

186 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP22-493-000

ORDER ISSUING CERTIFICATE

(Issued January 18, 2024)

1. On July 22, 2022, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application pursuant to 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 natural gas facilities in Dickson, Houston, and Stewart Counties, Tennessee (Cumberland Project). The project is designed to provide up to 245,040 dekatherms per day (Dth/d) of additional firm transportation service for Tennessee Valley Authority (TVA). For the reasons discussed below, we grant the requested authorization, subject to the conditions described herein.

I. Background and Proposal

2. Tennessee, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA.³ Tennessee's transmission system extends from Texas, Louisiana, and the Gulf of Mexico area, through Mississippi, Alabama, Arkansas, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

3. The Cumberland Project will provide additional firm transportation service for TVA to support a new natural gas-fired power plant in Stewart County, Tennessee. TVA intends to retire and demolish the two-unit, coal-fired Cumberland Fossil Plant as early as

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2022).

³ 15 U.S.C. § 717a(6).

2026 and construct and operate a new 1,450-megawatt natural gas-fueled plant on the same site.⁴

4. Specifically, Tennessee proposes to:

- construct an approximately 32-mile-long, 30-inch-diameter pipeline lateral extending from Tennessee’s existing Lines 100-3 and 100-4 in Dickson County, Tennessee, to a delivery point in Stewart County, Tennessee (Cumberland Pipeline);
- install new bi-directional back pressure regulation facilities near the origin of the proposed Cumberland Pipeline;
- install a new meter station, located at the terminus of the proposed Cumberland Pipeline on TVA’s property in Stewart County, Tennessee; and
- install appurtenant facilities, including three new mainline valves and in-line inspection traps⁵ at each end of the proposed Cumberland Pipeline.

5. Tennessee held an open season for the project from October 8, 2021, to October 29, 2021. As a result of the open season, Tennessee and TVA executed a precedent agreement with a 20-year term for 100% of the new lateral capacity. TVA was also awarded 221,000 Dth/d of firm transportation service on Tennessee’s 100 Line and 800 Line mainline system, which will use existing unsubscribed reserved mainline capacity. Tennessee will provide the transportation service on the lateral under a negotiated rate and the mainline transportation service pursuant to an FT-A service agreement at a discounted rate.⁶

⁴ TVA intends to retire one coal-fired unit by the end of 2026 and the other by the end of 2028. To maintain its operating reserves, however, the new natural gas-fired unit must be placed in service prior to retiring either coal-fired unit.

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

⁶ Discounting is permitted by section XXVII of the General Terms and Conditions of Tennessee’s FERC Gas Tariff.

II. Procedural Matters

A. Notice, Comments, Interventions, and Protests

6. Notice of Tennessee's application was issued on July 29, 2022, and published in the *Federal Register* on August 4, 2022, with interventions, comments, and protests due on August 19, 2022.⁷ Individuals and entities, including, on August 19, 2022, Sierra Club and Appalachian Voices (together) and Southern Alliance for Clean Energy, filed timely motions to intervene and comments.⁸ Commenters raised concerns regarding the project's need, eminent domain, and environmental impacts. These concerns are addressed in the final Environmental Impact Statement (EIS) issued for the project and, as appropriate, below.

B. Answers

7. On October 14, 2022, TVA filed a motion for leave to answer and an answer to the August 19, 2022 comments from Sierra Club, Appalachian Voices, and Southern Alliance for Clean Energy. On October 28 and 31, 2022, Sierra Club and Appalachian Voices (together) and Southern Alliance for Clean Energy, respectively, filed answers to TVA's motion and answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to answers unless otherwise ordered by the decisional authority;⁹ however, we accept all the answers because they informed our decision-making process.

C. Request for Evidentiary Hearing

8. In their August 19, 2022 comments, Sierra Club and Appalachian Voices request that the Commission hold an evidentiary hearing on Tennessee's application. Although our regulations provide for a hearing, neither section 7 of the NGA nor our regulations require that such a hearing be a trial-type evidentiary hearing. When the written record provides a sufficient basis for resolving the relevant issues, it is our practice to provide

⁷ 87 Fed. Reg. 47,736 (Aug. 4, 2022).

⁸ All, timely, unopposed motions to intervene are granted automatically pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2022). Timely motions to intervene include those filed dealing with environmental issues during the comment period for the draft Environmental Impact Statement (EIS). 18 C.F.R. § 380.10(a)(1)(i) (2022). Because the American Gas Association and the State of Tennessee filed motions to intervene during the comment period for the draft EIS, their motions are timely.

⁹ 18 C.F.R. § 385.213(a)(2) (2022).

for a paper hearing.¹⁰ That is the case here. We have reviewed the request for a hearing and conclude that all issues of material fact relating to Tennessee's proposal, including on the issue of need, are capable of being resolved on the basis of the written record, which contains substantial evidence on this issue. Accordingly, we will deny the request for a formal hearing.

III. Discussion

9. Because Tennessee's proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the proposal is subject to the requirements of sections (c) and (e) of section 7 of the NGA.¹¹

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹² 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. It 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.

11. Under this policy, the threshold requirement for an applicant 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

¹⁰ See, e.g., *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993) (“[the Commission] need not conduct such [an evidentiary] hearing if [the issues at hand] may be adequately resolved on the written record.”); *Tenn. Gas Pipeline Co.*, 158 FERC ¶ 61,110, at P 11 (2017).

¹¹ 15 U.S.C. §§ 717f(c), (e).

¹² *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 *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022) (Order on Draft Policy Statements).

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 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

12. Tennessee's proposal satisfies the threshold requirement that it financially support the project without subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes to charge incremental rates for new construction serving new incremental load, the pipeline satisfies the no-subsidization requirement.¹³ Tennessee proposes a separate incremental lateral recourse rate for transportation service on the Cumberland Pipeline, which is designed to recover the full costs associated with facilities being constructed for the project. Therefore, we find that Tennessee's existing shippers will not subsidize the Cumberland Project.

13. The project will provide up to 245,040 Dth/d of firm natural gas transportation service for TVA, a non-affiliated shipper. As described above, TVA intends to use the transportation service to provide fuel to a new natural gas-fired power plant, which will replace two existing coal-fired plants.

14. Commenters assert that additional natural gas infrastructure is unnecessary. Many of these commenters argue that alternative sources of energy should be used to combat climate change¹⁴ and that TVA's plans conflict with the climate policy of the federal government.¹⁵ Additionally, Sierra Club and Appalachian Voices claim that TVA's

¹³ See, e.g., *Transcon. Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

¹⁴ See, e.g., Tennessee Interfaith Power & Light August 19, 2022 Comments at 1-2; Sierra Club and Appalachian Voices August 19, 2022 Motion to Intervene; Delta Anne Davis January 4, 2023 Comments (relaying concerns expressed in Nashville Electric Services' December 14, 2022 Board Meeting).

