status).

¹⁴ 15 U.S.C. §§ 717f(c), (e).

¹⁵ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, corrected, 89 FERC ¶ 61,040 (1999), clarified, 90 FERC ¶ 61,128, further clarified, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). On March 24, 2022, the Commission issued an order converting the policy statements issued in February 2022 to draft policy statements. See Order on Draft Policy Statements, 178 FERC ¶ 61,197.

efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. No Subsidy Requirement and Project Need

13. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes to charge incremental rates for new construction that are higher than the pipeline's existing system rates, the pipeline satisfies the threshold requirement that existing shippers will not subsidize the project.¹⁶ As discussed below, Transco proposes an incremental recourse rate for firm transportation service created by the SEC Project, which is designed to recover the cost of project facilities and is higher than Transco's existing applicable system rate. Therefore, we find that Transco's existing shippers will not subsidize the SEC Project.

14. The project is designed to facilitate Gaston Unit 5's transition from using coal to using natural gas as a fuel source, allowing Alabama Power to comply with EPA guidelines. The project will further enable Alabama Power to meet the retail needs of its customers and provide reliable power generation. Transco executed a long-term, binding precedent agreement with SCS for 100% of the project capacity. A precedent agreement for 100% of the project's capacity is significant evidence of the need for the proposed project.¹⁷

¹⁶ See, e.g., *Tenn. Gas Pipeline Co, LLC*, 179 FERC ¶ 61,041, at P 14 (2022).

¹⁷ See, e.g., *Tex. Gas Transmission, LLC*, 181 FERC ¶ 61,049 (2022) (finding a long-term precedent agreement for almost 100% of the project's capacity is significant evidence of need for the proposed project); *Enable Gas Transmission, LLC*, 175 FERC ¶ 61,183, at P 30 (2021) (finding a long-term precedent agreement for approximately 67% of the project's capacity demonstrated a need for the proposed project); *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 35 (2020) (finding a 10-year, firm precedent agreement for approximately 74% of the project's capacity adequately demonstrated that the project was needed). See also *Sierra Club v. FERC*, 38 F.4th 220, 230 (D.C. Cir. 2022) (finding a long-term precedent agreement for 80% of the project's capacity showed an actual need for the project); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *1 (D.C. Cir. Feb. 19, 2019) (finding the Commission's conclusion that there is a market need for the project was reasonable and supported by

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

15. We find that the SEC Project will not adversely affect service to Transco's existing customers because the proposed facilities are designed to provide service for the project shippers without degradation of service to Transco's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers because, as described above, the project capacity will be used as a replacement fuel source to generate electricity at Gaston Unit 5 and is not intended to bypass an existing pipeline or displace existing service providers. No pipelines or their captive customers have objected to Transco's proposal.

16. We are further satisfied that Transco has taken appropriate steps to minimize adverse economic impacts on landowners and surrounding communities. The proposed facilities were designed to use, to the maximum extent practicable, existing rights-of-way and areas adjacent to existing rights-of-way.¹⁸ Although the construction of the proposed project will require a total of about 156.4 acres, Transco will permanently maintain a smaller 13.8 acres. Transco will restore the remaining acreage to preconstruction uses. Transco engaged with state and federal agencies, government officials, landowners, and other stakeholders during the Commission's pre-filing process, and continues to do so. It held a virtual outreach meeting on April 5, 2022 and in-person outreach meetings on April 6 and 7, 2022, to provide information to stakeholders regarding project details and the Commission's permitting process.¹⁹

3. Certificate Policy Statement Conclusion

17. In sum, the proposed project will provide up to 150,000 Dth/d of firm natural gas transportation service to Alabama Power's Gaston Unit 5. Transco entered into a precedent agreement with SCS, an unaffiliated entity, for 100% of the project's capacity. Accordingly, we find that Transco has shown a need for the project. Further, the project will not have adverse impacts on existing shippers or other pipelines and their existing customers and will have minimal economic impacts on the interests of landowners and surrounding communities. Therefore, we conclude that the project is consistent with the

substantial evidence, in the form of long-term precedent agreements for 100% of the project's capacity).

¹⁸ Application at 17.

¹⁹ *Id.* at 18.

criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.²⁰

B. Rates

1. Initial Recourse Rates

18. Transco proposes an incremental recourse rate under its Rate Schedule FT for the recovery of the costs attributable to the incremental project facilities. Transco proposes a daily incremental firm recourse reservation charge of \$0.51421 per Dth and an applicable usage charge of \$0.00265 per Dth, based on a 100% load factor. Transco derived its proposed incremental firm recourse reservation charge using a fixed first-year cost-of-service of \$28,153,093 and an annual design capacity equivalent to the annual contract quantity of 54,750,000 Dth. Transco's proposed incremental charges are based on cost-of-service factors approved by the Commission, including an onshore transmission depreciation rate of 3.00% for its solar turbines and 2.50% for all other onshore transmission facilities, including negative salvage.²¹ Transco uses a pre-tax return of 12.83%, which reflects a 12.50% return on equity.²²

19. We have reviewed Transco's proposed cost of service and initial incremental rates and find that they are consistent with current Commission policy. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.²³ Transco's proposed incremental daily reservation charge for the project of \$0.51421 per Dth plus the proposed usage charge of \$0.00265 per Dth, would be higher than Transco's current Rate Schedule FT, Zone 4-4, system maximum daily reservation charge of \$0.24368 per Dth plus the system maximum usage

²⁰ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on economic interests will the Commission then complete the environmental analysis).

²¹ The stated depreciation rates were part of the Stipulation and Agreement (Settlement) approved by the Commission on March 24, 2020 in Docket No. RP18-1126-000, et al. See *Transcon. Gas Pipe Line Co., LLC*, 170 FERC ¶ 61,245 (2020).

²² Application at 14, n.13. Transco notes that the use of a 12.83% pre-tax return reflects a return on equity and income tax rates agreed upon in the Settlement approved by the Commission on March 24, 2020, and is consistent with its initial rates filed for its Leidy South Project (Docket No. CP19-494-000), Transco's first expansion project subsequent to its Settlement.

²³ Certificate Policy Statement, 88 FERC at 61,745.

charge of \$0.01089 per Dth.²⁴ Therefore, we will approve the proposed incremental rates under Rate Schedule FT as the initial recourse charges for the incremental service provided on the project. In addition, Transco is directed to charge the applicable system interruptible rate for such service using the expansion capacity.

2. Fuel Retention and Electric Power Rates

20. Transco proposes to apply its generally applicable system fuel retention and electric power rates to project service and therefore requests a predetermination of rolled-in rate treatment for the proposed facilities' fuel consumption. To support this proposal, Transco submitted a fuel study that modeled the impact of the project on system compressor fuel and electric power consumption for the project path.²⁵ Transco states that the fuel study uses a representative sampling of the daily volume traversing the project path for a 365-day period between January 1, 2021, and December 31, 2021, and that it selected 10 days from this period to be "representative of the range of system operating conditions" had the proposed facilities been in service. The study demonstrates that the project would result in an overall 0.67% reduction in system fuel use (system compressor fuel and electric power consumption) attributable to existing facilities.²⁶ Because the proposed facilities would yield a net system fuel benefit to the existing system customers without subsidization, we approve Transco's proposal to charge its generally applicable system fuel retention percentage and system electric power rates for the project facilities. Further, the Commission grants Transco a predetermination that the gas fuel and electric power costs associated with the project will qualify for rolled-in treatment in a future general section 4 rate filing, absent a significant change in circumstances.

3. Reporting Incremental Costs

21. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.²⁷ Therefore, we will require Transco to keep separate books and accounting of costs and revenues attributable to the incremental capacity created by the project as required by section 154.309 of the

²⁴ Transcon. Gas Pipe Line Company, LLC, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates (31.0.0).

²⁵ Application at Ex. Z-1.

²⁶ *Id.* at 2.

²⁷ 18 C.F.R. § 154.309 (2022).

Commission's regulations.²⁸ The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.²⁹

4. Negotiated Rates

22. Transco's tariff allows it to charge negotiated rates for the proposed services. If Transco charges SCS under a negotiated rate agreement³⁰ for project services, Transco must file either the negotiated rate agreement or tariff records setting forth the essential terms of the agreement in accordance with the Alternative Rate Policy Statement³¹ and the Commission's negotiated rate policies.³²

C. Environmental Analysis

23. On April 18, 2022, Commission staff began its environmental review of the Southeast Energy Connector Project by granting Transco's request to use the Pre-Filing Process, assigning Docket No. PF22-6-000.³³ The Commission's Pre-Filing Process is

²⁸ *Id.*

²⁹ *See Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

³⁰ Transco states that Southern agreed to pay the recourse rate for transportation service. Application at 13. However, Transco also states that the precedent agreement "contains commercially sensitive information, including negotiated transportation rates..." *Id.* at 26. For now, Transco intends to use the recourse rate to recover the costs of the project. *Id.* at 13.

³¹ *Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regul. of Negotiated Transp. Servs. of Nat. 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).

³² *Nat. Gas Pipelines Negotiated Rate Policies & Pracs.*, 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).

³³ Approval of Pre-Filing Request, Docket No. PF22-6-000 (issued Apr. 18, 2022); see also 18 C.F.R. § 157.21(b) (2022).

designed to encourage early involvement by citizens, governmental entities, non-governmental organizations, and other interested parties in the development of proposed natural gas transmission projects, prior to the filing of a formal application.

24. As part of the Pre-Filing Process, on May 19, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Southeast Energy Connector Project*. The notice was published in the *Federal Register*³⁴ on May 25, 2022, and opened a 30-day scoping period. The notice was mailed to federal, state, and local officials; agency representatives; environmental and public interest groups; Native American Tribes; potentially affected landowners; and local libraries and newspapers (i.e., project stakeholders). The Commission received comments in response to the notice from the Muscogee (Creek) Nation,³⁵ the U.S. Fish and Wildlife Service (FWS), and the Alabama Department of Environmental Management.

25. On August 22, 2022, Transco filed its application. On October 28, 2022, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Southeast Energy Connector Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review (NOI)*. The NOI, which opened an additional 30-day scoping period, was published in the *Federal Register*³⁶ on November 3, 2022, and mailed to the project stakeholders. The Commission received comments to the NOI from four Tribes,³⁷ the EPA, U.S. Army Corps of Engineers (Corps), Southern Environmental Law Center and Coosa Riverkeeper (collectively, Coosa Riverkeeper), and one potential landowner. The comments concerned the project's purpose and need, alternatives, water resources, fisheries, wildlife, vegetation, federal and state protected species, air quality, greenhouse gases (GHG) emissions, climate change, environmental justice, cumulative impacts, and a request for an environmental impact statement (EIS).

26. On January 27, 2023, the Commission issued a *Notice to Prepare an Environmental Assessment and Revised Schedule for Environmental Review of the Southeast Energy Connector Project* (January 2023 Notice). The notice announced that the Commission would issue an environmental assessment (EA) for the project, rather

³⁴ 87 Fed. Reg. 31, 867 (May 25, 2022).

³⁵ The Cultural Resource Specialist for the Muscogee (Creek) Nation, Robin Soweka Jr., filed comments on behalf of the Nation.

³⁶ 87 Fed. Reg. 66,284 (Nov. 3, 2022).

³⁷ Comments from the Cherokee Nation, Choctaw Nation of Oklahoma, Chickasaw Nation, and Muscogee (Creek) Nation were filed as a single document. See FERC Memorandum (Dec. 2, 2022).

than an EIS, and revised the planned issuance date for the document. The January 2023 Notice was also published in the *Federal Register* on February 3, 2023,³⁸ and mailed to project stakeholders. The Commission did not receive any comments on the notice.

27. Pursuant to the National Environmental Policy Act of 1969 (NEPA),³⁹ Commission staff prepared an EA for the Southeast Energy Connector Project, which was issued on March 24, 2023. A Notice of Availability of the EA was published in the *Federal Register* on March 30, 2023, establishing a 30-day comment period.⁴⁰ The notice was also mailed to project stakeholders. The Corps participated as a cooperating agency in the preparation of the EA.

28. The analysis in the EA addresses geology, soils, water resources and wetlands, fisheries, vegetation, wildlife, threatened and endangered species, land use, visual resources, environmental justice,⁴¹ cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. With regard to climate change impacts, the EA does not characterize the project's GHG emissions as significant or insignificant, but we disclose the reasonably foreseeable emissions below.⁴² For the remainder of resources assessed, the EA concludes that with the recommended mitigation measures, project impacts would be reduced to less-than-significant levels. With regard to environmental justice communities, project construction impacts associated with visual resources, socioeconomics, transportation, air quality, and noise would be temporary and less than significant. In addition, permanent impacts on environmental justice communities associated with visual resources, noise, and air quality from operation of the Compressor Station 105 unit addition would be less than significant. All substantive comments received prior to its issuance were addressed in the EA.

³⁸ 88 Fed. Reg. 7429 (Feb. 3, 2023).

³⁹ 42 U.S.C. §§ 4321 *et seq.* See also 18 C.F.R. pt. 380 (2022) (Commission's regulations implementing NEPA).

⁴⁰ 88 Fed. Reg. 19,127 (Mar. 30, 2023).

⁴¹ Under NEPA, the Commission considers impacts to all potentially affected communities. Consistent with Executive Order 12,898 and Executive Order 14,008, the Commission separately identifies and addresses "disproportionately high and adverse human health or environmental effects" on environmental justice communities. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021). See *infra* PP 45-83.

⁴² EA at 112, 122.

29. In response to the EA, the Commission received comments from FWS, the Choctaw Nation of Oklahoma, EPA, and Coosa Riverkeeper. In a letter dated April 19, 2023, FWS responded to the Commission staff's biological assessment and agreed with staff's conclusion that the project might affect, but was unlikely to adversely affect, listed species, so that no further consultation is necessary.⁴³ Staff's recommended environmental condition requiring additional consultation between staff and FWS prior to construction⁴⁴ is therefore no longer needed and is not included as an environmental condition in the appendix to this order. The Choctaw Nation of Oklahoma notes that the project is outside its area of current and historical interest, and provided no specific comments on the EA.⁴⁵ EPA recommends evaluating additional alternatives and mitigation to prevent impacts to aquatic resources.⁴⁶ EPA also recommends including details regarding the type of coating that will be used in the pipeline and including the land and facilities necessary for cathodic protection.⁴⁷ Coosa Riverkeeper reiterates its claim that an EIS must be prepared and argues the EA is flawed because it does not analyze all reasonable alternatives, its assessment of GHG emissions is misleading, the environmental justice analysis does not adequately consider the potential for significant and disproportionate adverse impacts to environmental justice communities, and it does not fully evaluate wildlife or waterbody crossing impacts.⁴⁸ EPA's and Coosa Riverkeeper's comments are addressed below.