¹⁵ See, e.g., Sierra Club and Appalachian Voices August 19, 2022 Motion to Intervene at 9-18 (arguing that Tennessee's precedent agreement with TVA violates public policy and is not a reliable indicator of market need); Center for Biological Diversity October 7, 2022 Comments at 1-2. Tennessee states, however, that the proposed combined-cycle plant would help support TVA's reliable integration of 10 gigawatts of solar power into its system by 2035 and allows the existing coal-fired units to be retired on an accelerated schedule. Application at 30. Tennessee Valley

execution of the precedent agreement before issuance of its final EIS violates the National Environmental Policy Act (NEPA).¹⁶ They also provided market reports which they allege contradict TVA's conclusions regarding need for the new natural gas-fired plant.¹⁷ One commenter expressed concern that the decommissioning of coal-fired power plants would harm local communities by removing jobs and increasing the cost of power.¹⁸ Sierra Club, Appalachian Voices, and the Center for Biological Diversity also averred that the Commission must look beyond Tennessee's precedent agreement and examine the need for the proposed power plant because "TVA's unique position in the market creates opportunities for it to make decisions that would harm end-use ratepayers with impunity."¹⁹ In their supplemental comments filed on October 2, 2023, Sierra Club and Appalachian Voices cite to *Environmental Defense Fund v. FERC*²⁰ to assert that the precedent agreement is not a reliable indicator of market need or public benefits because TVA is "an unregulated monopoly utility that is not held in check by market competition or the oversight of a state utility commission" and the TVA Board delegated its approval of the Cumberland Gas Plant to its chief executive.²¹ Sierra Club and Appalachian

Public Power Association (TVPPA), an organization representing the interests of community-owned and consumer-owned electric utilities operating within TVA's service area, believes that TVA's decision represents a responsible way forward for the Tennessee Valley area, and supports Tennessee's Cumberland Project as integral to the implementation of that choice. TVPPA August 19, 2022 Comments at 5.

¹⁶ Sierra Club and Appalachian Voices August 19, 2022 Motion to Intervene at 11-13 (citing *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) ("[T]he comprehensive "hard look" mandated by Congress and required by [NEPA] must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made."); *Burkholder v. Peters*, 58 F. App'x 94, 97 (6th Cir. 2003) (noting "clear" violation where contracts for final design work were executed before the NEPA process was completed)).

¹⁷ Sierra Club and Appalachian Voices October 7, 2022 Comments at 7-10.

¹⁸ Allen England December 5, 2022 Comments.

¹⁹ Sierra Club, Appalachian Voices, and Center for Biological Diversity March 27, 2023 Draft EIS Comments at 5-7.

²⁰ 2 F.4th 953, 973 (D.C. Cir. 2021) (*Environmental Defense Fund*).

²¹ Sierra Club and Appalachian Voices October 2, 2023 Supplemental Comments at 1, 4-7.

Voices also question the validity of TVA's approval of the Cumberland Gas Plant, which they claim is the only evidence of market need beyond the precedent agreement.²²

15. Issues related to TVA's plan to replace coal-fired units from the Cumberland Fossil Plant with a natural gas-fired plant, including issues regarding the need for the new natural gas-fired plant, are outside the scope of this proceeding. Under the Tennessee Valley Authority Act (TVA Act),²³ the TVA Board has the exclusive authority to evaluate the need for generation facilities within TVA's service territory.²⁴ Sierra Club and Appalachian Voices' reliance on *Environmental Defense Fund* is misplaced. *Environmental Defense Fund* involved a precedent agreement with an affiliated entity and plausible record evidence of self-dealing.²⁵ Here, Tennessee entered into a binding precedent agreement with TVA, an unaffiliated entity, for the project's full capacity and we have no evidence of self-dealing. Therefore, we conclude that this precedent agreement is significant evidence of need for the proposed project.

16. Sierra Club and Appalachian Voices request that if a certificate is issued, it include a condition suspending construction if TVA's decision to replace coal-fired units from the Cumberland Fossil Plant with a natural gas-fired plant is withdrawn, suspended, stayed, remanded, or vacated.²⁶ As typical in our certificate orders, Ordering Paragraph (C) requires that Tennessee file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in its signed precedent agreement prior to commencing construction.

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

17. The proposed project will not adversely affect service to Tennessee's existing customers because the proposed facilities are designed to provide incremental service to meet the needs of the project shipper without degradation of service to Tennessee's existing customers. We also find that there will be no adverse impact on other pipelines

²² *Id.* at 8-13.

²³ 16 U.S.C. §§ 831 *et seq.*

²⁴ *See id.* § 831m-1 (requiring TVA to conduct a least cost planning program when evaluating and selecting new energy resources); *id.* § 831c(j) (granting the TVA Board the power to acquire or construct power houses).

²⁵ *Envtl. Def. Fund*, 2 F.4th at 973, 975.

²⁶ Sierra Club and Appalachian Voices November 14, 2023 Supplemental Comments at 1.

in the region or their captive customers. The project's capacity will be used to serve TVA's proposed natural gas-fired plant, not to displace existing service providers.²⁷ Finally, no pipelines or their captive customers have objected to Tennessee's proposal.

18. We are further satisfied that Tennessee has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities. Construction of the project is expected to affect about 507.58 acres of land. Of this, 193.50 acres are expected to be retained as a permanent easement. Tennessee has minimized disturbance from the project by routing approximately 80% of the Cumberland Pipeline adjacent to either an existing Tennessee pipeline right-of-way or adjacent to (within 200 feet of) an existing TVA electric transmission line right-of-way.²⁸ Additionally, Tennessee states that it held stakeholder meetings starting in May 2021, to inform the community of the project and solicit feedback from homeowners, landowners, and other stakeholders.²⁹ Tennessee also participated in the Commission's pre-filing process and states that it has been working to address landowner and community concerns and will continue to do so.³⁰

3. Certificate Policy Statement Conclusion

19. The proposed project will provide up to 245,040 Dth/d of firm transportation service to provide fuel for a new natural gas-fired power plant that will replace an existing coal-fired plant. TVA has issued a record of decision adopting the demolition of its two-unit, coal-fired Cumberland Fossil Plant and construction of a new natural gas-fueled combined cycle plant to replace the generation capacity of one of the two retired units, which was the action identified as the Preferred Alternative in its Cumberland Fossil Plant Retirement Final EIS.³¹ TVA explains this decision is consistent with its 2019 Integrated Resource Plan, which identified the various energy resource options for TVA to pursue "to meet the energy needs of the Tennessee Valley region over a 20-year planning period,"³² and Tennessee has entered into a precedent agreement with TVA for 100% of the project's capacity. Accordingly, we find that Tennessee has demonstrated a need for the project. Further, the project will not have

²⁷ Application at 26-27.

²⁸ *Id.* at 17.

²⁹ *Id.*

³⁰ *Id.* at 17-19.

³¹ 88 Fed. Reg. 3767 (Jan. 20, 2023).

³² *Id.*

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 criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.³³

B. Eminent Domain

20. We received comments opposing the use of eminent domain for the project.³⁴ Additionally, Edward M. Polk filed comments that the language in the easement agreement that Tennessee has proposed to him would allow Tennessee to “replace, change the size of, protect, preserve, relocate, alter, remove and retire in place one or more pipelines for the purpose of transporting natural gas, oil, gas, crude, condensate and any other substances that can be transported by pipeline and all related above and below ground appliances, appurtenances, fixtures and equipment deemed by Grantee to be necessary or desirable . . . , in, on, over, under, across, upon, and through the . . . property.”³⁵ Mr. Polk notes that the quoted language conflicts with the language presented in the application and draft EIS.³⁶ In further comments filed on December 6, 2023, Mr. Polk states that if the Commission approves the project and Tennessee is conferred the right of eminent domain, the easement language as written could bar landowners from compensation for future damages, and landowners would bear the burden of proof in court that the language is overly broad, which will in most cases be cost prohibitive.³⁷ For these reasons, he requests that the Commission restrict

³³ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

³⁴ Appalachian Voices on Behalf of Anne Barga and Barbara Williamson March 27, 2023 Comments at 1, 16 (respectively, “[t]he use of eminent domain for the purpose of advancing the interests of private gas corporations like Kinder Morgan, especially without an assessment of need, is wrong” and “vulnerable communities will lose land to the pipeline company through eminent domain”).

³⁵ Edward M. Polk June 30, 2023 Final EIS Comments at 2.