⁴³ FWS April 19, 2023 Letter at 2.

⁴⁴ EA at 46, 126 (“Transco should not begin construction activities until: a. FERC staff receives additional comments from the FWS regarding the proposed action; b. FERC staff completes ESA consultation with the FWS; and c. Transco has received written notification from the Director of OEP, or the Director’s designee, that construction or use of mitigation may begin.”).

⁴⁵ Choctaw Nation of Oklahoma April 13, 2023 Comment.

⁴⁶ EPA April 24, 2023 Comment at 3.

⁴⁷ *Id.* at 4.

⁴⁸ Coosa Riverkeeper April 24, 2023 Comment at 2,

30. After Commission staff issued the EA, Congress enacted the *Fiscal Responsibility Act of 2023*.⁴⁹ A section titled “Builder Act” amended NEPA in several ways.⁵⁰ NEPA section 102(C), as amended, requires that agencies prepare NEPA documents on:

- (i) reasonably foreseeable environmental effects of the proposed agency action;
- (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.⁵¹

The Commission has complied with its NEPA responsibilities under both versions of the statute.⁵²

⁴⁹ See FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10 (June 3, 2023). The Commission relied on the *Fiscal Responsibility Act of 2023* in a recent order. See *Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221, at PP 7, 9, 11 n.20 (2023).

⁵⁰ See FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10, at § 321 (June 3, 2023) (providing the “Builder Act”).

⁵¹ 42 U.S.C. § 4332(c)(i).

⁵² We note that the Council on Environmental Quality recently published a Notice of Proposed Rulemaking to revise its regulations implementing NEPA, including to implement the Builder Act amendments. 88 Fed. Reg. 49,924 (July 31, 2023). The

1. Greenhouse Gas Emissions and Climate Change

31. NEPA requires agencies to include in NEPA documents reasonably foreseeable environmental effects of the proposed agency action.⁵³ The Council on Environmental Quality (CEQ) defines effects or impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable,” which includes those effects that “occur at the same time and place” and those that “are later in time or farther removed in distance, but are still reasonably foreseeable.”⁵⁴ An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take into account in reaching a decision.”⁵⁵

32. We find that the Southeast Energy Connector Project’s construction and direct operational emissions, and net reduction in indirect emissions, are reasonably foreseeable. The EA estimates that construction of the project may result in emissions of up to about 17,645 metric tons of carbon dioxide equivalents (CO₂e) over the duration of construction.⁵⁶ The project’s estimated operational GHG emissions are 54,631 metric tons per year (tpy) of CO₂e,⁵⁷ which was calculated based on the increased horsepower resulting from the new project facilities and assuming 100% utilization; i.e., it is assumed that the facilities are operated at maximum capacity for 365 days/year, 24 hours/day.⁵⁸

Commission will monitor this proceeding to inform the Commission’s practices going forward.

⁵³ See FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10, at § 321 (June 3, 2023).

⁵⁴ 40 C.F.R. § 1508.1(g) (2022).

⁵⁵ *Id.* § 1508.1(aa). See generally *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (explaining that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” and that “[t]he Court analogized this requirement to the ‘familiar doctrine of proximate cause from tort law’”) (citation omitted); *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

⁵⁶ EA at 111-112.

⁵⁷ *Id.* at 112.

⁵⁸ *Id.*

With respect to downstream emissions, staff explains in the EA that the gas transported by the project will be combusted at the Gaston Steam Plant.⁵⁹ The EA explains that Alabama Power will convert its existing Gaston Unit 5 from burning coal to burning natural gas.⁶⁰ Transco estimates the full potential of converting the electric generating unit from coal to natural gas would yield an overall net GHG emissions reduction of approximately 3.1 million metric tpy CO_{2e},⁶¹ resulting in long-term, ongoing emission reductions. The EA estimates that the avoided social cost of the emissions from construction and operation of the project, including the reduction in emissions that would result at the Gaston Steam Plant, is either -\$605,027,471 (assuming a discount rate of 5%), -\$2,240,153,433 (assuming a discount rate of 3%), -\$3,369,415,577 (assuming a discount rate of 2.5%) or -\$6,795,227,133 (using the 95th percentile of the social cost of GHGs with a discount rate of 3%).⁶²

33. As we have done in prior certificate orders, we compare estimated project GHG emissions to the total GHG emissions of the United States as a whole and at the state level. This comparison allows us to place a project's anticipated emissions in context. At a national level, 5,586 million metric tons of CO_{2e} were emitted in 2021 (inclusive of CO_{2e} sources and sinks).⁶³ Construction emissions from the project could potentially increase CO_{2e} emissions based on the national 2021 levels by approximately 0.0003%.⁶⁴

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* The existing Gaston Steam Plant emits 7,156,557 metric tpy CO_{2e} and Transco estimates that the modified Gaston Steam Plant will emit 4,042,493 metric tpy CO_{2e} following the conversion of Gaston Unit 5 from coal to natural gas. Transco Response to Sept. 27, 2023 Environmental Information Request (filed Sept. 29, 2023).

⁶² EA at 114-115. For the calculations, staff assumed that construction emissions will take place between 2024 and 2025, that the project will begin service in 2025, and that the project's operational and downstream emissions will be at a constant rate throughout the term of Transco's precedent agreement with its shipper. *Id.* at 114. The IWG draft guidance identifies costs in 2020 dollars. Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, at 5 (Table ES-1) (Feb. 2021).

⁶³ EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020 at ES-4 (Table ES-2) (April 2022), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020>

⁶⁴ EA at 113.

Operation of the modified emission sources could potentially increase CO₂e emissions based on the national 2021 levels by 0.001%.⁶⁵ However, we note that, during each year of the project's operation, the net overall reduction in GHG emissions from the combined operation of the modified Gaston Steam Plant and the project's facilities would decrease emissions based on the national 2021 levels by approximately 0.06%.⁶⁶

34. At the state level, Alabama's energy-related CO₂e emissions in 2020 were 98.3 million metric tons.⁶⁷ Construction emissions from the project could potentially increase CO₂e emissions based on Alabama's 2020 levels by 0.018%. In subsequent years, operational emissions could potentially increase emissions based on Alabama's 2020 levels by 0.06%.⁶⁸ The net overall reduction in GHG from the combined operation of the modified Gaston Power Plant and the project's facilities stated above would decrease emissions based on the Alabama 2020 levels by approximately 3.1%.⁶⁹ Finally, we note that when states have GHG emissions reduction targets, we will compare the project's GHG emissions to those state goals to provide additional context, however, Alabama has no established reduction targets at the time of the issuance of the EA document.

35. We clarify that for informational purposes, Commission staff disclosed an estimate of the avoided social cost of GHGs.⁷⁰ While we have recognized in some past orders that social cost of GHGs may have utility in certain contexts such as rulemaking,⁷¹ we have also found that calculating the social cost of GHGs does not enable the Commission to determine credibly whether the reasonably foreseeable GHG emissions associated with a project are significant or not significant in terms of their impact on global climate change.⁷² Currently, there are no criteria to identify what monetized

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 115. "Commission staff have not identified a methodology to attribute discrete, quantifiable, physical effects on the environment resulting from the Project's incremental contribution to GHGs." *Id.* at 112.

⁷¹ *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 35-37 (2018).

⁷² See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, (2017), *aff'd* sub nom. *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199; *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 111 (D.C. Cir. 2022). The social cost of

values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria.⁷³ Nor are we aware of any other currently scientifically accepted method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions.⁷⁴ The D.C. Circuit has repeatedly upheld the Commission's decisions not to use the social cost of carbon, including to assess significance.⁷⁵ In fact, the D.C. Circuit recently affirmed the Commission's decision to

GHGs tool merely converts GHG emissions estimates into a range of dollar-denominated figures; it does not, in itself, provide a mechanism or standard for judging "significance."

⁷³ *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051, at P 37 (2022); see also *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, order on reh'g, 163 FERC ¶ 61,197, at PP 275-297 (2018), aff'd, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at * 2 ("[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes."); *EarthReports v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (accepting the Commission's explanation why the social cost of carbon tool would not be appropriate or informative for project-specific review, including because "there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes"); *Tenn. Gas Pipeline Co., L.L.C.*, 180 FERC ¶ 61,205, at P 75 (2022); See, e.g., *LA Storage, LLC*, 182 FERC ¶ 61,026, at P 14 (2023); *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at P 91 (2022).

⁷⁴ See, e.g., *LA Storage, LLC*, 182 FERC ¶ 61,026 at P 14 ("there are currently no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria").

⁷⁵ See, e.g., *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023) (*Alaska LNG*) (explaining that "the Commission compared the Project's direct emissions with existing Alaskan and nationwide emissions," "declined to apply the social cost of carbon for the same reasons it had given in a previous order"; describing those reasons as: (1) "the lack of consensus about how to apply the social cost of carbon on a long time horizon," (2) that "the social cost of carbon places a dollar value on carbon emissions but does not measure environmental impacts as such," and (3) "FERC has no established criteria for translating these dollar values into an assessment of environmental impacts"; and recognizing that the Commission's "approach was reasonable and mirrors analysis . . . previously upheld" and that the Commission "had no obligation in this case to consider the social cost of carbon") (citations omitted); *EarthReports*, 828 F.3d at 956 (upholding the Commission's decision not to use the social cost of carbon tool due to a lack of standardized criteria or methodologies, among other things); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104 (also upholding the Commission's decision not to use the

not analyze the social cost of carbon in its NEPA analysis,⁷⁶ rejected the suggestion that it was required to do so, found that the petitioner’s arguments “fare no better when framed as NGA challenges,” and then, in the very same paragraph, sustained the Commission’s public interest determination as “reasonable and lawful.”⁷⁷

36. Coosa Riverkeeper argues that the Southeast Energy Connector Project’s support for natural gas use at Gaston Unit 5 conflicts with national climate goals. Coosa Riverkeeper points to the goals in Executive Order 14008 of net-zero emissions by 2050 and carbon-free electricity sector by 2035, Executive Order 13990 providing for the disclosure of global climate damages using the Social Cost of GHG tool, and a New York Times article estimating that the Inflation Reduction Act investments will reduce national carbon emissions by 40% by 2030.⁷⁸ Coosa Riverkeeper further argues that the Commission failed to disclose emissions estimates over the project lifetime and suggests that, if the 50-year old Gaston Unit 5 retires “in the next few years to comply with tightening climate goals,” consistent with planned retirements by 2028 at the Gaston Plant Units 1-4, local electric ratepayers may be forced to pay for a project of very little use.⁷⁹

37. As an initial matter, we note that Coosa Riverkeeper has not shown how or the extent to which the project could affect achievement of the climate goals it cites, which are not binding requirements under any statutes. The EA adequately addressed potential GHG emissions and their impacts. The EA disclosed the project emissions associated with temporary construction and on-going operations, concluding that operational emissions will be offset by the project-enabled Gaston Unit 5 switch from burning coal to burning natural gas. The EA also compared the project’s emissions, including overall net emissions reductions per year, to national and state levels to contextualize the full scope

social cost of carbon); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (same).

⁷⁶ *Alaska LNG*, 67 F.4th at 1184 (“Rather than use the social cost of carbon, the Commission compared the Project’s direct emissions with existing Alaskan and nationwide emissions. It declined to apply the social cost of carbon for the same reasons it had given in a previous order. . . FERC’s approach was reasonable and mirrors analysis we have previously upheld.”).

⁷⁷ *Id.*

⁷⁸ Coosa Riverkeeper April 24, 2023 Comment at 14-16.

⁷⁹ *Id.* at 16.

of the project's environmental impacts.⁸⁰ For informational purposes, the EA disclosed an estimate of the avoided social cost of GHGs. We add that the project is expected to result in a net emissions reduction of about 108.5 million metric tons of CO₂e over a 35-year period.⁸¹ Last, we disagree with Coosa Riverkeeper's claim that the Gaston Unit 5's retirement "in the next few years," even after transitioning to natural gas, is reasonably foreseeable, particularly when Transco and SCS have entered into a long-term precedent agreement for project-enabled firm transportation service.⁸²

38. Regarding Coosa Riverkeeper's argument about electric ratepayers paying for the project, this concern is more appropriately considered in a proceeding before the relevant state public service commission. The Commission has held that "oversight of the procurement decisions of [state-regulated entities] is best left to state regulators."⁸³ The Commission's findings that the project is required by the public convenience and necessity do not preclude Alabama from undertaking an after-the-fact prudence review of any firm service agreement by SCS.

39. Coosa Riverkeeper next claims that Commission staff in the EA improperly relied on Transco's upper bound 3.1 million metric tpy CO₂e net reduction in emissions rather than quantifying the project's indirect GHG emissions using Gaston Unit 5's current emissions and Gaston Unit 5's anticipated emissions post-conversion.⁸⁴

40. We clarify that the pre-conversion Gaston Unit 5 emits up to 7,156,557 metric tpy of CO₂e and, post-conversion, will emit up to 4,042,493 metric tpy of CO₂e, resulting in a

⁸⁰ See *WildEarth Guardians v. Bernhardt*, 502 F.Supp.3d 237, 251-253 (D.D.C. 2020) (finding that if a project will *greatly increase yearly* emission rates, but will only produce emissions for a year or two, the full environmental impact cannot be understood knowing only the yearly rate) (emphasis added).

⁸¹ See *generally* Transco Aug. 31, 2018 Revised Tariff Records, Statement P, Exhibit No. T-59 at 17 (noting an economic life of 35 years).

⁸² We note, for informational purposes, that for Plant Gaston Units 1-5, the permanent cessation of coal combustion is planned, with Units 1-4 expected to retire and Unit 5 repowered to operate solely on natural gas by the end of 2028. Alabama Power Integrated Resource Plan at 11, (2022), <https://www.alabamapower.com/content/dam/alabama-power/pdfs-docs/company/compliance---regulation/IRP.pdf>.