³⁶ *Id.*

³⁷ Edward M. Polk December 6, 2023 Comments.

Tennessee's right of eminent domain to the proposed project and so state in writing to landowners.³⁸

21. Tennessee filed comments responding to Mr. Polk that the easement agreement presented to Mr. Polk is a standard easement agreement used regularly by Tennessee and others in the industry.³⁹ Tennessee states that it would still be required to obtain approval from the Commission and other permitting agencies for any future changes to the project facilities.⁴⁰ Tennessee adds that it has no plans to relocate, change, or alter the proposed project facilities on Mr. Polk's property at this time.⁴¹

22. As Mr. Polk acknowledges,⁴² the Commission has long held that legal disputes regarding property rights are not within the Commission's jurisdiction, but instead are a matter of state law for an appropriate court to resolve.⁴³ NGA section 7 provides that once a certificate of public convenience and necessity is granted, the holder of the

³⁸ *Id.*

³⁹ Tennessee July 31, 2023 Final EIS Comments at 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Edward M. Polk December 6, 2023 Comments.

⁴³ *Sacramento Mun. Util. Dist.*, 178 FERC ¶ 61,112, at P 15 (2022) (citing *Halecrest Co.*, 60 FERC ¶ 61,121, at 61,413 (1992) (finding that the Federal Power Act does not confer the Commission with any jurisdiction or authority to resolve disputes between the licensee and third parties that concern interests in real property)); *see also Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,046, at P 28 n. 35 (2017) (explaining that the Commission takes no role in negotiating property rights); *Californians for Renewable Energy, Inc. v. Williams Nw. Pipeline*, 135 FERC ¶ 61,158, at P 17 (2011) ("interpretation of the language of easement is a matter for a court of appropriate jurisdiction, not the Commission, which possesses no jurisdiction over, or expertise in, such matters."); *Columbia Gas Transmission Corp.*, 128 FERC ¶ 61,050, at P 47 (2009) (explaining that compensation for property and mineral rights is a private contractual matter over which the Commission does not have jurisdiction); *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306, at PP 41, 43 (2008) (explaining that the Commission has no jurisdiction over landowners' real property or damages claims nor over landowner valuation claims); *Duke Power Co.*, 79 FERC ¶ 62,229, at ¶ 64,766 (1997) (explaining the Commission does not have jurisdiction to impose environmental mitigation measures on private landowners, even where those measures have been suggested by other state or federal agencies).

certificate may pursue necessary property rights via eminent domain in either U.S. district court or an appropriate state court.⁴⁴ NGA section 7(h) gives certificate holders the right to exercise eminent domain to acquire “the necessary right-of-way to construct, operate, and maintain [facilities] for the transportation of natural gas, and the necessary land or property . . . necessary to the proper operation of such pipeline.”⁴⁵ Thus, our approval of this proposal allows for Tennessee, in the future, to use an easement for the purposes of operating and maintaining the project. As the courts have repeatedly held, nothing in the statute gives the Commission “authority to deny or restrict a certificate holder’s exercise of the statutory right of eminent domain with respect to a certificate issued pursuant to the procedures laid out in” the NGA.⁴⁶

C. Rates

1. Initial Rates

23. Tennessee proposes to establish an incremental firm recourse rate under Rate Schedule FT-IL for firm service using the incremental capacity created by the project and an incremental interruptible rate under Rate Schedule IT for interruptible service.⁴⁷

⁴⁴ 15 U.S.C. § 717f(h).

⁴⁵ *Id.*

⁴⁶ *Spire STL Pipeline, LLC*, 178 FERC ¶ 61,109, at P 9 (2022) (citing *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000) (“The Commission does not have the discretion to deny a certificate holder the power of eminent domain.” (internal citation omitted)); *Twp. of Bordentown, N.J. v. FERC*, 903 F.3d 234, 265 (3d Cir. 2018) (stating that NGA section 7(h) “contains no condition precedent” to the right of eminent domain, other than issuance of the certificate, when a certificate holder is unable to acquire a right-of-way by contract); *Berkley v. Mountain Valley Pipeline, LLC*, 896 F.3d 624, 628 (4th Cir. 2018) (“Issuing such a Certificate conveys and automatically transfers the power of eminent domain to the Certificate holder Thus, FERC does not have discretion to withhold eminent domain . . . once it grants a Certificate.” (internal citation omitted))); *see also PennEast Pipeline Co., LLC*, 174 FERC ¶ 61,056, at P 10 (2021) (once the Commission has issued a certificate order, it has no authority to limit a pipeline company’s use of eminent domain).

⁴⁷ The Rate Schedule FT-IL service was approved by the Commission in Docket Nos. RP02-17-000 and CP00-65-005 in connection with the Stagecoach Lateral Project. In that proceeding, the Commission approved Tennessee’s Rate Schedule FT-IL for the Stagecoach Lateral and for “any future incrementally priced laterals approved by the

24. Tennessee proposes an incremental monthly recourse reservation charge of \$10.3912 per Dth and a daily usage charge of \$0.0001 per Dth, based on an annual cost of service of \$30,555,000 and an annual design capacity of 2,940,480 Dth using a straight fixed-variable rate design.⁴⁸ The proposed usage charge reflects variable costs of \$4,000 per year and estimated firm throughput using an 86% load factor utilization.⁴⁹ Tennessee also proposes to charge \$0.3417 per Dth for interruptible service on the Cumberland Pipeline based on the 100% load factor equivalent of its proposed incremental recourse rate.⁵⁰ Tennessee's proposed incremental cost of service reflects an adjusted income tax rate and the capital structure and rate of return approved by the Commission in its rate settlement in Docket No. RP95-112-000⁵¹ and reaffirmed in its last settlement in Docket No. RP19-351-002.⁵² The proposed cost of service reflects a depreciation rate of 2.05%, which is Tennessee's currently effective rate applicable to its onshore transmission facilities.⁵³

25. Further, Tennessee states that to the extent that capacity on the Cumberland Pipeline is available from time to time, other shippers can access the Cumberland Pipeline through an Extended Transportation Service offered under Rate Schedule

Commission and constructed by [Tennessee].” *Tenn. Gas Pipeline Co.*, 97 FERC ¶ 61,133 at 61,609 (2001).

⁴⁸ Application at Ex. N at 3.

⁴⁹ *Id.*

⁵⁰ See Application at Ex. P at 5.

⁵¹ See *Tenn. Gas Pipeline Co.*, 94 FERC ¶ 61,117 (2001), *order on reh'g*, 95 FERC ¶ 61,034 (2001); *Tenn. Gas Pipeline Co.*, 77 FERC ¶ 61,083 (1996), *reh'g denied*, 78 FERC ¶ 61,069 (1997), *pet. for review denied sub nom. NorAm Gas Transmission Co.*, 148 F.3d 1158 (D.C. Cir. 1998) (1995 Settlement).

⁵² *Tenn. Gas Pipeline Co.*, 167 FERC ¶ 61,169 (2019) (2019 Settlement). Pursuant to the terms of the 2019 Settlement, for purposes of determining cost-of-service levels in certificate applications, the federal income tax rate in the 1995 Settlement was adjusted to reflect the reduction in federal corporate income tax rates to 21% as a result of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

⁵³ Application at Ex. O at 1.

FT-A⁵⁴ or through interruptible transportation service offered under Rate Schedule IT.⁵⁵ Tennessee proposes a daily reservation charge of \$0.3416 per Dth for Rate Schedule FT-A Extended Transportation Service based on the 100% load factor equivalent of the Rate Schedule FT-IL reservation charge.⁵⁶

26. We have reviewed Tennessee's proposed cost of service and initial incremental rates and find that they are consistent with current Commission policy. These charges and rates are consistent with the rate design for Rate Schedule FT-IL service approved by the Commission for the Stagecoach Lateral and the Tewksbury-Andover Lateral.⁵⁷ Therefore, we approve Tennessee's proposal to charge incremental recourse rates for firm and interruptible service for the Cumberland Project.