⁸³ See *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148, at P 71 (2023) (citations omitted).

⁸⁴ Coosa Riverkeeper April 24, 2023 Comment at 17-19.

net reduction of 3,114,064 metric tpy of CO_{2e} emissions.⁸⁵ As noted above and detailed in the EA,⁸⁶ the project will result in an overall net reduction in GHG emissions from the combined operation of the modified Gaston Plant and the project's facilities, yielding a decrease in the national inventory based on 2021⁸⁷ levels by approximately 0.06%.⁸⁸ In the EA, Commission staff also properly disclosed project emissions, including direct emissions from operation of the project's new compressor facilities, potential fugitive emissions, and the indirect downstream GHG emission reductions based on the project's service to the Gaston Steam Plant supporting the transition of Unit 5 from coal to natural gas.⁸⁹ The EA states that "[c]onstruction and operation of the Project would increase the atmospheric concentration of GHGs in combination with past, current, and future emissions from all other sources globally and contribute incrementally to future climate change impacts."⁹⁰ The EA goes on to explain that the project's transported gas is displacing a higher emitting emissions source, resulting in "downstream emissions reductions."⁹¹

41. Coosa Riverkeeper also contends that the Commission failed to consider the possible upstream effects of the project, in contravention of the CEQ's Interim Climate Guidance.⁹² It claims that the Commission's failure to seek out additional information regarding these effects violates NEPA.

42. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ

⁸⁵ Transco Response to Sept. 27, 2023 Environmental Information Request (filed Sept. 29, 2023).

⁸⁶ EA at 112-113.

⁸⁷ *Id.* at 113 (The EA incorrectly references the year 2020).

⁸⁸ *Id.*

⁸⁹ *Id.* at 81-82.

⁹⁰ *Id.* at 112.

⁹¹ *Id.* *Ky. Coal Ass'n, Inc. v. Tenn. Valley Auth.*, 804 F.3d 799, 804-805 (6th Cir. 2015) (finding the Tennessee Valley Authority (TVA) reasonably concluded in its EA that switching from coal to natural gas generation at one of its power plants would have a net positive impact on the environment).

⁹² Coosa Riverkeeper April 24, 2023 Comment at 18.

regulations.⁹³ Here, there is no basis in the record to find a causal relationship. We agree with the conclusion in the EA that there was not sufficient information to render the upstream impacts reasonably foreseeable because the source of the gas is unknown and would likely change throughout the project's operation.⁹⁴ Therefore, we find that the GHG emissions released by the upstream production or processing of the gas to be transported on the project are not reasonably foreseeable.

43. Lastly, Coosa Riverkeeper claims that an EIS is required because the EA does not determine whether the project's GHG emissions are significant.⁹⁵ In particular, Coosa Riverkeeper faults the EA for avoiding this finding by relying on the Commission's open "generic proceeding" to decide how to evaluate GHG emissions significance.⁹⁶ Coosa Riverkeeper contends that an EIS is required when a federal action *may* result in significant impacts, and, because the EA does not find that GHG emissions will have no significant impact, the Commission must prepare an EIS.⁹⁷ Alternatively, Coosa Riverkeeper contends that downstream GHG emissions are significant because downstream emissions could result in 2.9 million metric tpy of CO_{2e}, which is higher than the 100,000 metric tpy of CO_{2e} threshold currently under consideration by the Commission.⁹⁸

44. We note that there currently are no accepted tools or methods for the Commission to use to determine significance, therefore the Commission is not herein characterizing

⁹³ *E.g.*, *Equitrans, L.P.*, 183 FERC ¶ 61,200, at P 42 (2023); *see, e.g.*, *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148 at P 93; *Cent. N.Y. Oil & Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App'x 472, 474-75 (2d Cir. 2012) (unpublished opinion); *see also Nat'l Fuel Gas Supply Corp. Empire Pipeline, Inc.*, 164 FERC ¶ 61,084, at P 102 (2018).

⁹⁴ EA at 115. *See Tenn. Gas Pipeline Co., LLC*, 181 FERC ¶ 61,051 at P 27 (rejecting petitioner's argument on rehearing that the Commission should have asked for additional information to assess upstream environmental impacts because the source of the natural gas to be transported was currently unknown and subject to change during the project's operation).

⁹⁵ Coosa Riverkeeper April 24, 2023 Comment at 4.

⁹⁶ *Id.*

⁹⁷ *Id.* at 5.

⁹⁸ *Id.*

the evaluated GHG emissions as significant or insignificant.⁹⁹ The Commission’s February 18, 2022 Interim GHG Policy Statement has been converted to draft status.¹⁰⁰ Given the evaluation and disclosures in the EA, as clarified and supplemented above, we have taken the required “hard look” at project-related GHG emissions and have satisfied our obligations under NEPA.

2. Environmental Justice

45. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (*i.e.*, environmental justice communities).¹⁰¹ Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹⁰² Environmental justice is “the fair treatment and meaningful involvement of all people

⁹⁹ The February 18, 2022 *Interim GHG Pol’y Statement, Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022), which proposed to establish a NEPA significance threshold of 100,000 tons per year of CO₂e as a matter of policy, has been suspended, and opened to further public comment. Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

¹⁰⁰ Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

¹⁰¹ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance. *See* 18 C.F.R. § 380.12(g) (2022) (requiring applicants for projects involving significant aboveground facilities to submit information about the socioeconomic impact area of a project for the Commission’s consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

¹⁰² Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, EJ 2020 Glossary (Aug. 18, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁰³

46. Consistent with CEQ¹⁰⁴ and EPA¹⁰⁵ guidance, the Commission’s methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (i.e., minority or low-income populations)¹⁰⁶ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.¹⁰⁷ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area

¹⁰³ EPA, *Learn About Environmental Justice*, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (Sep. 6, 2022). Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

¹⁰⁴ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act 4* (Dec. 1997) (CEQ’s *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.

¹⁰⁵ See generally EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (Promising Practices), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁰⁶ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

¹⁰⁷ See *Promising Practices* at 21-25.

exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.¹⁰⁸

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

48. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2020 U.S. Census American Community Survey data¹⁰⁹ for the race, ethnicity, and poverty data at the state, county, and block group level.¹¹⁰ Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

49. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionately high and adverse on environmental justice communities

¹⁰⁸ Here, Commission staff selected the counties as the reference communities to ensure that affected environmental justice communities are properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

¹⁰⁹ U.S. Census Bureau, American Community Survey 2020 ACS 5-Year Estimates Detailed Tables, File# B17017, Poverty Status in the Past 12 Months by Household Type by Age of Householder, <https://data.census.gov/table?q=B17017&tid=ACSDT1Y2021.B17017>; File #B03002 Hispanic or Latino Origin By Race, <https://data.census.gov/table?q=b03002&tid=ACSDT5Y2020.B03002>.

¹¹⁰ For this project, we determined that a 1-mile radius around the proposed aboveground facilities was the appropriate unit of geographic analysis for assessing project impacts on the environmental justice communities. A 1-mile radius is sufficiently broad considering the likely concentration and range of construction-period air and noise emissions, visual impacts, and traffic impacts proximal to the compressor station. Additionally, Commission staff concluded that the furthest radius of impact (1-hour NO₂) during operations for air quality is 0.9 mile. EA at 61.

and also whether those impacts were significant.¹¹¹ Commission staff assessed whether impacts to an environmental justice community were disproportionately high and adverse based on whether those impacts were predominately borne by that community, consistent with EPA's recommendations in *Promising Practices*.¹¹² Identified project impacts and proposed mitigation measures are discussed below.

50. The Commission's environmental staff identified that all six census block groups near the project facilities exceed the defined threshold for minority and/or low-income communities and are therefore environmental justice communities.¹¹³ Three block groups are identified as environmental justice communities based on the low-income threshold, two block groups are identified as environmental justice communities based on the minority threshold, and one block group is identified as an environmental justice community based on both the minority and low income thresholds.¹¹⁴ All work associated with the project will occur within the identified environmental justice communities, including the construction and operation of the Compressor Station 105 unit addition/Units 1-3 modifications, the Chilton Loop, West and East Pig Traps, Contractor Yard CY-CHLT-01, and Contractor Yard CY-CHLT-02.¹¹⁵

51. Coosa Riverkeeper argues that the Commission must justify the geographic scale used for the environmental justice analysis for each potential impact area.¹¹⁶ It asserts that the statement in the EA regarding the proper radius of impact only refers to the impacts around the compressor station, not the impacts to the environmental justice

¹¹¹ See *Promising Practices* at 33 (stating that "an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA" and in other circumstances "an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA").

¹¹² *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations"). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

¹¹³ EA Table 7 at 63.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 62.

¹¹⁶ Coosa Riverkeeper April 24, 2023 Comment at 30-31.

communities in close proximity to the Chilton Loop.¹¹⁷ Coosa Riverkeeper believes the Commission must first identify impacts of concern, then explain how those impacts relate to the geographic scale of the study area.¹¹⁸

52. The geographic scope of Commission staff's analysis of potential impacts on environmental justice communities is determined by the impacts from natural gas facilities on air and noise quality, safety, socioeconomics, traffic and visual quality at the locations where environmental justice communities reside. Consequently, this scope is based on the measured distance of the furthest estimated direct impact on noise, visual resources, socioeconomics, traffic, and air emissions that the project's aboveground and pipeline facilities can impart. For the pipeline facilities and contractor yards, Commission staff identified the census block groups crossed by the pipelines as the appropriate units of geographic analysis for assessing the facilities' impacts on environmental justice communities because impacts related to noise, visual resources, socioeconomics, traffic, and air emissions from construction and operation of the pipelines would be localized such that an expanded radius is not warranted. A one-mile radius for the compressor station is sufficiently broad considering the likely concentration of construction-period and operational air and noise emissions, visual impacts, and traffic impacts proximal to the compressor stations.¹¹⁹ Additionally, the EA concludes that the farthest radius of impact during operations for air quality (1-hour NO₂) is 0.9 mile.¹²⁰

53. Coosa Riverkeeper criticizes the Commission for not considering potential impacts on environmental justice communities because the EA concluded that environmental justice concerns were not present for other resources areas, such as geology, soils, groundwater, surface water, wetlands, vegetation, wildlife, fisheries, land use, or cultural resources.¹²¹ For example, Coosa Riverkeeper notes that the Commission did not discuss how impacts on groundwater and surface water resources might disproportionately affect environmental justice communities even though other sections of the EA conclude that impacts from inadvertent returns from horizontal directional drilling could be as significant as those from open-cut crossing methods.¹²²

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 31.

¹¹⁹ EA at 61.

¹²⁰ *Id.*

¹²¹ Coosa Riverkeeper April 24, 2023 Comment at 25.

¹²² *Id.* at 25-26.

54. The EA's discussion of impacts on the identified environmental justice communities in proximity to the project facilities focused on visual, socioeconomic, traffic, air, and noise impacts.¹²³ The EA did not focus on environmental justice concerns for other resource areas due to the minimal overall impact the project would have on those resource areas. As noted above, however, for this project, all construction and operational activities associated with the project will occur within identified environmental justice communities. Accordingly, the environmental justice section of the EA explains that "[i]mpacts on the natural and human environment from construction and operation of Project facilities are identified and discussed throughout this document."¹²⁴ The EA discusses potential impacts from the project on each of the resource areas mentioned by Coosa Riverkeeper, assesses the degree of impact, and determines whether or not those impacts are significant.

55. To the extent that the Commission states that disproportionate impacts will not be significant because mitigation or minimization measures will be in place to ensure impacts do not reach the level of significance, Coosa Riverkeeper requests that these measures be clearly articulated and become enforceable measures within the certificate.¹²⁵ Coosa Riverkeeper asserts that these measures should include ongoing monitoring for potential impacts and evaluation of whether the mitigation or minimization measures are working as intended, in order to determine whether they might need to be supplemented by additional measures.¹²⁶

56. The mitigation measures Coosa Riverkeeper is referring to are disclosed in the EA as commitments made by Transco in its certificate application. These, along with Commission staff's Compressor Station 105 noise survey environmental recommendation, are required by Ordering Paragraph (A) below and the Environmental Conditions in the appendix to this order. The Commission's construction and restoration inspections would include, but not be limited to, review of Transco's implementation of these measures, such as those contained within the Traffic Management Plan and Dust Control Plan.¹²⁷ Environmental Condition 2, below, gives the Commission added flexibility to take whatever steps necessary to ensure the protection of environmental resources during construction and operation of the Project.

¹²³ EA at 61-73.

¹²⁴ *Id.* at 62.

¹²⁵ Coosa Riverkeeper April 24, 2023 Comment at 26.

¹²⁶ *Id.*

¹²⁷ EA at 73-74.

57. Coosa Riverkeeper maintains that Transco's outreach efforts to environmental justice communities indicate an inadequate level of community involvement and public participation.¹²⁸

58. There were multiple opportunities for public involvement during the Commission's pre-filing and environmental review processes.¹²⁹ During the pre-filing period, Transco held a virtual outreach meeting (open house) on April 5, 2022 and an in-person outreach (open house) meeting on April 6 and 7, 2022, respectively.¹³⁰ Newspaper advertisements of open houses were placed in newspapers of general circulation in the project area.¹³¹ Transco placed copies of its certificate application in public libraries across the project area immediately after application filing, followed by publishing public notices of its application in newspapers of general circulation across the project area within 14 days. The Commission subsequently included environmental justice advocacy groups GreenLatinos and Black Belt Citizens Fighting For Health & Justice to its environmental mailing list.¹³² To date, the Commission has not received comments from either environmental justice advocacy group.

a. Visual Impacts

59. With respect to visual impacts on environmental justice populations, as described in the EA, impacts on visual and aesthetic resources during the construction of the aboveground facilities are expected to be temporary and not significant.¹³³ The closest residences to the west end of the Chilton Loop construction and to the Chilton Loop's horizontal directional drill (HDD) entry and exit construction sites for the Coosa River crossing would be visually shielded by intervening forested landscape and/or hilly terrain.¹³⁴ The closest residences to the Compressor Station 105 unit addition would be

¹²⁸ Coosa Riverkeeper April 24, 2023 Comment at 32.

¹²⁹ EA at 59.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at n. 17.