2. Fuel

27. Tennessee states that, given that the Cumberland Pipeline does not include compression facilities, Tennessee does not propose to assess transportation fuel or electric power cost charges for service on the Cumberland Pipeline.⁵⁸ Tennessee's proposal to not assess transportation fuel or electric power cost charges for service on the Cumberland Pipeline is consistent with prior Commission determinations for Rate Schedule FT-IL that applied a zero percent fuel charge for transportation on the Stagecoach Lateral and the Tewksbury-Andover Lateral.⁵⁹ As such, we approve Tennessee's proposal.

28. We note, however, that Tennessee's application does not address the collection of Lost and Unaccounted For gas (LAUF) on the Cumberland Pipeline. The Commission's policy is that pipelines are required to recover LAUF from shippers on a lateral, just as

⁵⁴ See Tennessee Gas Pipeline Company, L.L.C., TGP Tariffs, Sheet No. 78, (3.0.0).

⁵⁵ Application at 13.

⁵⁶ *Id.* at 12, Ex. P at 3.

⁵⁷ *Tenn. Gas Pipeline Co.*, 110 FERC ¶ 61,047 (2005); *Tenn. Gas Pipeline Co.*, 94 FERC ¶ 61,194 (2001).

⁵⁸ Application at 13 n.20; *see also* Tennessee's February 8, 2023 Data Response.

⁵⁹ *Tenn. Gas Pipeline Co.*, 110 FERC ¶ 61,047; *Tenn. Gas Pipeline Co.*, 94 FERC at 61,194.

shippers on the existing system are assessed LAUF on those facilities.⁶⁰ Tennessee is not required to use the system LAUF percentage but is directed to explain how it will determine LAUF on the Cumberland Pipeline when it makes its first fuel tracker filing⁶¹ after the in-service date of the project.⁶²

3. Reporting Incremental Costs

29. 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.⁶³ Therefore, we will require Tennessee 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 Commission's regulations.⁶⁴ 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. 710.⁶⁵

4. Negotiated Rates

30. Tennessee proposes to provide service to TVA under a negotiated rate transportation agreement. Tennessee must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement in accordance with the

⁶⁰ See *Gulf S. Pipeline Co., LLC*, 171 FERC ¶ 61,228, at P 27 (2020); *Tex. Gas Transmission, LLC*, 154 FERC ¶ 61,032, at P 26 (2016); *E. Shore Nat. Gas Co.*, 145 FERC ¶ 62,153, at 64,309 (2013); *Transcon. Gas Pipe Line Co., LLC*, 130 FERC ¶ 61,019, at P 25 (2010); *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,240, at P 6 (2002) (*Columbia*).

⁶¹ See Tennessee Gas Pipeline Company, L.L.C., TGP Tariffs, Sheet No. 400 Fuel Adjustment Mechanism (3.0.0).

⁶² See *Columbia*, 100 FERC ¶ 61,240 at P 6.

⁶³ 18 C.F.R. § 154.309 (2022).

⁶⁴ *Id.*

⁶⁵ See *Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

Commission's Alternative Rate Policy Statement⁶⁶ and the Commission's negotiated rate policies.⁶⁷

D. Environmental Analysis

31. On November 5, 2021, Commission staff began its environmental review of the Cumberland Project by granting Tennessee's request to use the Pre-filing Process, assigning Docket No. PF22-2-000.⁶⁸ The Commission's Pre-filing Process is designed to encourage early involvement by the public and government agencies in the development of proposed natural gas transmission projects, prior to the filing of a formal application.⁶⁹ As part of the pre-filing review, Tennessee conducted two landowner information meetings on January 18 and 19, 2022, in Vanleer and Erin, Tennessee, respectively.⁷⁰ Tennessee also conducted a virtual public meeting on January 27, 2022.⁷¹ Commission staff participated in all three meetings to explain the Commission's environmental review process to interested stakeholders.

32. As part of the Pre-filing Process, on March 3, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned*

⁶⁶ *Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regul. of Negotiated Transportation Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 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).

⁶⁷ *Nat. Gas Pipeline Negotiated Rate Policies & Pracs.; Modification of Negotiated Rate Pol'y*, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

⁶⁸ Tennessee Gas Pipeline Company, LLC, Letter, Docket No. PF22-2-000 (issued November 5, 2021); see also 18 C.F.R. § 157.21(b) (2022).

⁶⁹ *Reguls. Implementing Energy Pol'y Act of 2005; Pre-Filing Procs. for Review of LNG Terminals & Other Nat. Gas Facilities*, Order No. 665, 113 FERC ¶ 61,015, at P 3 (2005).

⁷⁰ Tennessee Gas Pipeline Company, LLC, Open House Invitations, Docket No. PF22-2-000 (filed Jan. 19, 2022).

⁷¹ Tennessee Gas Pipeline Company, LLC, Draft Environmental Resource Report 5, Docket No. PF22-2-000, at 5-22 (filed Apr. 14, 2022).

Cumberland Project (Notice of Scoping). The Notice of Scoping was published in the *Federal Register* on March 9, 2022, and opened a 30-day scoping period with comments due on April 4, 2022.⁷² The notice was mailed to federal, state, and local officials; Native American Tribes; agency representatives; environmental and public interest groups; and local libraries and newspapers (i.e., project stakeholders). The Commission received comments in response to the Notice of Scoping from the Tennessee Department of Environment and Conservation (Tennessee DEC), U.S. Fish and Wildlife Service (FWS), Teamsters National Pipeline Labor Management Cooperation Trust, Center for Biological Diversity,⁷³ Environmental Justice Group, Sierra Club,⁷⁴ Nashville Metropolitan Council, conservation groups,⁷⁵ and eight individuals.

33. On September 7, 2022, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Cumberland Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review*. The notice, which opened an additional 30-day scoping period that ended on October 7, 2022, was published in the *Federal Register* on September 13, 2022,⁷⁶ and mailed to the project stakeholders. In response to the July 29, 2022 Notice of Application and this notice, the Commission received 36 comments from individuals and non-governmental organizations (including one duplicate filing), 5 comment letters from agencies and Tribes—U.S. Environmental Protection Agency (EPA), FWS, Bureau of Indian Affairs, Cherokee Nation, and Choctaw Nation of Oklahoma—, a Notification of Application from the U.S. Army Corps of Engineers (Corps), and 27 motions to intervene in the proceeding.

34. Pursuant to NEPA,⁷⁷ Commission staff prepared a draft EIS for the proposed project. The Corps and the EPA participated as cooperating agencies in the preparation of the EIS. The draft EIS addressed geological resources; soils; water resources;

⁷² 87 Fed. Reg. 13,286 (Mar. 9, 2022).

⁷³ Center for Biological Diversity filed a letter opposing the project signed by its members and supporters.

⁷⁴ Sierra club collected and filed 175 comments from its members and supporters.

⁷⁵ Joint comments were filed by Southern Environmental Law Center, Appalachian Mountain Advocates, Sierra Club, Center for Biological Diversity, Appalachian Voices, and Southern Alliance for Clean Energy.

⁷⁶ 87 Fed. Reg. 56,048 (Sept. 13, 2022).

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

fisheries, vegetation, wildlife, and protected species; land use, recreation, and visual resources; cultural resources; socioeconomics and environmental justice; air quality; noise; reliability and safety; cumulative impacts; and alternatives. The draft EIS addressed all substantive environmental comments received prior to issuance.

35. The draft EIS was filed with the EPA, and the Commission issued a *Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cumberland Project* on February 3, 2023, that was mailed to the project stakeholders. The draft EIS was noticed in the *Federal Register* on February 9, 2023,⁷⁸ establishing a 45-day comment period that ended on March 27, 2023.

36. In response to the draft EIS, the Commission received written comments from TVA, U.S. Department of the Interior's Office of Environmental Policy and Compliance, EPA, Tennessee DEC, the State of Tennessee, Quapaw Nation, Southern Environmental Law Center, Tennessee Interfaith Power and Light, Appalachian Voices, Teamsters National Pipeline Labor Management Cooperation, Southern Alliance for Clean Energy, Sierra Club, and four individuals. In addition, Tennessee also provided comments on the draft EIS and updated project information. Commission staff also conducted two public comment sessions for the draft EIS in Dickson and Cumberland City, Tennessee, on February 21 and 22, 2023, respectively. The Commission received six oral comments during the two meetings, which were transcribed and placed into the record.⁷⁹ Comments concerned alternatives, climate change, air quality, water resources (including surface water, floodplains, water use, and wetlands), and pipe burial depth.

37. Commission staff issued the final EIS on June 30, 2023. The *Notice of Availability of the Final Environmental Impact Statement for the Proposed Cumberland Project* was published in the *Federal Register* on July 7, 2023,⁸⁰ and mailed to the project stakeholders. The final EIS addresses geology; soils; water resources; fisheries, vegetation, wildlife, and protected species; land use, recreation, and visual resources; cultural resources; socioeconomics and environmental justice;⁸¹ air quality; noise;

⁷⁸ 88 Fed. Reg. 8417 (Feb. 9, 2023).

⁷⁹ See Commission Staff March 20, 2023 Transcripts.

⁸⁰ 88 Fed. Reg. 43,333 (July 7, 2023).

⁸¹ 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 61-75.

reliability and safety; cumulative impacts; and alternatives. The final EIS addresses all substantive environmental comments received on the draft EIS prior to issuance.

38. The final EIS concludes that most adverse environmental impacts would be temporary or short-term during construction and have minimal effects on existing land use, as new aboveground project facilities would be added within an area characterized as mainly open land/industrial, or such facilities would be well screened with existing vegetation and privacy fencing. With the exception of potential impacts on climate change, the final EIS concludes that impacts would be reduced to less than significant levels through implementation of Tennessee's proposed avoidance, minimization, and mitigation measures and Commission staff recommendations, which we have adopted and modified herein as conditions in the appendix of this order.⁸² With regard to climate change impacts, the final EIS does not characterize the project's GHG emissions as significant or insignificant, but we provide information about these emissions below, based on the information on file in the proceeding and as disclosed in the final EIS.⁸³

39. In response to the final EIS, the Commission received comments from affected landowner Mr. Polk, noting non-environmental concerns about his easement description; possible future unplanned or unapproved expansions, uses, or placement of the pipeline; and Tennessee's operational maintenance requirements.⁸⁴ EPA also filed comments on the final EIS expressing concerns with the assessment of GHG emissions.⁸⁵ Tennessee filed comments on the final EIS clarifying its proposal for blasting during project construction and responding to Mr. Polk's comments on the final EIS.⁸⁶ Mr. Polk's comments and Tennessee's response regarding easements are addressed above.⁸⁷ EPA's comments and Tennessee's clarification on blasting are addressed below.

⁸² Final EIS at 5-1.

⁸³ *See infra* PP 47-60.

⁸⁴ Edward M. Polk June 26, 2023 Final EIS Comments.

⁸⁵ EPA August 7, 2023 Final EIS Comments.

⁸⁶ Tennessee July 31, 2023 Final EIS Comments.

⁸⁷ *See supra* PP 19-21.

40. After Commission staff issued the Notice of Scoping, Congress enacted the *Fiscal Responsibility Act of 2023*.⁸⁸ A section titled “Builder Act” amended NEPA in several ways.⁸⁹ 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.⁹⁰

41. The Commission has complied with its NEPA responsibilities under both versions of the statute.⁹¹

⁸⁸ 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).

⁸⁹ See FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10, at § 321 (June 3, 2023) (providing the “Builder Act”).

⁹⁰ 42 U.S.C. § 4332(c)(i).

⁹¹ We note that the Council on Environmental Quality (CEQ) 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. Blasting

42. In its comments, Tennessee clarifies its proposal to engage in controlled construction trench blasting in certain subsurface bedrock conditions and for certain stream crossings.⁹² The final EIS correctly stated that, while this is not anticipated, Tennessee may use controlled blasting in areas with shallow bedrock as necessary to remove challenging streambed materials during the pipeline trenching process.⁹³ Tennessee re-affirms that it proposes to engage in pipeline trench blasting when needed but would not use blasting in Tennessee DEC jurisdictional waters or Corps jurisdictional waters characterized by karst-prone geology with an unacceptable risk of hydrologic loss. This is consistent with Tennessee's commitments in permit applications with Tennessee DEC and the Corps as well as the Aquatic Resource Alteration Permit NRS22.192 and Clean Water Act Section 401 Water Quality Certification⁹⁴ issued by Tennessee DEC on July 21, 2023.⁹⁵ We note that Tennessee would comply with the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures),⁹⁶ which do not restrict companies from the use of blasting within waterbodies where it is required and where companies have the appropriate waterbody crossing permits. The final EIS analyzed in-stream blasting and found that temporary effects may occur during construction, but Tennessee's adherence to the Plan and Procedures and Geohazard Mitigation Guidance

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

⁹² Tennessee July 31, 2023 Final EIS Comments at 1-2.

⁹³ Final EIS at 2-12. We note that a comment response in the final EIS incorrectly stated that Tennessee would not use blasting within streams. *Id.* at I-116 (Response to NGO 07-46).

⁹⁴ The Aquatic Resource Alteration Permit authorizes the Cumberland Project's temporary and permanent impacts on wetland and waterbodies in the state of Tennessee. Tennessee July 31, 2023 Final EIS Comments at 1.

⁹⁵ *Id.* at 1-2.

⁹⁶ The Commission's Plan and Procedures were adopted by Tennessee with certain approved alternative measures. Final EIS at iv (citing FERC, *Upland Erosion Control, Revegetation, and Maintenance Plan* (May 2013), <https://ferc.gov/sites/default/files/2020-04/upland-erosion-control-revegetation-maintenance-plan.pdf> (accessed Oct. 5, 2023)); FERC, *Wetland and Waterbody Construction and Mitigation Procedures* (May 2013), <https://www.ferc.gov/sites/default/files/2020-04/wetland-waterbody-construction-mitigation-procedures.pdf> (accessed Oct. 5, 2023)).

Plans would reduce these impacts to less than significant levels.⁹⁷ We agree that the use of blasting, limited to the circumstances described in the final EIS and above, is an environmentally acceptable part of the proposed action.

2. Water Quality Certification

43. The final EIS contained a recommendation (no. 12) that would have required Tennessee to file, within 5 days of receipt of the Aquatic Resource Alteration Permit issued by Tennessee DEC, the complete water quality certification, including all conditions.⁹⁸ Because Tennessee has obtained and filed the Section 401 Water Quality Certification for the project,⁹⁹ the recommendation in the final EIS is not included as a condition of this order. Instead, we are adding environmental condition 13 to the appendix of this order, incorporating the conditions of the water quality certification and requiring Tennessee to file prior to construction any revisions to its project design necessary to comply with the water quality certification requirements.