¹³³ *Id.* at 69.

¹³⁴ The closest residences to the Chilton Loop are on residence located 51 feet from Access Road PAR-CHLT-0909 and 763 feet from the pipeline centerline near the west end of the loop. The two closest residences to the HDD exit site are located 1,170 feet west-northwest and 1,650 feet north. *Id.* at 68.

visually shielded by forest vegetation that would be partially cleared for construction workspaces but permitted to reestablish itself following construction.¹³⁵ The EA concludes that the visual impacts from construction activities and operation of the Chilton Loop and the Compressor Station 105 unit addition would not be significant.¹³⁶

60. Construction use of Contractor Yard CY-CHLT-01 would be visually obscured by forest and scrub shrub vegetation for nearby residences within an environmental justice community.¹³⁷ Residences within an environmental justice community near Contractor Yard CY-CHLT-02 are all located across U.S. Highway 280 and sufficiently shielded with highway embankment or intervening forest and shrubs from visual impacts for the temporary use of the contractor yard.¹³⁸ A church located within this same environmental justice community would have a direct line of sight to Contractor Yard CY-CHLT-02, but would experience visual impacts during daytime hours for the temporary duration of project construction.¹³⁹

61. The EA concludes that, given the nature of the already industrial visual character of the yards and the short-term nature of their use for construction, the visual impacts on environmental justice communities from the use of the yards would not be significant.¹⁴⁰ We agree.

b. Socioeconomics

62. Coosa Riverkeeper argues that the Commission should clarify the impacts of a large influx of temporary workers on low-income communities in the project vicinity, particularly the potential impacts of occupying a large proportion of the short-term

¹³⁵ The closest residences to the Compressor Station 105 Unit 5 addition are Noise Sensitive Area (NSA) 1 at 1,500 feet south southwest, NSA 2 at 1,675 feet south southeast, and NSA 3 at 1,675 feet southeast. *Id.* at 69.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Residences located near Contractor Yard CY-CHLT-02 include one located approximately 600 feet north across US Highway 280 and a church located approximately 1,200 feet west of Contractor Yard CY-CHLT-02 across State Highway 9 on nearly level land. *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

housing options in the project area.¹⁴¹ It points out that the Commission does not provide specifics on the actual number of available housing units or the typical number of hotel rooms and RV/campground sites or how those figures would change with the number of incoming workers.¹⁴² Coosa Riverkeeper is concerned how the additional workers will impact transportation and access to important public services, noting that the Commission does not consider the existing state of the roads or infrastructure in the project area.¹⁴³ Coosa Riverkeeper states that the Commission does not explain why it is appropriate to compare the temporary influx in workers to the entire population of Coosa County.¹⁴⁴

63. As stated in the EA, the peak crew size is estimated to be approximately 179 workers, of which 104 will be non-local workers, during the 8-12 month construction period.¹⁴⁵ The number of non-local workers represents 0.65% of the estimated vacant housing (approximately 1,600 residential units) in Coosa and Chilton Counties.¹⁴⁶ Additional housing for workers exists in the form of multiple hotels and campgrounds in the immediate area of the project.¹⁴⁷ It is thus unlikely that worker influx could result in housing shortages within the environmental justice communities, so impacts on the local housing market would be less than significant.¹⁴⁸ The temporary influx of workers into the area could increase the overall demand for public services such as schools, police enforcement, and medical care.¹⁴⁹ Commission staff believes that worker influx impacts on community services used by the local population, and by inclusion environmental justice communities, would be less than significant given the limited number of workers compared to the availability of existing public services, including police and fire

¹⁴¹ Coosa Riverkeeper April 24, 2023 Comment at 26-27.

¹⁴² *Id.* at 27.

¹⁴³ *Id.* at 28.

¹⁴⁴ *Id.* at 27.

¹⁴⁵ EA at 54-55, 69.

¹⁴⁶ *Id.* at 55.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 56.

departments, hospitals, and public schools located nearby within Chilton and Coosa Counties.¹⁵⁰

64. Influxes of workers could result in impacts on tax revenue during construction. The increase in construction workforce would have a beneficial, short-term impact on employment, local goods and service providers, and result in greater sales tax revenues.¹⁵¹ Finally, regarding worker influxes competing for jobs in low-income communities, the types of trades dominating employment in Chilton and Coosa Counties¹⁵² would be dissimilar to the specific skills of natural gas facility workers needed for the project, thereby avoiding attrition of local workforces. Commission staff concludes that, based on the foregoing analysis, socioeconomic impacts of project worker influx related to economic opportunity for members of the local environmental justice communities would be less than significant.¹⁵³ We agree.

c. Traffic Impacts

65. The EA discusses that project related traffic would cause increased use of local roads, higher traffic volumes, increased delays and commute times, and a potentially greater risk of vehicle accidents for the duration of construction.¹⁵⁴ The EA discusses that the low volume of vehicle movements in this rural area, and the restriction of local and construction traffic to periods of active construction for a temporary period of construction, would result in negligible impacts on local traffic.¹⁵⁵ Transco has committed to maintaining traffic flow and other measures according to all necessary permits and approvals from the appropriate traffic control agencies.¹⁵⁶ Additionally, Transco would implement safety and management practices in its proposed Traffic Management Plan, including vehicle speed and weight restrictions, turning radius restrictions, periodic cleaning of debris from road surfaces near residences, coordination of local traffic with local school districts, and notification of local residents when any

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 56, 105-106.

¹⁵² *Id.* at 54-55.

¹⁵³ *Id.* at 69.

¹⁵⁴ *Id.* at 69-70

¹⁵⁵ *Id.* at 57, 69-70.

¹⁵⁶ *Id.* at 70.

unforeseen nighttime construction is needed.¹⁵⁷ The EA concludes that, taking into consideration Transco's adherence to local traffic permits and approvals, its proposed traffic safety and management procedures, and the temporary nature of construction activities, project related traffic would not be expected to significantly impact the environmental justice communities.¹⁵⁸ We agree.

d. Air Quality

66. Coosa Riverkeeper claims the additional gas-driven compressor unit at Compressor Station 105 will increase local air pollution, thereby disproportionately impacting at least three environmental justice communities surrounding the station.¹⁵⁹ It notes that the total concentration for multiple pollutants regulated under the National Ambient Air Quality Standards (NAAQS) come close to meeting the NAAQS thresholds, and thus the Commission should consider whether the cumulative impacts of these pollutants on the surrounding communities are the source of disproportionate impacts on environmental justice communities.¹⁶⁰ Citing *Friends of Buckingham v. State Air Pollution Control Board*,¹⁶¹ Coosa Riverkeeper states that at least one court recognizes that compliance with NAAQS "is not a sufficiently searching analysis of air quality standards for an EJ community."¹⁶² Coosa Riverkeeper claims the proposed project would disproportionately affect at least three environmental justice communities,¹⁶³ and the localized harm from the compressor station's air quality impacts on environmental justice communities should be more fully addressed in an EIS.¹⁶⁴ Moreover, Coosa Riverkeeper asserts that the Commission should require Transco to submit community health assessments to allow for a more rigorous analysis of these impacts from Compressor Unit 105.¹⁶⁵ Finally, Coosa Riverkeeper argues that the Commission should

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Coosa Riverkeeper April 24, 2023 Comment at 10, 21-22.

¹⁶⁰ *Id.* at 22-23.

¹⁶¹ 947 F.3d 68, 92 (4th Cir. 2020).

¹⁶² Coosa Riverkeeper April 24, 2023 Comment at 23.

¹⁶³ *Id.* at 24.

¹⁶⁴ *Id.* at 25.

¹⁶⁵ *Id.*

compare the health impacts of the proposed project on environmental justice communities against the no-action alternative and of adding an electric-driven compressor unit with and without gas backup.¹⁶⁶

67. As a preliminary matter, the EA concluded, and we affirm herein, that the project will have disproportionate adverse impacts on environmental justice communities, including those surrounding Compressor Station 105, as impacts from the project will be predominately borne by those communities.¹⁶⁷ In contrast to the underlying record described in *Friends of Buckingham v. State Air Pollution Control Board*, where the Virginia Air Pollution Control Board made no determination as to the presence of, nor the project's impacts on, environmental justice communities,¹⁶⁸ Commission staff's assessment of potential air quality impacts on environmental justice communities went beyond predicting compliance with NAAQS. As summarized below, the EA disclosed and analyzed air quality impacts on environmental justice communities from project construction and operation, assessed criteria pollutants covered by NAAQS as well as non-criteria hazardous air pollutants, and considered these emissions based on the project's proximity to environmental justice communities and the nearest residences.

68. The EA distinguished Compressor Station 105's construction air impacts and mitigating factors separately from those of operations, accounting for all types of activities including particulate matter (dust) production and engine emissions.¹⁶⁹ The EA disclosed and evaluated operational air impacts from the modified Compressor Station 105, including those from particulate matter, volatile organic carbon emissions, carbon monoxide, nitrogen oxides, and sulfur dioxide emitted from compression as well as natural gas fugitive emissions.¹⁷⁰ The closest residences within environmental justice communities are located 1,500 to 1,675 feet from Compressor Station 105.¹⁷¹ The EA analysis resulted from a standard consideration of the Compressor Station 105's expected direct impacts, their duration, and available mitigation that was commensurate with relatively distant residences in a forested rural setting.¹⁷² Commission staff considered an

¹⁶⁶ *Id.* at 44.

¹⁶⁷ EA at 70.

¹⁶⁸ 947 F.3d at 87-89.

¹⁶⁹ EA at 80-81.

¹⁷⁰ *Id.* at 81-83.

¹⁷¹ *Id.* at 88.

¹⁷² *Id.* at 74-83.

EA rather than an EIS sufficient based on its finding and characterization of the project's anticipated impacts on air quality, noise, visual quality, socioeconomics, and traffic in environmental justice communities.

69. As discussed in the EA, the EPA has promulgated NAAQS to protect human health and welfare.¹⁷³ The NAAQS include two standards, primary and secondary. Primary standards establish limits that are considered to be protective of human health and welfare, including sensitive populations such as children, the elderly, and asthmatics. Secondary standards set limits to protect public welfare, including protection against reduced visibility and damage to crops, vegetation, animals, and buildings. Areas meeting the NAAQS are termed attainment areas, and areas not meeting the NAAQS are termed nonattainment areas.¹⁷⁴ Areas that have insufficient data to make a determination of attainment or nonattainment are unclassified or are not designated but are treated as being attainment areas for permitting purposes.¹⁷⁵ The attainment designation of an area is determined on a pollutant-by-pollutant basis and for each established primary standard.¹⁷⁶ The project facilities are in Coosa and Chilton Counties, Alabama. As discussed in the EA,¹⁷⁷ Coosa and Chilton Counties are designated as attainment for all criteria pollutants.

70. As all project emission components are within applicable NAAQS compliance thresholds, the analysis presented in the EA appropriately considered human health considerations in the assessment. We find the air quality cumulative impact assessment included in the EA is appropriate considering: (1) the limited scope of project modifications and changes in overall potential to emit from the facility, (2) the facility's compliance with the NAAQS for all pollutants, and (3) the use of the EPA's publicly available ambient outdoor air monitoring data, which demonstrates that regional air quality is in attainment for all NAAQS criteria components.¹⁷⁸ Projects identified within the geographic scope for cumulative impacts, discussed below, would be required to remain in compliance with their applicable state and federal air permitting regulations. Although the project is not anticipated to cause or significantly contribute to an

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 71, 76.

¹⁷⁸ EPA, Air Data: Air Quality Data Collected at Outdoor Monitors Across the US, <https://www.epa.gov/outdoor-air-quality-data>.

exceedance of NAAQS, and the NAAQS are designated to protect sensitive populations, we acknowledge that NAAQS attainment alone may not assure there is no localized harm to such populations due to project emissions of volatile organic compounds and hazardous air pollutants, as well as issues such as the presence of non-project-related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate care.¹⁷⁹ The EA concludes that, overall, the operational emissions from the project would not have significant adverse air quality impacts on the environmental justice populations in the project area.¹⁸⁰ We agree.

71. Construction air emissions would result in short-term, localized impacts in the immediate vicinity of construction work areas, particularly the Chilton Loop and East and West Pig Trap removals, HDD exit and entry sites, Compressor Station 105 unit addition site, and both Contractor Yards.¹⁸¹ As discussed in the EA, Transco's Fugitive Dust Control Plan complies with state regulations and the Commission requirements to control construction-related dust produced by land clearing, grading, excavation, and backfilling activities.¹⁸² Transco would reduce exhaust emissions by using low-sulfur diesel fuel for construction equipment, maintain equipment to increase fuel use efficiency, substitute vans or buses in place of worker vehicles for transportation to work zones, and minimize vehicle and equipment idling time to the extent practical during construction activities.¹⁸³ The EA concludes that, taking into consideration the temporary duration of construction activities and Transco's proposed mitigation measures, construction emissions would not result in a significant impact on air quality in the region affecting environmental justice communities.¹⁸⁴ We agree.

e. Climate Change Impacts

72. Coosa Riverkeeper argues that the Commission must analyze whether the climate change effects caused by the project's GHG emissions will disproportionately burden environmental justice communities.¹⁸⁵ It states that such an analysis would likely find

¹⁷⁹ EA at 71.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 70, 108.

¹⁸² *Id.*

¹⁸³ *Id.* at 70-71.

¹⁸⁴ *Id.* at 71.

¹⁸⁵ Coosa Riverkeeper April 24, 2023 Comment at 28.

that environmental justice communities are disproportionately affected by impacts from climate change and such impacts would be significant.¹⁸⁶ Coosa Riverkeeper notes that low-income and communities of color are more likely to be adversely affected by impacts like flooding, drought, and severe hot and cold weather, in part because they tend to lack resources to mitigate impacts and already face cumulative pollution burdens.¹⁸⁷

73. The EA considered climate change impacts in the region.¹⁸⁸ Environmental justice communities could experience impacts associated with GHG-driven climate change due to the impacts of compounded extreme events (such as simultaneous heat and drought, or flooding associated with high precipitation on top of saturated soils), which may exacerbate preexisting community vulnerabilities and have a cumulative adverse impact on environmental justice communities. As discussed, however, the project is expected to result in a net overall reduction by displacing a higher emitting source.

f. Noise Impacts

74. Construction related noise impacts within an environmental justice community could potentially occur on three residences located 1,170 to 1,700 feet from the Chilton Loops HDD activities, as well as to one residence located 51 feet from access road PAR-AL-CHLT-0909.¹⁸⁹ Construction noise related to the project would be temporary and last for the duration of the construction period. Transco has developed a number of noise reduction mitigation strategies involving pipeline construction equipment it would use, as discussed in the EA.¹⁹⁰ Transco's HDD operations would not result in noise levels exceeding the day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at the closest noise sensitive areas.¹⁹¹ The EA concludes that, based on the projected noise levels, distances to noise-sensitive receptors, and Transco's mitigation strategies, the project would not result in significant construction noise impacts on local residents within the surrounding minority environmental justice population.¹⁹²

¹⁸⁶ *Id.* at 28-29.