3. Cultural Resources

44. The final EIS contained a recommendation (no. 13) that would have required Tennessee to file any remaining cultural resources survey reports for Commission staff review in order for staff to complete required cultural resources consultation for the project.¹⁰⁰ On October 10, 2023, Tennessee filed an addendum to its cultural resources survey report, completing all outstanding surveys for the project.¹⁰¹ Tennessee included with the addendum a September 14, 2023 letter from the Tennessee State Historic Preservation Office finding that “no historic properties eligible for listing in the National Register of Historic Places will be affected by this undertaking.”¹⁰² We agree. Therefore, we do not include the recommendation from the final EIS as a condition of this order, and the Commission has satisfied its requirements under section 106 of the National Historic Preservation Act.¹⁰³

⁹⁷ Final EIS at 2-11 – 2-12, 2-14, 2-21, 4-17 – 4-19, 4-26, 4-28, 4-30.

⁹⁸ *Id.* at 5-4.

⁹⁹ Tennessee July 31, 2023 Comments at attach. 1-3.

¹⁰⁰ Final EIS at 5-4.

¹⁰¹ Tennessee October 10, 2023 Cultural Resources Report.

¹⁰² *Id.* at attach. 1.

¹⁰³ *See* 54 U.S.C. § 306108.

45. On September 20, 2023, Commission staff issued a letter to the Cherokee Nation Tribal Historic Preservation Officer requesting confirmation that the Nation had received all the information it had requested regarding the project. No response was filed.¹⁰⁴

4. Environmental Complaint Resolution Procedure

46. Tennessee has agreed to develop an Environmental Complaint Resolution Plan to aid in resolving environmental mitigation problems and concerns identified by landowners/residents during construction of the project and restoration of the right-of-way;¹⁰⁵ this document, however, has not yet been filed with the Commission. In order for Commission staff to assess the adequacy of Tennessee's complaint resolution procedure, we are adding environmental condition 9 to the appendix of this order, requiring Tennessee to file its complaint resolution procedure for review and approval prior to construction.

5. Greenhouse Gas Emissions and Climate Change

47. 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 include 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."¹⁰⁶ An impact is reasonably foreseeable if it is "sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision."¹⁰⁷

48. For the Cumberland Project, we find that the construction emissions, operational emissions, and the downstream combustion emissions associated with the transportation capacity subscribed by shipper TVA are reasonably foreseeable effects of the project. The final EIS estimated that construction of the project may result in 8,655 metric tons of carbon dioxide equivalent emissions (CO₂e) over the duration of construction.¹⁰⁸ The project's estimated operational emissions are 1,973 metric tons of CO₂e per year, which was calculated based on the estimated operational fugitive emissions leaks at valves, connectors, meters, and open-ended lines and potential releases from pig

¹⁰⁴ Commission Staff December 12, 2023 Memo.

¹⁰⁵ Final EIS at 2-8.

¹⁰⁶ 40 C.F.R. § 1508.1(g) (2022).

¹⁰⁷ *Id.* § 1508.1(aa).

¹⁰⁸ Final EIS at 4-127.

launcher/receivers, blowdowns, and filter/separators assuming 100% utilization; i.e., assuming that the facilities are operated at maximum capacity for 365 days/year, 24 hours/day.¹⁰⁹ The reasonably foreseeable downstream emissions from the project would be approximately -7.06 million metric tons of CO₂e per year, based upon TVA's estimated utilization rate for the Cumberland Fossil Plant.¹¹⁰ This decrease is based on the retirement of coal-fired units at the Cumberland Fossil Plant (three-year average emissions of 9.59 million metric tons of CO₂e per year) and operation of the new Cumberland Gas Plant (estimated to result in approximately 2.53 million metric tons of CO₂e per year), which would result in an overall net reduction in potential downstream GHG emissions.¹¹¹ The estimated social cost of GHGs from the project is either -\$1,861,778,306 (assuming a discount rate of 5%), -\$6,911,634,721 (assuming a discount rate of 3%), -\$10,395,651,597 (assuming a discount rate of 2.5%), or -\$21,011,509,820 (using the 95th percentile of the social cost of GHGs with a discount rate of 3%).¹¹² The final EIS states that while "[c]onstruction and operation of the Project would increase the atmospheric concentration of GHGs in combination with past,

¹⁰⁹ *Id.* at 4-128. Calculations based on an assumption that facilities will operate at maximum capacity year-round are, in most cases, an overestimate because pipelines only operate at full capacity during periods of full demand.

¹¹⁰ Table 4.10.5 of the final EIS provides the existing and proposed downstream emissions from the Cumberland Fossil Plant that were included in TVA's draft EIS for the Cumberland Fossil Plant Retirement. *Id.* at 4-101. The table was not updated to reflect the changes to and data in TVA's final EIS. The updated emissions data shows fewer downstream emissions from the Cumberland Gas Plant. The revised data projects downstream GHG emissions of 2.79 million tons per year of CO₂e (2.53 million metric tons). The updated emissions from TVA's final EIS also indicate larger net reductions in criteria pollutant emissions due to the use of a 55% utilization rate as well as improved emissions estimates. Specifically, there would be net reductions of 3,864.4 tons of oxides of nitrogen, 950.1 tons of carbon monoxide, 7,252.9 tons of sulfur dioxide, 1,158.8 tons of PM_{2.5} and PM₁₀, and 0.1 tons of lead per year.

¹¹¹ *Id.* at 4-101.

¹¹² The final EIS inadvertently reported the annual average social cost of GHGs. *See id.* at 4-130. The numbers stated herein have been corrected to disclose the total social cost of GHGs for the 20-year period, and the estimates have been updated for the year 2024. *See id.* at 4-129 to 4-130 for a description of the method and assumptions staff used for calculating the social cost of GHGs. 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).

current, and future emissions from all other sources globally and contribute incrementally to future climate change impacts,” project operations would result in a “net overall reduction in GHG emissions” due to the retirement of existing facilities.¹¹³

49. A net reduction in the emissions of a pollutant logically cannot cause a significant adverse impact under NEPA. Because the record indicates a net reduction in GHG emissions, we conclude that project-related GHG emissions cannot have a significant adverse impact for NEPA purposes. The EIS provided additional context for the project-related GHG emissions, as discussed further below.

50. EPA recommends that Commission staff quantify upstream GHG emissions associated with the project and includes its own estimates of upstream emissions and associated SC-GHG values for the project.¹¹⁴ That is not required here. Upstream GHG emissions are not reasonably foreseeable effects of the project. The environmental impacts resulting from the production of natural gas are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, particularly here where the supply source is unknown.¹¹⁵ Tennessee interconnects with Tennessee’s existing Lines 100-3 and 100-4 at approximately mileposts 83-3 0.4 and 83-4 0.4, respectively, in Dickson County, Tennessee.¹¹⁶ The specific source of natural gas to be transported is currently unknown and may change throughout the project’s life. Therefore, we find that the upstream GHG emissions associated with this facility are not reasonably foreseeable.

51. In its comments on the final EIS, the EPA recommends that the Commission monetize climate damages using SC-GHG and place emissions in the context of relevant

¹¹³ *Id.* at 4-128.

¹¹⁴ EPA March 27, 2023 Comments at 3; EPA August 7, 2023 Final EIS Comments at 3-4.

¹¹⁵ *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 (2023); *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.*, 164 FERC ¶ 61,084, at P 102 (2018).