¹⁸⁷ *Id.* at 29.

¹⁸⁸ EA at 112.

¹⁸⁹ *Id.* at 71-72.

¹⁹⁰ *Id.* at 85-87.

¹⁹¹ *Id.* at 72.

¹⁹² *Id.*

75. Operational noise levels experienced by residential noise-sensitive receptors within adjacent environmental justice communities would slightly but imperceptibly increase as a result of the unit addition to Compressor Station 105.¹⁹³ The noise load emanating from the entire Compressor Station 105 would be below the Commission's criterion of 55 dBA L_{dn} at any residence.¹⁹⁴ In order to verify the accuracy of Transco's noise estimates, Commission staff recommended an environmental condition that requires that Transco file noise surveys with the Commission after it places the new compressor unit into service.¹⁹⁵ We are including the recommendation, as a required Environmental Condition 13 in the appendix to this order. If noise from the modified compressor station exceeds 55 dBA L_{dn} at any noise sensitive area, Transco will be required to install additional noise controls and confirm compliance by filing another noise survey.¹⁹⁶ The EA concludes that, based on the projected noise levels, the project would not result in significant operational noise impacts on local residents and the surrounding environmental justice community.¹⁹⁷ We agree.

g. Pipeline Safety

76. Coosa Riverkeeper asserts that the Commission must evaluate the risks of explosions and other pipeline safety failures in its environmental justice analysis.¹⁹⁸ It argues that the Commission fails to consider how these safety risks are potentially disproportionately burdensome to environmental justice communities.¹⁹⁹ Coosa Riverkeeper states that the Commission must ensure that appropriate safety measures and monitoring are enforceable certificate conditions.²⁰⁰

¹⁹³ *Id.* at 108.

¹⁹⁴ *Id.* at 72.

¹⁹⁵ *Id.* at 88.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 72-73.

¹⁹⁸ Coosa Riverkeeper April 24, 2023 Comment at 21.

¹⁹⁹ *Id.* at 30.

²⁰⁰ *Id.*

77. The EA discusses safety risks and ameliorating regulatory oversight factors pertaining to pipeline and compressor station operations.²⁰¹ Given that the majority of the Chilton Loop and Compressor Station 105 are located within environmental justice communities, project impacts would be disproportionately high and adverse because they would be predominately borne by environmental justice communities.²⁰² The EA states that the risk of pipeline incidents may be elevated in areas with a heavy concentration of energy industry facilities and in areas of dense population in close proximity to pipelines and aboveground facilities.²⁰³ We observe however, that the project's general remoteness, low population levels with low residential concentrations, and relatively large distances separating residences in environmental justice communities from the facilities²⁰⁴ would result in a relatively low and less than significant level of risk for adverse safety events to affect nearby environmental justice communities. Additionally, the extensive regulatory and enforcement oversight powers of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) under which Transco must construct, inspect, and maintain its new pipeline infrastructure,²⁰⁵ would moderate that risk.

h. Aquatic Impacts

78. Coosa Riverkeeper claims the Commission failed to consider whether project impacts on groundwater and surface water resources would disproportionately impact environmental justice communities, particularly if there are inadvertent returns from horizontal directional drilling.²⁰⁶

79. As stated in the EA, implementation of provisions within Transco's HDD Plan, including using approved drilling fluid additives, maintaining constant supply of drilling mud, and cleaning up inadvertent releases of drilling mud into the stream substrate, would minimize the risk of groundwater contamination²⁰⁷ and contamination of surface

²⁰¹ EA at 89-95.

²⁰² *Id.* at 74.

²⁰³ *Id.* at 54.

²⁰⁴ *Id.* at 54, 55, 68, 105.

²⁰⁵ *Id.* at 19, 54, 89-90.

²⁰⁶ Coosa Riverkeeper April 24, 2023 Comment at 25.

²⁰⁷ EA at 99.

waters.²⁰⁸ Additionally, no public or private water wells have been identified as being within 150 feet of the project workspaces.²⁰⁹ Due to implementation of mitigation measures and the lack of private water wells in close proximity to project workspaces, and HDD workspaces in particular, adverse impacts on environmental justice communities related to groundwater contamination are not anticipated.

80. Coosa Riverkeeper claims the EA has failed to consider potential impacts on those who fish and recreate in waters affected by the project, including Upper Jordan Lake.²¹⁰

81. Upper Jordan Lake is about 10 miles downstream from the project and would not be affected by project construction. Therefore, there would be no impacts on individuals who fish and recreate in those waters, including individuals from environmental justice communities. Recreation in more local areas adjacent to the project's Coosa River crossing site could be impacted within environmental justice communities. As discussed in the EA,²¹¹ while using the HDD method and withdrawing water from the Coosa River for purposes of HDD construction and facility pressure testing, Transco would implement several measures to protect aquatic habitat and fisheries organisms. These measures include implementing protective measures in its HDD Plan, withdrawing water from the Coosa River so as to prevent entrapment of aquatic organisms, inspection and cleaning of water pumps and equipment used for water withdrawal and discharge, preventing contamination of withdrawn water, discharging used water back into the Coosa River at the same milepost as the withdrawal site to prevent the spread of invasive aquatic species, and using filters to dissipate discharge water velocity. Alabama Department of Conservation and Natural Resources concluded that the use of HDD across the Coosa River and two minor stream crossings and the dry-ditch open cut construction method at the five minor stream crossings should not impact aquatic resources if Transco follows FERC's Waterbody Construction and Mitigation Procedures during construction.²¹² Alabama Department of Conservation and Natural Resources also approved Transco's request to complete instream construction activities in warmwater fisheries from December 1 through May 31 provided that state water quality standards are strictly adhered to, crossing time is expedited, and best management practices are followed for all crossings. Given the temporary nature of construction activities across and adjacent to

²⁰⁸ *Id.* at 34.

²⁰⁹ *Id.* at 99.

²¹⁰ Coosa Riverkeeper April 24, 2023 Comment at 26.

²¹¹ EA at 37-38.

²¹² Transco Response to Nov. 7, 2022 Environmental Information Request at 23 (filed Nov. 22, 2022).

the Coosa River, Transco's implementation of impact minimization measures contained in its Procedures and Environmental Construction Plan, and Alabama Department of Conservation and Natural Resources' finding that Transco's proposal would not impact aquatic resources, we conclude the project would not significantly impact fishery resources at or downstream of the Coosa River crossing location for environmental justice communities.²¹³

i. Cumulative Impacts

82. The EA concludes that environmental justice communities would experience temporary cumulative impacts on visual resources, socioeconomics, and traffic impacts; however, these impacts would be less than significant.²¹⁴ Cumulative air quality impacts to environmental justice communities would not occur during construction given that no nearby projects are located within 0.25 miles of the project.²¹⁵ Operation of the proposed Compressor Station 105 is not anticipated to significantly affect air quality within the Air Quality Control Region.²¹⁶ Air quality impacts from operation of the project's compressor station would be minimized by the use of equipment, emissions controls, and operating practices that meet or exceed industry standards to minimize emissions and are in compliance with federal and state emission thresholds.²¹⁷ The air dispersion modeling analysis for the operation of the facilities described above demonstrates that the project would be in compliance with the NAAQS.²¹⁸ There would be little additional cumulative impact presented by any other project in the area.²¹⁹ The EA finds that cumulative noise impacts on environmental justice communities during construction would not be significant given the short-term nature of construction and Transco's implementation of noise mitigation measures.²²⁰ The EA also concludes that project operations will not

²¹³ *Id.* at 38.

²¹⁴ *Id.* at 106.

²¹⁵ *Id.* at 107.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 107.

result in cumulative noise impacts within environmental justice communities.²²¹ We agree.

j. Environmental Justice Conclusion

83. As described in the EA, the proposed project would have a range of impacts on the environment and individuals living in the vicinity of the project facilities, including environmental justice populations.²²² Project work within the environmental justice communities includes the construction and operation of the Chilton Loop and associated East and West Pig Trap removals, and the new Compressor Station 105 unit addition and two contractor yards.²²³ Impacts associated with these facilities on environmental justice communities would be disproportionately high and adverse as they would be predominately borne by environmental justice communities.²²⁴ Project construction impacts associated with visual resources, socioeconomics, transportation, air quality, and noise for these components would be temporary and less than significant.²²⁵ In addition, permanent impacts on environmental justice communities associated with visual resources, noise, and air quality from operation of the compressor station unit addition would be less than significant.²²⁶ Further, as described above, impacts on environmental justice communities related to groundwater contamination and recreation are not anticipated. Lastly, impacts to fishery resources at or downstream of the Coosa River crossing location would be less than significant for environmental justice communities.

3. Aquatic Resources and Wetlands

a. Best Management Practices

84. The EPA recommends that Transco provides adequate baseline information assessing site conditions to ensure pipe installation and best management practices are successful.²²⁷ Additionally, for areas with stream crossings where heavy machinery and

²²¹ *Id.*

²²² *Id.* at 74.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ EPA April 24, 2023 Comment at 3.

vehicular use may be necessary, the EPA recommends designing crossings for organism passage at permanent stream crossings, locating skid trails away from aquatic resources, constructing unavoidable stream crossings during periods of low flow, and using stormwater or green design alternatives to minimize aquatic resource impacts.²²⁸

85. The Commission notes that these recommendations are consistent with Transco's *Wetland and Waterbody Construction and Mitigation Procedures* (Transco's Procedures),²²⁹ which adhere to the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* designed as baseline construction and mitigation measures developed in consultation with resource agencies to minimize the potential environmental impacts of construction on wetlands and waterbodies.²³⁰ Transco's Procedures include best management practices such as minimizing instream obstructions that could prevent aquatic organism passage, limiting right-of-way width and workspaces in riparian areas at and adjacent to stream crossings, restricting the timing of waterbody crossings to minimize aquatic resource impacts, and specific measures to minimize stormwater sedimentation impacts at stream crossings.²³¹ The EA finds that Transco's implementation of the measures included in its Procedures would ensure that the project would not result in significant impacts on aquatic resources.²³² We agree.

b. Waterbody Crossing Methods

86. Coosa Riverkeeper argues that the EA's determination that the proposed wet open-cut crossings will not have significant impacts on streams and wetlands conflicts with the best available science.²³³ Coosa Riverkeeper asserts that the wet open-cut crossing method and the dry-ditch crossing method do not have equivalent impacts and that the EA should not treat them as if they are equivalent.²³⁴ Moreover, Coosa Riverkeeper requests that the Commission not authorize Transco to use whichever method it prefers,

²²⁸ *Id.*

²²⁹ Application, Resource Report 1 at app. 1D.

²³⁰ EA at 12.

²³¹ Application, Resource Report 1 at app. 1D.

²³² EA at 31, 34, 36, 38.

²³³ Coosa Riverkeeper April 24, 2023 Comment at 38.

²³⁴ *Id.* at 38-39.

noting that wet open-cut trench crossings are known to be more damaging than dry-ditch methods.²³⁵

87. Coosa Riverkeeper suggests that Transco should complete a more detailed study of the impacts of pipeline construction using conventional open-cut or dry-ditch crossing methods on wildlife in the five minor waterbodies, four of which are perennial streams.²³⁶ Additionally, Coosa Riverkeeper comments that the EA omitted discussion of impacts to listed species present in the streams that would be crossed by destructive methods.²³⁷

88. Coosa Riverkeeper argues that it is unlikely that the perennial stream will have “no discernable flow” and for the intermittent stream, there are potential impacts if the environmental inspector does not accurately forecast the weather or if the crossing is not completed before a rainfall event.²³⁸ Coosa Riverkeeper states that the Commission should require Transco to use only dry-ditch crossing methods for these crossings.²³⁹ In the case of no discernable flow, Coosa Riverkeeper asserts that the construction crew should still be prepared to use the dam and pump or flume dry-ditch methods.²⁴⁰

89. As stated in the EA, Transco would conduct stream crossings according to practices and measures contained within Transco’s Procedures, which requires crossing five minor waterbodies each having small crossing widths of 1 to 3 feet, using either a dry-ditch method or conventional open cut method.²⁴¹ The conventional open cut method would only be used if there is no discernable flow identified at the time of crossing.²⁴² Commission staff concludes in the EA that employment of Transco’s Procedures would reduce stream sedimentation and minimize impacts on habitat for the species of concern

²³⁵ *Id.* at 39.

²³⁶ *Id.* at 34.

²³⁷ *Id.* at 35.

²³⁸ *Id.* at 40.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Application, Resource Report 1 at app. 1D.

²⁴² EA at 31.

in the small streams crossed by the proposed loop that are not associated with the proposed HDD.²⁴³

90. Coosa Riverkeeper requests that, should Transco propose to change its crossing method for the Coosa River, the Commission evaluate all established trenchless methods such as conventional boring, guided conventional boring, micro tunneling, Direct Pipe, and directional micro tunneling.²⁴⁴ If Transco renews its request to cross the Coosa River by any means other than HDD, Coosa Riverkeeper asks that the Commission require Transco to consider the other trenchless methods referenced above and the Commission should evaluate the potential impacts of each method on the Coosa River and its wildlife.²⁴⁵

91. If Transco renews its request to use an alternate method of crossing the Coosa River, it would be required to file a variance request which would be evaluated by Commission staff for technical feasibility and environmental impacts.

92. For the Direct Pipe method in particular, Transco considers it technically feasible, but it comes with a greater risk of failure and overall environmental impact on the health of the Coosa River given the extensive hard rock present at both banks and requisite shore disturbance and dewatering structure that would have to take place.²⁴⁶ Transco placed a premium on using the HDD method because it was successfully used in the installation of Line D. During pre-filing, Transco modified the location of the HDD pipeline pullback extra work space out of wetland forest to an area closely paralleling it non-wetland right-of-way to limit environmental impacts.

93. EPA asserts that the proposal to bore a 42-inch natural gas pipeline underneath the Coosa River using HDD methods may have potential impacts to aquatic resources by pressure-injecting a slurry mixture of water, bentonite clay, and approved chemical additives.²⁴⁷ EPA claims this material has the potential to leak into riverbeds, causing permanent impacts to aquatic biota and water quality.²⁴⁸ EPA also argues that there are possible installation failure risks that may cause the channel bottom to collapse, channel

²⁴³ *Id.* at 34 and 38.

²⁴⁴ Coosa Riverkeeper April 24, 2023 Comment at 41.

²⁴⁵ *Id.* at 43.

²⁴⁶ Application, Resource Report 2 at app. D.

²⁴⁷ EPA April 24, 2023 Comment at 3.

²⁴⁸ *Id.*

morphological changes because of vertical and lateral incision, habitat destruction, and increased sediment transport.²⁴⁹

94. Transco performed a geotechnical assessment of the proposed HDD crossing and found that the subsurface geologic conditions are suitable and feasible for the proposed HDD crossing method.²⁵⁰ The HDD path would be installed at a depth of 60 feet beneath the Coosa River riverbed to preserve the integrity of the channel.²⁵¹ To minimize any potential indirect impacts on aquatic resources associated with potential HDD drilling mud releases, Transco developed a *Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plan* (HDD Plan).²⁵² The HDD Plan incorporates measures to prevent, detect, notify, and mitigate any inadvertent release of drilling mud that could impact aquatic resources.²⁵³ As stated in the EA, staff reviewed the HDD Plan and found it acceptable to minimize and mitigate any possible inadvertent returns of drilling mud.²⁵⁴

95. The EA discusses additional aspects of the HDD method's impact minimization on aquatic resources. The designed HDD would entail a minor 3-foot-wide swath of vegetation clearing by hand along the HDD wireline cable placed on the surface between the entry and exit points to assist with the HDD tracking and guidance of the drill bit below the ground surface/channel bottom.²⁵⁵ No additional scrub-shrub or forested wetland crossing impacts would occur along the remaining Chilton Loop, and the remaining segment of the Chilton Loop would have minor impacts on emergent wetlands (0.14 acre).²⁵⁶ Transco's proposal would result in 0.1 acre of wetlands added to the Chilton Loop's permanent right-of-way, but no loss of wetlands.²⁵⁷ As indicated in the EA, Transco's proposal to cross five additional minor waterbodies along the Chilton

²⁴⁹ *Id.*

²⁵⁰ EA at 24.

²⁵¹ Application, Resource Report 2 at app. D.

²⁵² EA at 18.

²⁵³ *Id.* at 33.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 40.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 48.

Loop by use of an open cut or dry ditch crossing method²⁵⁸ and use of an alternative stream crossing method at these minor waterbodies is constrained by available workspace on steep slopes.²⁵⁹ We find that the EA demonstrates that Transco's implementation of its proposed HDD Plan and waterbody crossing methods and mitigation measures²⁶⁰ would minimize aquatic resource impacts. Therefore, the EA did not identify any long-term waterbody and wetland impacts or concerns that required a less environmentally damaging practicable alternative to use of the HDD method.

c. Mitigation and Revegetation

96. The EPA recommends that the Commission provide a less environmentally damaging practicable wetland crossing method.²⁶¹ If a practicable alternative cannot be found, EPA states that all unavoidable impacts must be adequately mitigated through suitable compensatory mitigation.²⁶²

97. The Corps, a cooperating agency having expertise with respect to resources potentially affected by the project and a participant in the preparation of the EA, has jurisdiction on the wetlands and has not required any mitigation for this project. With that in mind, the project would not result in any permanent loss of wetlands, and the minor impacts to emergent wetland from project construction would be restored and revegetated soon after construction of the project, making wetland impacts temporary and not significant.²⁶³

98. EPA recommends mitigation along riparian zones and stream banks to reestablish the existing native community as soon as construction activities conclude.²⁶⁴ EPA also recommends preparing a native revegetation plan and monitoring the proposed project to ensure aquatic resources are minimally impacted.²⁶⁵

²⁵⁸ *Id.* at 31.

²⁵⁹ *Id.* at 34.

²⁶⁰ *Id.* at 18, 37.

²⁶¹ EPA April 24, 2023 Comment at 4.

²⁶² *Id.*

²⁶³ EA at 36.

²⁶⁴ EPA April 24, 2023 Comment at 4.

²⁶⁵ *Id.*

99. Transco would abide by its Invasive Species Management Plan to prevent the spread of invasive species and noxious weeds in areas disturbed by the project.²⁶⁶ This plan includes, but is not limited to: (1) flagging areas of existing noxious weed infestations identified during the invasive plant baseline survey conducted prior to construction, (2) cleaning vehicles and equipment prior to arrival at the construction site, (3) returning soils with identified invasive plants to their previous location, (4) restoring disturbed areas quickly after construction, and (5) reseeding with a weed-free seed mix chosen in coordination with applicable federal and state agencies.²⁶⁷

100. Coosa Riverkeeper is concerned that delayed revegetation in riparian areas will lead to erosion and sediment transport.²⁶⁸ Moreover, Coosa Riverkeeper notes that the lack of vegetation in riparian areas may decrease the amount of shade or cover for wildlife, as well as increase the ground or water temperature, potentially impacting wildlife.²⁶⁹ Coosa Riverkeeper states that, in the course of the EA's flooding analysis, no mention is made of EA's acknowledgment of the soil's low-revegetation potential making for limited success in revegetation and thus overall restoration.²⁷⁰ Even if remediation is eventually successful, Coosa Riverkeeper argues that each time there is erosion and sediment transport into these waterbodies, there will be adverse impacts on aquatic life, including the state-listed seepage salamanders, that the EA does not fairly assess.²⁷¹

101. Transco would abide by a number of impact minimization procedures and impact mitigation measures contained within Transco's Procedures that would reduce erosion and sediment transport through riparian zones associated with the waterbody crossings. Transco's Procedures include: (1) limiting clearing adjacent to waterbodies and limiting instream construction activities for open-cut crossings of minor and intermediate waterbodies to 24 and 48 hours, respectively, (2) reestablishing herbaceous, shrub and forested riparian vegetation alongside stream banks at a 25-foot-wide distance from each stream bank across the entire right-of-way except for a ten-foot-wide herbaceous-only strip centered on the pipeline, (3) stabilizing and restoring disturbed waterbody banks as close as practicable to their pre-construction conditions, and (4) limiting routine

²⁶⁶ EA at 39.

²⁶⁷ Application, Resource Report 3 at app. 3B.

²⁶⁸ Coosa Riverkeeper April 24, 2023 Comment at 37.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 38.

²⁷¹ *Id.*

vegetation mowing adjacent to waterbodies and mowing cleared areas outside of spring and early summer in order to favor riparian revegetation.²⁷² Finally, Transco is required to file quarterly status reports in compliance with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* to document the revegetation progress following the first and second growing season after construction of the project, including revegetation progress of riparian areas.²⁷³ Commission staff will also assess Transco's revegetation compliance in the first and second growing seasons following construction in its review of Transco's post-construction filings and during field restoration inspections.²⁷⁴ These procedures and measures are designed to overcome difficulties in restoration of vegetation posed by poor soils, repeated episodes of high levels of runoff, and temporary exposures of soils within areas of disturbed right-of-way.

102. The EA considered revegetation impacts to wildlife. Regarding the seepage salamander, Commission staff explained that no individuals were observed during surveys and the closest known nearby population is 10 miles away.²⁷⁵ Nonetheless, the EA acknowledges the temporary loss of habitat may impact but is not likely to adversely impact these species.²⁷⁶ We agree.

d. Impacts on Aquatic Species

103. Coosa Riverkeeper is concerned that the EA insufficiently examines how the HDD method poses a risk of inadvertent returns that would result in discharges of drilling mud and other pollutants into the Coosa River and adversely impact mussel species.²⁷⁷ Without requiring a more detailed wildlife survey of the Coosa River, Coosa Riverkeeper argues that the number and types of mussels and other aquatic life that could be impacted by the Chilton Loop is unknown and the Commission's evaluation of the impact is insufficient.²⁷⁸ Coosa Riverkeeper asserts that the EA omits any discussion of the impacts to the fine lined pocketbook mussel, southern clubshell mussel, and southern pigtoe mussel species in the stream that will be crossed using the open-cut trench and

²⁷² Application, Resource Report 1 at app. 1D.

²⁷³ EA at 19.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 46-47.

²⁷⁶ *Id.*

²⁷⁷ Coosa Riverkeeper April 24, 2023 Comment at 34.

²⁷⁸ *Id.*

dry-ditch crossing methods.²⁷⁹ Coosa Riverkeeper notes that the EA does not mention specific surveys for threatened or endangered mussel species.²⁸⁰

104. As stated in the EA, the HDD would minimize impacts to the Coosa River and aquatic species within it.²⁸¹ Commission staff concluded that impacts from potential inadvertent returns would be temporary as Transco would implement measures within its HDD Plan to contain and clean up any inadvertent returns if they occur.²⁸² Transco was initially evaluating an alternative open-cut crossing of the Coosa River that would only be implemented in the highly unlikely event of an unsuccessful HDD. The FWS indicated in an email to Transco on March 17, 2022, that, even if an open-cut is used, surveys for listed species along the Chilton Loop would be beneficial but are not necessary given that the species are not expected to be present in the project area.²⁸³ In its August 8, 2022 letter to the FWS, Transco stated that potential mussel surveys were on hold as it continued to evaluate the contingency open-cut method.²⁸⁴ Once Transco finished gathering geotechnical data and determined that the HDD across the Coosa River was feasible, it became clear that disturbance to mussel habitat would not occur and mussel surveys would no longer be necessary. Thus, Commission staff concludes in the EA that Transco's use of the HDD crossing method, employment of inadvertent return clean-up measures contained within its HDD Plan, and use of mesh screens and floating intake structures for hydrostatic testing would adequately protect any mussel species at the Coosa River crossing such that that the project may affect, but is not likely to adversely affect the three mussel species of concern.²⁸⁵

105. Coosa Riverkeeper claims that the EA's discussion of Transco's proposed water withdrawals from the Coosa River fails to evaluate effects on a microscopic larval stage of the mussels (called glochidia) and on juvenile mussels, yet the EA determines that the impacts from withdrawal will be insignificant.²⁸⁶ Coosa Riverkeeper also states that the

²⁷⁹ *Id.* at 34-35.

²⁸⁰ *Id.* at 33.

²⁸¹ EA at 34, 37, 105.

²⁸² *Id.* at 18, 33, 34, 37, 45.

²⁸³ Application, Resource Report 3 at app. 3A.

²⁸⁴ *Id.*

²⁸⁵ EA at 44.

²⁸⁶ Coosa Riverkeeper April 24, 2023 Comment at 35.

EA does not mention how Transco will prevent glochidia or juvenile mussels from entering the test water, even though Transco will be withdrawing water during the glochidia release.²⁸⁷

106. As stated in the EA, Transco's amount of water withdrawal would not substantially affect base flow conditions, fish habitat, other aquatic life, and recreational use.²⁸⁸ Transco would withdraw water using a mesh screen and floating intake structures that would limit water withdrawal to the top of the water column and minimize capturing of host fish, glochidia and juvenile mussel species.²⁸⁹ On April 19, 2023, FWS concurred with Commission staff's determination that the project *may affect, but is not likely to adversely affect* the listed finelined pocketbook mussel, southern clubshell mussel, southern pigtoe mussel, and tulotoma snail.²⁹⁰ Given that the Commission has completed Endangered Species Act consultation with the FWS, this order does not include the related environmental condition number 12 recommended in the EA. Commission staff concludes that water withdrawals from the Coosa River will not adversely affect glochidia or juvenile mussels. We agree.

e. Construction During Spawning

107. Coosa Riverkeeper asserts that the EA does not provide adequate information to assess the impacts from open-cut and dry-ditch crossing methods on warmwater fisheries.²⁹¹ It claims the EA does not provide any specific information about the fish populations in the project area, including but not limited to, information about the current health and composition of the fisheries.²⁹² It notes that Transco proposes to use either method all year, rather than from June 1 to November 30, which will impact the spawning season.

108. Section V.B.1 of Transco's Procedures cited in the EA specifies the allowable construction timing windows for aquatic habitat unless expressly permitted or restricted

²⁸⁷ *Id.* at 36.

²⁸⁸ EA at 33, 99.

²⁸⁹ *Id.* at 37, 44.

²⁹⁰ FWS April 24, 2023 Letter at 2.

²⁹¹ Coosa Riverkeeper April 24, 2023 Comment at 36.

²⁹² *Id.* at 36-37.

by the appropriate federal or state agency on a site-specific basis.²⁹³ As stated in the EA, Transco obtained permission from the Alabama Department of Conservation and Natural Resources to conduct instream work December 1 through May 31 provided it follows state water quality standards, expedites the crossing time, and follows best management practices.²⁹⁴ Moreover, the EA acknowledges that the open-cut crossings could result in increased turbidity and sedimentation, but the duration of impacts would be limited given that construction activities would be completed within 24 hours for minor waterbodies and 48 hours for intermediate waterbodies.²⁹⁵ We agree with staff's conclusions.

4. Wildlife

109. Coosa Riverkeeper argues that the Commission cannot adequately assess the impacts to wildlife based on the information in the record, thus the Commission should require Transco to submit additional information.²⁹⁶ More specifically, Coosa Riverkeeper requests that the Commission require Transco to complete wildlife surveys in the Coosa River and in the other waterbodies crossed by the Chilton Loop.²⁹⁷ Coosa Riverkeeper states that the EA ignores any impacts to wildlife that live in smaller stream or how those impacts, such as increased turbidity and water quality impacts, could affect wildlife downstream in the Coosa River.²⁹⁸

110. As mentioned in the EA, potential impacts from open cut crossings of waterbodies would be increased turbidity, increased sedimentation, and relocation of more mobile aquatic species.²⁹⁹ However, the duration of impacts would be limited given that Transco's Procedures require instream construction activities at minor and intermediate waterbodies to be completed within 24 and 48 hours, respectively.³⁰⁰ Any downstream

²⁹³ EA at 38.