¹¹⁶ Application at 7. As provided above, Tennessee’s system spans from Texas, Louisiana, and the Gulf of Mexico area, through Mississippi, Alabama, Arkansas, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

climate action goals and commitments.¹¹⁷ EPA also recommends that the Commission compare reasonably foreseeable GHG emissions to national goals, including net-zero emissions goals, the national reduction targets in the Paris Agreement, and the policy for the federal government to lead by example in order to achieve a carbon-free electricity sector by 2035.¹¹⁸ Furthermore, EPA recommends that the Commission explain how the proposed action and alternatives would help meet or detract from achieving relevant goals and commitments.¹¹⁹ The EPA acknowledges that Tennessee has not established state-level GHG emission reduction goals but notes that Nashville and other Tennessee cities have goals or initiatives that the Commission should have considered.¹²⁰ EPA further suggests that the Commission consider how the Inflation Reduction Act may impact energy consumption patterns and GHG emissions.¹²¹

52. 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 contextualize the project emissions.¹²² We have updated this analysis from that in the final EIS based on updated emissions data. At a national level, 5,586 million metric tons of CO₂e were emitted in 2021 (inclusive of CO₂e

¹¹⁷ EPA August 7, 2023 Final EIS Comments at 4 (citing *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and Effects of Climate Change in National Environmental Policy Act Reviews*, 81 Fed. Reg. 51,866 (Aug. 5, 2016)). EPA seems to have inadvertently cited to CEQ's 2016 guidance instead of its January 9, 2023 Interim Guidance. See *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions & Climate Change*, 88 Fed. Reg. 1196, at 1201 (Jan. 9, 2023) (CEQ Interim Guidance)).

¹¹⁸ EPA August 7, 2023 Final EIS Comments at 4 (citing Exec. Order No. 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*, 86 Fed. Reg. 70,935 (Dec. 13, 2021)).

¹¹⁹ *Id.* (citing CEQ Interim Guidance, 88 Fed. Reg. at 1203).

¹²⁰ *Id.* at 5.

¹²¹ *Id.*

¹²² See *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186, at P 28 (2022); *Golden Pass Pipeline, LLC*, 180 FERC ¶ 61,058, at P 21 (2022).

sources and sinks).¹²³ Construction-related emissions from the project could potentially increase CO₂e emissions based on the 2021 national levels by 0.0002%, and, in subsequent years, project operations based on potential fugitive leaks of natural gas, could potentially increase CO₂e emissions by 0.00004% based on the national 2021 levels.¹²⁴

53. However, we note that during each year of the project's operation, the net reduction in emissions attributable to the retirement of two existing coal-powered units at the Cumberland Fossil Plant and operation of TVA's proposed Cumberland Gas Plant would be approximately 2,299 times larger in magnitude relative to the project's operational emissions.¹²⁵ The net overall reduction in GHG emissions from the retirement of the coal-fired power plant, operation of the natural-gas fired power plant, and the project's facilities would be approximately -4,532,985 metric tons per year and would decrease emissions compared to the national inventory based on 2021 levels by approximately 0.08%.¹²⁶

54. At the state level, we compare the project's GHG emissions to the Tennessee GHG inventories.¹²⁷ For Tennessee, 83.3 million metric tons of CO₂e were emitted in 2020.¹²⁸ Accordingly, project construction could potentially increase CO₂e emissions by 0.01% and, in subsequent years, project operations, including the net reduction in downstream emissions, could potentially decrease emissions by 5.4% (based on the 2020 levels).¹²⁹

¹²³ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021 at ES-4* (Table ES-2) (April 2023), <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf> (accessed Oct. 24, 2023).

¹²⁴ Final EIS at 4-128.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* When states have GHG emissions reduction targets, we compare the project's GHG emissions to those state goals to provide additional context; however, Tennessee does not have a statewide GHG emissions goal. *Id.* at 4-129.

55. We clarify that, for informational purposes, Commission staff disclosed an estimate of the social cost of GHGs.¹³⁰ Although we have recognized in some past orders that social cost of GHGs may have utility in certain contexts such as rulemakings,¹³¹ 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.¹³² Currently, however, there are no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria.¹³³ Nor are we aware of any other currently scientifically accepted method that would enable the Commission to determine the significance of reasonably

¹³⁰ “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 4-128. To the extent the Final EIS contains any language indicating otherwise, such language is superseded and controlled by this order. *See infra* P 76.

¹³¹ *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 35-37 (2018).

¹³² *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 (D.C. Cir. 2019) (unpublished); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 111 (D.C. Cir. 2022). The social cost of 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.”

¹³³ *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*, 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*, 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).

foreseeable GHG emissions.¹³⁴ The D.C. Circuit has repeatedly upheld the Commission's decisions not to use the social cost of carbon, including to assess significance.¹³⁵ In fact, the D.C. Circuit recently affirmed the Commission's decision to not analyze the social cost of carbon in its NEPA analysis,¹³⁶ 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."¹³⁷

56. Based on the discussion above, we have taken the required "hard look" and have satisfied our obligations under NEPA.

¹³⁴ See, e.g., *LA Storage, LLC*, 182 FERC ¶ 61,026 at P 14 ("[T]here 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.").

¹³⁵ 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 at 104 (also upholding the Commission's decision not to use the social cost of carbon); *Appalachian Voices v. FERC*, 2019 WL 847199 (unpublished) (same).

¹³⁶ *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.").

¹³⁷ *Id.*

57. EPA comments that the final EIS did not disclose the GHG emissions or SC-GHG values associated with each project alternative¹³⁸ and recommends that the Commission include the monetized values of the climate change damages associated with “gross GHG emissions” from the project pipeline and for each of its alternatives.¹³⁹

58. Commission staff’s SC-GHG analysis presented in the final EIS is consistent with current Commission policy. Commission staff evaluated potential alternatives to the project in the final EIS and found no viable system alternatives or major route alternatives.¹⁴⁰ Emissions from any alternative would likely be greater than the proposed action. Indeed, the final EIS noted that the two system alternatives considered but rejected for lacking the required capacity would require greater construction footprints and compression needs.¹⁴¹ We find no value in any further SC-GHG alternative analysis beyond the project pipeline analysis summarized above.

59. EPA argues that contrary to CEQ regulations, the final EIS fails to consider mitigation measures to reduce GHG emissions from the project.¹⁴² EPA proposes additional measures to mitigate fugitive GHG emissions to be included with Commission staff’s recommended mitigation measures.¹⁴³ The CEQ regulations and NEPA itself compel only “a reasonably complete discussion of possible mitigation measures.”¹⁴⁴

¹³⁸ EPA August 7, 2023 Final EIS Comments at 3.

¹³⁹ *Id.* at 5.

¹⁴⁰ Final EIS at 3-1 – 3-4.

¹⁴¹ *Id.* at 3-3. The final EIS noted that use of ANR Pipeline Company’s 30-inch-diameter interstate pipeline system would require a 44-mile-long lateral in lieu of the project and East Tennessee Natural Gas Pipeline, LLC’s 16- and 36-inch-diameter interstate pipeline would require a 40-mile-long lateral. *Id.*

¹⁴² EPA August 7, 2023 Final EIS Comments at 5 (citing CEQ Interim Guidance, 88 Fed. Reg. at 1206).

¹⁴³ *Id.*; *see also* EPA March 27, 2023 Draft EIS Comments (recommending that the Final EIS consider all reasonably available mitigation of the direct GHG emissions from the project, including pig ramp technologies, vacuum and compression, and use of inert gas to purge the pig launcher); Final EIS at 4-131 (finding the additional GHG mitigation measures proposed by EPA are not necessary because Tennessee will detect and repair any pipeline leaks as they occur).

¹⁴⁴ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989) (interpreting 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1505.2(c) (2022)).

Tennessee will follow a prescribed operation and maintenance procedure to detect and repair leaks along the Cumberland Pipeline system as they occur, as stated in the final EIS.¹⁴⁵ The final EIS concluded that no additional GHG mitigation is warranted for Tennessee's project,¹⁴⁶ and we agree.