²⁹⁴ *Id.*

²⁹⁵ *Id.* at 37.

²⁹⁶ Coosa Riverkeeper April 24, 2023 Comment at 33.

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 35.

²⁹⁹ EA at 37.

³⁰⁰ *Id.*

impacts would also be temporary. Additionally, FWS did not require any additional surveys for wildlife. We agree with staff's conclusions.

5. Safety

111. EPA recommends including details regarding the type of pipeline coating, if known.³⁰¹ EPA also recommends the use of cathodic protection, particularly for the underwater pipeline components, and asks that the Commission identify the land and facilities necessary for cathodic protection.³⁰²

112. As stated in the EA, Transco would construct and operate the Chilton Loop under prevailing safety regulations administered by PHMSA.³⁰³ The EA states that Transco will use both an external protective pipeline coating and a cathodic protection system required by all pipelines installed after July 1971 to reduce the corrosion rate compared to unprotected or partially protected pipe.³⁰⁴ PHMSA's regulations include approaches to risk management, ensuring safety in the design, construction, testing, operation, maintenance, and emergency response of pipeline facilities, including pipeline coating and cathodic protections.³⁰⁵ Accordingly, Transco's application states that it has assessed the need for cathodic protection and planned its use for the entire Chilton Loop in accordance with the federal safety standards.³⁰⁶ Transco's application with the Commission did not specify the type of coating that it would use for the pipeline segments, but we note that the federal safety regulations do specify the external protective coating requirements.³⁰⁷ Transco plans to install its cathodic protection circuitry lines using 0.02 acre of permanent right-of-way at the western end of the Chilton Loop near milepost 909.63 of its Mainline pipeline system alongside existing permanent access road PAR-AL-CHLT-0909.³⁰⁸ As stated in the EA, PHMSA has the exclusive authority to promulgate the federal safety standards used in the transportation

³⁰¹ EPA April 24, 2023 Comment at 4.

³⁰² *Id.*

³⁰³ EA at 89-95.

³⁰⁴ *Id.* at 94-95.

³⁰⁵ *Id.* at 89-95.

³⁰⁶ Application, Resource Report 1 at 1-13.

³⁰⁷ 49 C.F.R. § 192.461 (2022).

³⁰⁸ Application, Resource Report 1 at tbl. 1.2-2, 1-13 – 1-14.

of natural gas, and it is responsible for enforcement of Transco's compliance with the safety regulations regarding pipeline coating and cathodic protection.³⁰⁹ Thus, we find that the EA adequately addresses this concern.

6. Alternatives

113. As part of the NEPA analysis, the EA evaluated a reasonable range of alternatives to the project. Coosa Riverkeeper states that the EA fails to consider the following alternatives to the proposed agency action: (i) a carbon-free alternative that would provide the electricity currently supplied by Gaston Unit 5; (ii) an electric-driven compressor unit with a backup gas generator at Compressor Station 105; and (iii) the no-action alternative in which Gaston Unit 5 is retired by 2028.³¹⁰

114. NEPA provides that agencies include "a detailed statement" on "reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal."³¹¹ The Commission has satisfied these procedural requirements.

115. Courts review both an agency's stated project purpose and its selection of alternatives under the "rule of reason," where an agency must reasonably define its goals for the proposed action, and an alternative is reasonable if it can feasibly achieve those goals.³¹² Where, as here, a federal agency is not the sponsor of a project, "the Federal government's consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project."³¹³

³⁰⁹ EA at 89-90.

³¹⁰ Coosa Riverkeeper April 24, 2023 Comment at 6.

³¹¹ 42 U.S.C. §§ 4332(C)(iii).

³¹² See, e.g., *Friends of Se.'s Future v. Morrison*, 153 F.3d 1059, at 1066-67 (9th Cir. 1998) (stating that while agencies are afforded "considerable discretion to define the purpose and need of a project," agencies' definitions will be evaluated under the rule of reason.); *City of Alexandria, Va. v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999). See also 43 C.F.R. § 46.420(b) (2022) (defining "reasonable alternatives" as those alternatives "that are technically and economically practical or feasible and meet the purpose and need of the proposed action").

³¹³ *City of Grapevine, Tex. v. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197 (D.C. Cir.

Courts have upheld federal agencies' use of applicants' project purpose and need in environmental documents and as the basis for evaluating alternatives.³¹⁴ When an agency is asked to consider a specific proposal, the needs and goals of the parties involved in the application should be taken into account.³¹⁵

116. We recognize that a project's purpose and need may not be so narrowly defined as to preclude consideration of reasonable alternatives. Nonetheless, an agency need only consider alternatives that will bring about the ends of the proposed action, and the evaluation is "shaped by the application at issue and by the function that the agency plays in the decisional process."³¹⁶ Further, because the alternatives considered under NEPA are informed both by "the project sponsor's goals,"³¹⁷ as well as "the goals that Congress has set for the agency,"³¹⁸ the Commission's consideration of alternatives includes the no-action alternative and alternatives that achieve the purpose of the project. Alternatives may be eliminated if they will not achieve a project's goals or are otherwise unreasonable.

1991) (*Citizens Against Burlington*)).

³¹⁴ *E.g.*, *City of Grapevine v. U.S. Dep't of Transp.*, 17 F.3d at 1506; *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d at 199; (explaining that the evaluation of alternatives is "shaped by the application at issue and by the function that the agency plays in the decisional process.").

³¹⁵ *Citizens Against Burlington*, 938 F.2d at 196.

³¹⁶ *Id.* at 199; *see also Sierra Club v. U.S. Forest Serv.*, 897 F.3d 582, 598-99 (4th Cir. 2018) (*Sierra Club*) (finding the statement of purpose and need for a Commission-jurisdictional natural gas pipeline project that explained where the gas must come from, where it will go, and how much the project would deliver, allowed for a sufficiently wide range of alternatives but was narrow enough that there were not an infinite number of alternatives).

³¹⁷ *Id.* at 196.

³¹⁸ *Sierra Club*, 897 F.3d at 598-99 (finding the statement of purpose and need for a Commission-jurisdictional natural gas pipeline project that explained where the gas must come from, where it will go, and how much the project would deliver, allowed for a sufficiently wide range of alternatives but was narrow enough that there were not an infinite number of alternatives).

a. **Consideration of Non-Gas Alternatives and No-Action Alternatives**

117. Coosa Riverkeeper first argues that NEPA requires the Commission to consider carbon-free, non-gas power sources for Gaston Unit 5 as either a reasonable alternative or as part of the no-action alternative. Coosa Riverkeeper alleges that accepting the applicants purpose and need is inconsistent with CEQ’s Interim Climate Guidance, which states that “agencies should evaluate reasonable alternatives that may have lower GHG emissions, which could include technically and economically feasible clean energy alternatives to proposed fossil fuel-related projects[.]”³¹⁹ Coosa Riverkeeper urges the Commission to “consider the available (and soon-to-be available) carbon-free sources of electricity” incrementally, arguing that the Commission was obliged to request necessary information on such sources “from Transco and/or federal or state agencies.”³²⁰ In considering carbon-free electricity sources, Coosa Riverkeeper asks that the Commission not rely upon the applicant’s preferred in-service date of 2025 as a deadline for other sources to be available, instead a portfolio of renewable energy sources, batteries, and/or energy efficient efforts could be added incrementally.³²¹

118. Commission staff appropriately defined the project’s purpose and need, and used that to consider a reasonable range of alternatives, including the no-action alternative.³²² As a general matter, renewable energy resources would not accomplish the project purpose of providing natural gas transportation service.³²³ As explained in the EA, Commission staff focused on alternatives that could meet the project objective, which is to provide natural gas to support the proposed gas-fired turbine at Gaston Unit 5, rather

³¹⁹ Coosa Riverkeeper April 24, 2023 Comment at 6-7.

³²⁰ *Id.* at 7.

³²¹ *Id.*

³²² *E.g.*, *City of Grapevine v. U.S. Dep’t of Transp.*, 17 F.3d at 1506 (upholding the use of an applicant’s project purpose and need as the basis for evaluating alternatives); *Colo. Env’tl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999) (same).

³²³ *See Columbia Gas Transmission, LLC*, 164 FERC ¶ 61,036, at P 65 & n.147 (2018), *order denying reh’g*, 170 FERC ¶ 61,247 (2020) (“As we have concluded with respect to other natural gas transportation infrastructure projects, we do not find that the potential for energy conservation and renewable energy sources to be practical alternatives.”); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (recognizing that “renewable energy is not a comparable replacement for the transportation of natural gas”).

than evaluate alternatives to satisfy the purpose of Gaston Unit 5 itself.³²⁴ Moreover, while Coosa Riverkeeper claims that the Commission should have considered a greater range of alternatives, it has not identified any specific proposal by entities willing to pursue such alternatives that the Commission has overlooked, acknowledging that non-carbon alternatives may not be available by the applicant's 2025 in-service date.³²⁵

119. Coosa Riverkeeper goes on to argue that the Commission has limited its consideration of alternatives to Transco's overly narrow stated purpose and need: to transport gas to Gaston Unit 5.³²⁶ Coosa Riverkeeper contends that this approach of accepting an applicant's defined purpose and need statement as dispositive violates NEPA.³²⁷

120. As stated in the EA, the purpose of the Southeast Energy Connector Project is to provide an incremental 150,000 Dth/d of year-round firm transportation capacity from existing supply points in Mississippi and Alabama to the existing Gaston delivery meter station located adjacent to the existing Compressor Station 105.³²⁸ The EA identifies and evaluates numerous reasonable alternatives to the project, including the no-action alternative, system alternatives, route alternatives, aboveground facility site alternative, and compression-intensive alternative.³²⁹ In the EA, Commission staff does not go on to further evaluate these alternatives, concluding that none would meet the project's purpose and need, be technically feasible, and offer a significant environmental advantage.³³⁰

121. Coosa Riverkeeper alleges the Commission does not fairly compare GHG emission quantities across alternative scenarios, particularly with respect to the no-action

³²⁴ EA at 118.

³²⁵ See *Indep. Pipeline Co.*, 91 FERC ¶ 61,102, at 61,345 (2000) (the applicant's in-service date was a factor in evaluating alternatives in the NEPA document); *Indep. Pipeline Co.*, 89 FERC ¶ 61,283, at 61,844 (1999) (finding a proposed alternative was not viable because there were no applications on file to implement the alternative and it was not sufficient to meet the proposed capacity of the project or the proposed time frame for providing service to the applicant's shippers).

³²⁶ Coosa Riverkeeper April 24, 2023 Comment at 7.

³²⁷ *Id.*

³²⁸ EA at 118.

³²⁹ *Id.* at 118-121.

³³⁰ *Id.*

alternative for continued operation of Gaston Unit 5, in contravention of the CEQ GHG Guidance.³³¹ Coosa Riverkeeper argues that the Commission must redefine the no-action alternative to exclude continued coal use at Gaston Unit 5.³³² Because Gaston Units 1-4 are retiring in 2028, Coosa Riverkeeper claims the most reasonable no-action alternative is that Gaston Unit 5 would operate until 2028 at the latest, then be retired rather than be converted to gas.³³³ Coosa Riverkeeper relies on the EA's Systems Alternatives analysis which describes Transco as "the primary natural gas transportation company in the [p]roject area" and notes that no "other existing, modified or proposed pipeline systems" were identified in the project area.³³⁴

122. The EA appropriately determined that the no-action alternative could result in the same or higher environmental impacts than the preferred alternative and did not consider them further.³³⁵ Although Alabama Power intends to convert Gaston Unit 5 to natural gas, it is appropriate to assume Alabama Power may continue to use coal at Gaston Unit 5 post-2028, as evidenced by its acknowledgment that for Gaston Unit 5 to continue to burn coal, certain equipment would need to be installed for the unit to comply with EPA's Steam Electric Power Generating Effluent Limitations Guidelines and Standards Rule (ELG Rule).³³⁶ We note that under such a scenario, Alabama Power would continue to emit up to 7.16 million metric tpy of CO₂e.³³⁷

123. Coosa Riverkeeper assumes that under the no-action alternative, if the proposed project is not approved, Alabama Power will not have access to another source of natural gas and will ultimately be forced to retire Gaston Unit 5 to comply with EPA's ELG

³³¹ Coosa Riverkeeper April 24, 2023 Comment at 17-19.

³³² *Id.* at 11.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ EA at 118.

³³⁶ Alabama Power performed a cost and benefit analysis to determine if Gaston Unit 5 should continue to burn coal, be converted to operate fully on natural gas, or be replaced with another generation source. Application at 9. Moreover, we note that the known impacts of maintaining the status quo and the current level of activity is used as a benchmark. *See Custer Cnty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir.2001).

³³⁷ Transco Response to Sept. 27, 2023 Environmental Information Request (filed Sept. 29, 2023).

Rule. Coosa Riverkeeper's reliance on the EA's statement that Transco is the main interstate natural gas pipeline in the region, however, is misleading. The EA states "[t]here are currently no existing pipeline systems that could transport the requested volume of gas *without expansion and environmental impacts that would likely exceed those of the proposed [p]roject*... We did not identify any other existing, modified or proposed pipeline systems in the [p]roject area that would be able to provide the additional gas supplies *without incurring similar or greater amounts of environmental impacts*."³³⁸ These statements in the EA are not intended to mean that there would be no other sources of natural gas for Gaston Unit 5's transition. Rather, if the Southeast Energy Connector Project is not certificated, Alabama Power could source natural gas from other existing, modified, or proposed pipeline systems in the project area, though, based on our analysis in the EA, these alternative systems would have similar or greater environmental impacts as compared to the proposed project.³³⁹ Thus, we disagree with Coosa Riverkeeper that the most reasonable no-action alternative would be that Gaston Unit 5 ends its operations no later than 2028.

b. System and Route Alternatives

124. Coosa Riverkeeper claims that the Commission should more fully evaluate the use of an electric compressor unit at Compressor Station 105, arguing that the alternative was eliminated based on misleading reasoning from Transco and leaves out important factors, including local air quality and environmental justice impacts.³⁴⁰ Coosa Riverkeeper also disputes Transco's reliability concerns of possible power outages interrupting electric transmission to electric-driven units, arguing that these concerns are unsupported and are easily solved by installing electric compressors with gas-powered backup generators as it proposed in its Southside Reliability Enhancement Project.³⁴¹

125. The EA appropriately eliminated the use of electric-driven compression from further consideration.³⁴² Transco states that it is planning to replace three existing gas-fired turbine-driven compressors totaling 22,880 HP at Compressor Station 100 in Chilton County, Alabama, with two new electric motor-driven compressors, with a

³³⁸ EA at 119 (emphasis added).

³³⁹ *Id.*

³⁴⁰ Coosa Riverkeeper April 24, 2023 Comment at 8.

³⁴¹ *Id.*

³⁴² EA at 121.

scheduled in-service date of fourth quarter of 2024.³⁴³ Once complete, 85% of the horsepower at Compressor Station 100 will be electric motor-driven compression.³⁴⁴ Given the planned replacement at Compression Station 100, coupled with the proximity of Compressor Station 100 to Compressor Station 105, Transco believes a regional utility power outage for electric motor-driven compressors at both Compressor Stations 100 and 105 would have a marked impact to the system throughput capacity.³⁴⁵ Transco argues that having additional electric motor-driven compression at the SEC Project would compromise system reliability, whereas installing gas-fired turbine-driven compression at Compressor Station 105 would provide needed backup for electric motor-driven compression in the event of a regional utility power outage.³⁴⁶ Additionally, the remote location of Compressor Station 105, necessitating a 10-mile-long extension of a new powerline corridor through forested landscapes that would be its sole source of electrical power, makes it more difficult to lower the risk of generation failure during outages.³⁴⁷ While Coosa Riverkeeper suggests that an electric compressor backed up by a gas-powered generator would have air quality and environmental justice benefits, we find that these unquantified claimed benefits would be outweighed by the adverse impacts of constructing a 10-mile-long powerline through a forested area.

126. EPA states that the EA does not consider practicable alternatives that do not involve impacts to aquatic resources and can still meet the basic needs of the project, noting that the proposed pipeline follows existing pipelines in some areas, but then diverges from the existing pipeline corridor causing new impacts to aquatic resources.³⁴⁸ EPA states that the EA is unclear why the new pipeline route cannot be installed in closer proximity to the existing pipelines to minimize impacts to aquatic resources.³⁴⁹

³⁴³ Application, Resource Report 10 at 10-27. Transco plans to replace the gas-fired turbine-driven compressors with two new electric motor-driven compressors under Section 2.55(b) of the Commission's regulations.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.* at 10-27 – 10-28.

³⁴⁷ Transco Response to Jan. 18, 2023 Environmental Information Request at 5 (filed Jan. 30, 2023).

³⁴⁸ EPA April 24, 2023 Comment at 3.

³⁴⁹ *Id.*

127. As stated in the EA, Transco's proposed 1.9-mile-long Chilton Loop includes a 0.63-mile-long (3,378 feet) HDD to cross the Coosa River.³⁵⁰ The EA describes Transco's effort to co-locate the Chilton Loop within its existing multi-line pipeline corridor,³⁵¹ in which its currently existing mainline Line E pipeline approaches but does not cross the Coosa River from both directions. The proposed Chilton Loop's approaching alignments closely follow mainline Lines C and D.³⁵² In order to reduce overall impacts on aquatic resources, Transco complemented its use of its multi-line corridor with an HDD crossing which required its own crossing. Thus, Transco's proposed east-side Chilton Loop pipeline alignment was required to eventually deviate from Line C but still follow Line D down the hill to the HDD entry point. This amount of co-location allows the Chilton Loop's approaching alignments to proceed across steep slopes in a manner that avoids a large amount of upland and wetland forest.³⁵³ Transco, by eliminating construction ground disturbance between the HDD's entry and exit points, would be using a construction method and alignment configuration specifically designed to avoid aquatic resources including, and direct impacts on, the Coosa River and channel habitat, wetlands, and two minor waterbodies.³⁵⁴ Therefore, we conclude that no further consideration of pipeline routing alternatives or consideration of any practicable alternatives to avoid impacts on aquatic resources is warranted.

D. Environmental Analysis Conclusion

128. We have reviewed the information and analysis contained in the EA, as well as the other information in the record, regarding potential environmental effects of the project. We accept the environmental recommendations in the EA, aside from the environmental condition discussed above,³⁵⁵ and we are including them as conditions in the appendix to this order. Based on the analysis in the EA, as supplemented or clarified herein, we conclude that, if constructed and operated in accordance with Transco's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the

³⁵⁰ EA at 17.

³⁵¹ *Id.* at 5.

³⁵² *Id.* at 5,6.

³⁵³ Application, Resource Report 1 at vol. 2.

³⁵⁴ EA at 17, 34, 35.

³⁵⁵ *See supra* P 29.

human environment.³⁵⁶ We note that the analysis in the EA provides substantial evidence for our conclusions in this order, but that it is the order itself that serves as the record of decision, consistent with the Commission's obligations under NEPA and the Administrative Procedure Act. For that reason, to the extent that any of the analysis in the EA is inconsistent with or modified by the Commission's analysis and findings in the order, it is the order that controls and we do not rely on or adopt any contrary analysis in the EA.

IV. Conclusion

129. The proposed project will enable Transco to provide up to 150,000 Dth/d of firm transportation service on its existing system for delivery to Gaston Unit 5. We find that Transco has demonstrated a need for the SEC Project, that the project will not have adverse impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse effects on landowners and surrounding communities. We have analyzed the technical aspects of the project and conclude that it has been appropriately designed to achieve its intended purpose. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of Transco's SEC Project, subject to the conditions in this order.

130. 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 staff is 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 abandonment, 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.

131. 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

³⁵⁶ We are not making a significance determination regarding GHG impacts for the reasons discussed in PP 35, 44, *supra*.

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁵⁷

132. At a hearing held on XX, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Transco to construct and operate its SEC Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) shall be conditioned on Transco's:

- (1) completion of construction of the proposed facilities and making them available for service within three years from 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.

(C) Transco shall file a written statement affirming that it has executed a firm contract for the capacity level and terms of service represented in the signed precedent agreement, prior to commencing construction.

³⁵⁷ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(D) Transco's proposed initial incremental firm recourse reservation charge and usage charge under Rate Schedule FT are approved as the initial recourse charges for this project. Transco is directed to charge the applicable system interruptible rate for the expansion capacity.

(E) Transco's proposal to charge its generally applicable system fuel percentage and system electric power rates to recover fuel and electric power costs associated with the project is approved.

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

By the Commission. Commissioner Danly is not participating.

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

Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA) for the Southeast Energy Connector Project (Project), this authorization includes the following conditions:

1. Transco 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. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP), 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**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

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

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

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP, 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. **At least 60 days before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Transco must file revisions to the plan as schedules change. The plan shall identify:
- a. how Transco 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 Transco 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 Transco 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 Transco's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Transco shall employ at least one EI per construction spread. The EI(s) shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports 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 Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of 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 Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. Transco must receive written authorization of the Director of OEP, or the Director's designee, **before commencing construction of any Project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco 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**, Transco 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 Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. All conditions attached to the water quality certification issued by the Alabama Department of Environmental Management, except those that the Director of OEP, or the Director's designee, identify as waived pursuant to 40 C.F.R. § 121.9, constitute mandatory conditions of the Order. **Prior to construction**, Transco shall file, for review and written approval of the Director of OEP, or the Director's designee, any revisions to its project design necessary to comply with the water quality certification conditions.
13. **Transco shall file noise surveys with the Secretary no later than 60 days after** placing in service the authorized unit at Compressor Station 105. If full load condition noise surveys are not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to operation of the modified stations under

interim or full horsepower load conditions exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive areas, Transco shall file a report on what changes are needed and install additional noise controls to meet that level **within 1 year** of the in-service date. Transco shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-501-000

(Issued November 16, 2023)

CLEMENTS, Commissioner, *dissenting in part*:

1. I concur with the result of today's Order, but I dissent from the majority's conclusion that the Commission is incapable of assessing the significance of the impacts of greenhouse gas (GHG) emissions associated with the SEC Project.¹ The Commission should have simply found that the project's net reduction in GHG emissions renders its climate impacts insignificant for purposes of both the National Environmental Policy Act² and the Commission's public interest determination under section 7(e) of the Natural Gas Act.³ Instead, the Order imports extraneous and wrong-headed language used in other recent certificate orders to find there are no acceptable tools for determining the significance of GHG emissions.

2. In *Northern Natural Gas Co.*, the Commission found that it could determine the significance of GHG emissions of a natural gas project by applying its experience, judgment, and expertise to the evidence in the record.⁴ Here, the Order finds that the SEC Project will result in an overall net reduction in GHG emissions of approximately 3.1 million metric tons per year.⁵ The Order therefore should just state the obvious: the GHG emissions associated with the SEC Project will have no significant adverse environmental impact.

3. Rather than reaching the seemingly inescapable conclusion that the project's GHG emissions would be insignificant, the majority strains to include in the Order the same unnecessary and misguided language to which I have previously objected. In my concurrence in *Transco*, I explained the history of the language in Paragraphs 35 and 44

¹ *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,133, at PP 35, 44 (2023) (Order).

² 42 U.S.C. §§ 4321 *et seq.*

³ 15 U.S.C. § 717f(e).

⁴ *See N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at PP 32, 36 (2021).

⁵ *See Order*, 185 FERC ¶ 61,133 at P 32.

of the Order,⁶ which is the so-called “*Driftwood* compromise.”⁷ In *Driftwood*, the majority suddenly adopted new language declaring that there are no methods for assessing the significance of GHG emissions, and particularly criticizing the Social Cost of GHGs protocol.⁸ I have dissented from this language in *Driftwood* and subsequent orders for two reasons: (1) it reflects a final Commission decision that it cannot determine the significance of GHG emissions, despite the fact the Commission has never responded to comments in the GHG Policy Statement docket⁹ addressing methods for doing so; and (2) the language departs from previous Commission precedent without reasoned explanation, thereby violating the Administrative Procedure Act.¹⁰ I dissent from Paragraphs 35 and 44 of this Order for the same reasons.

⁶ See *Transcon. Gas Pipe Line Co.*, 184 FERC ¶ 61,066 (2023) (Clements, Comm’r, concurring at PP 2-3) (*Transco*).

⁷ See *id.* (Phillips, Chairman, and Christie, Comm’r, concurring at PP 1-2).

⁸ See *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

⁹ Docket No. PL21-3.

¹⁰ See *Driftwood*, 183 FERC ¶ 61,049 (Clements, Comm’r, dissenting at PP 2-3 & n.161); see also *Texas LNG Brownsville LLC*, 185 FERC ¶ 61,079 (2023) (Clements, Comm’r, dissenting at PP 9-10); *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023) (Clements, Comm’r, dissenting at PP 9-10); *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 (2023) (Clements, Comm’r, concurring in part and dissenting in part at PP 7-8); *WBI Energy Transmission, Inc.*, 185 FERC ¶ 61,036 (2023) (Clements, Comm’r, dissenting in part at PP 2-3); *Venture Global Plaquemines LNG, LLC*, 185 FERC ¶ 61,037 (2023) (Clements, Comm’r, dissenting in part at PP 2-3); *Texas Eastern Transmission, LP*, 185 FERC ¶ 61,038 (2023) (Clements, Comm’r, dissenting in part at PP 2-3); *Trailblazer Pipeline Company LLC*, 185 FERC ¶ 61,039 (2023) (Clements, Comm’r, dissenting in part at PP 2-4); *Equitrans, L.P.*, 185 FERC ¶ 61,040 (2023) (Clements, Comm’r, dissenting in part at PP 2-4); *Port Arthur LNG Phase II, LLC*, 184 FERC ¶ 61,184 (2023) (Clements, Comm’r, dissenting in part at PP 2-3); *Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 (2023) (Clements, Comm’r, dissenting in part at PP 2-4); *Northern Natural Gas Company*, 184 FERC ¶ 61,186 (2023) (Clements, Comm’r, dissenting in part at PP 2-3); *Texas Eastern Transmission, LP*, 184 FERC ¶ 61,187 (2023) (Clements, Comm’r, dissenting in part at PP 2-4); *Equitrans, L.P.*, 183 FERC ¶ 61,200 (2023) (Clements, Comm’r, dissenting at PP 2-3); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (Clements, Comm’r, dissenting at PP 5-8); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Clements, Comm’r, dissenting at PP 14-15); *Texas LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023) (Clements, Comm’r, dissenting

4. I do not know whether the Social Cost of GHGs protocol or another tool can or should be used to determine significance. That is because the Commission has not seriously studied the answer to that question. Rather, the majority simply decided there is no acceptable method, with no explanation of why the Commission departs from the approach taken in previous certificate orders.¹¹ As I have said before, the Commission should decide the important unresolved issues relating to our assessment of GHG emissions through careful deliberation in a generic proceeding with full transparency. However, in the meantime, the Commission should rely on our precedent in *Northern Natural*, as well as our common sense, to find that the GHG emissions here are not significant.

For these reasons, I respectfully dissent in part.

Allison Clements
Commissioner

at PP 14-15).

¹¹ To depart from prior precedent without explanation violates the Administrative Procedure Act. *See, e.g., West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17 (D.C. Cir. 2014) (“[T]he Commission cannot depart from [prior] rulings without providing a reasoned analysis.”) (citations omitted).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-501-000

(Issued November 16, 2023)

CHRISTIE, Commissioner, *concurring*:

1. Today's order makes a finding of fact that the upstream GHG emissions are not reasonably foreseeable.¹ I would add, however, that, unlike downstream emissions, the Commission has no legal obligation to estimate emissions from upstream, non-jurisdictional activities anyway, so this finding fulfills no legal obligation, and amounts to a "finding" of no legal consequence. Further, the Commission has no legal authority whatsoever to order mitigation of such non-jurisdictional upstream activities, much less to consider such non-jurisdictional upstream emissions in our merits review under the Natural Gas Act.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

¹ Order at P 42. The EA reached the same conclusion. EA at 115.