60. EPA also recommends that the Commission discuss climate change risks to pipelines, including changing floodplains and soil stability.¹⁴⁷ The final EIS addresses impacts of geological hazards, such as soil liquefaction, landslides, and flash flooding/scour, on the proposed pipeline, and states that Tennessee would be required to adhere to all applicable Pipeline and Hazardous Materials Safety Administration regulations.¹⁴⁸ The final EIS also addresses safety and notes that the Commission's regulations require that an applicant certify its compliance with federal safety standards and plans for pipeline maintenance and inspection.¹⁴⁹ Furthermore, buried natural gas pipelines across the United States are routinely exposed to heavy rainfall events and flooding. During operation of pipelines, pipeline operators conduct routine monitoring of the rights-of-way to ensure the integrity of their pipelines, including checking for pipe exposure from scouring or erosion.

6. Environmental Justice

61. In conducting NEPA reviews of proposed natural gas projects, the Commission follows the instruction of 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).¹⁵⁰ Executive Order 14008 also directs agencies to develop

¹⁴⁵ Final EIS at 4-131.

¹⁴⁶ EPA August 7, 2023 Final EIS Comments at 5.

¹⁴⁷ *Id.* (citing Pipeline and Hazardous Materials Safety Administration, *Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards*, 87 Fed. Reg. 33,576-01 (June 2, 2022)).

¹⁴⁸ Final EIS at 4-13 – 4-17.

¹⁴⁹ *Id.* at 4-109 (citing 18 C.F.R. § 157.14(a)(10)(vi) (2022)).

¹⁵⁰ Exec. Order No. 12,898, 59 Fed. Reg. 7629. 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

“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.”¹⁵¹ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and

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>.

¹⁵¹ Exec. Order No. 14,008, 86 Fed. Reg. 7619. 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* (Jul. 31, 2023), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

policies.”¹⁵² Consistent with CEQ¹⁵³ and EPA¹⁵⁴ guidance and recommendations, the Commission’s methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)¹⁵⁵ 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

¹⁵² EPA, *Learn About Environmental Justice* (Aug. 16, 2023), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>. 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.*

¹⁵³ 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. Tennessee conducted environmental justice community outreach activities as part of its pre- and post-filing consultations and states that its communication with environmental justice communities is ongoing and would continue through project restoration. Tennessee Gas Pipeline Company, LLC, Draft Environmental Resource Report 5, Docket No. PF22-2-000, at 5-22 (filed Apr. 14, 2022). In addition, Tennessee held two open houses on in Vanleer and Erin, Tennessee, on January 18 and 19, respectively, and a virtual open house on January 27. *Id.* There were also opportunities for public involvement during the Commission’s environmental review processes. *See supra* PP 30-36.

¹⁵⁴ *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.

¹⁵⁵ *See generally* Exec. Order No. 12,898, 59 Fed. Reg. 7629. Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

the meaningfully greater analysis methods to identify minority populations.¹⁵⁶ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area 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.¹⁵⁷

62. 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.

63. To identify potential environmental justice communities during preparation of the final EIS, Commission staff used the U.S. Census Bureau's American Community Survey data¹⁵⁸ for the race, ethnicity, and poverty data at the state, county, and block group level.¹⁵⁹ Additionally, in accordance with *Promising Practices*, Commission staff used EJScreen 2.1, 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.

64. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice

¹⁵⁶ See *Promising Practices* at 21-25.

¹⁵⁷ Final EIS at 4-74 – 4-75. Commission staff selected Dickson, Houston, and Stewart Counties, Tennessee, as the comparable reference communities to ensure that affected environmental justice communities were properly identified. *Id.* at 4-74. A reference community may vary according to the characteristics of the particular project and the surrounding communities. *Id.*

¹⁵⁸ 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/cedsci/table?q=B17017 File #B03002> Hispanic or Latino Origin By Race, <https://data.census.gov/cedsci/table?q=b03002>.

¹⁵⁹ For this project, we determined that a one-mile radius around the proposed aboveground Pressure Regulator Station and Cumberland Meter Station were the appropriate unit of geographic analysis for assessing project impacts on the environmental justice communities. Final EIS at 4-74. A 1-mile radius is sufficiently broad considering the likely concentration and range of construction emissions, noise, traffic impacts and visual impacts proximal to the proposed facilities. *Id.*

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 and also whether those impacts were significant.¹⁶⁰ 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*.¹⁶¹ Identified project impacts and Tennessee's proposed mitigation measures are discussed below.

65. As presented in the final EIS, seven block groups out of the 11 within the geographic scope of the project exceed the defined thresholds for minority or low-income communities and are, therefore, environmental justice communities.¹⁶² Three of the seven block groups have a minority population that either exceeds 50% or is meaningfully greater than their respective counties.¹⁶³ The remaining identified block groups have a low-income population that is equal to or greater than its respective county.¹⁶⁴ Project work within the identified environmental justice communities includes the construction and operation of a portion of the pipeline including meter and regulator stations and associated pig launcher/receiver and use of the two proposed Construction Contractor Yards.¹⁶⁵

66. The final EIS evaluated potential impacts on the identified environmental justice communities in proximity to the project facilities including visual impacts;

¹⁶⁰ 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”).

¹⁶¹ *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 the 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.

¹⁶² Final EIS at 4-76.

¹⁶³ *Id.* at 4-75.

¹⁶⁴ See *id.*

¹⁶⁵ *Id.* at 4-79 – 4-80.

socioeconomic impacts, including traffic impacts and increased demand for temporary housing and public services; and air and noise impacts from construction and operation.¹⁶⁶ Environmental justice concerns are not present for other resource areas, such as soils, geology, groundwater, surface water, wetlands, vegetation, wildlife, or cultural resources due to the minimal overall impact the project would have on these resources.¹⁶⁷

a. Visual Impacts

67. As described in the final EIS, temporary visual impacts would occur during construction of the pipeline and guided bore crossings, including vehicle and equipment movement, vegetation clearing and grading, trench excavation, pipe storage, and spoil piles.¹⁶⁸ Permanent visual impacts may occur along the pipeline right-of-way from periodic vegetation clearing to allow for visual pipeline inspection.¹⁶⁹ However, with the majority of the pipeline being parallel to the existing TVA overhead power line corridor, visual impacts due to the maintained pipeline easement would be less than significant.¹⁷⁰ The new tie-in facility with the Pressure Regulation Station would be entirely within an environmental justice community (based on low-income thresholds).¹⁷¹ Two residents in this area would be within 300 feet and 400 feet of the aboveground facility.¹⁷² The Pressure Regulation Station would be installed adjacent to Tennessee's existing mainlines (Line 100-3 and Line 100-4).¹⁷³ Tennessee proposes to install a wooden fence around the perimeter of the facility to visually screen and mitigate any increase in noise levels.¹⁷⁴ Visual impacts associated with construction and operation of this facility would be predominately borne by these residents; however, given that the facility would have a

¹⁶⁶ *Id.* at 4-80 – 4-84.

¹⁶⁷ *Id.* at 4-80.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

wooden fence surrounding it and existing vegetation is located in surrounding areas, visibility of this facility would be limited.¹⁷⁵

68. Overall, visual impacts on environmental justice communities would be less than significant.¹⁷⁶ The final EIS found that environmental justice communities in the study area would also experience cumulative impacts on visual resources; however, these impacts would be less than significant.¹⁷⁷ We agree.

b. Socioeconomic Impacts

69. Traffic delays and an increase in demand for temporary housing for non-local workers and public services may occur during the construction period (about 15-16 months anticipated to begin in August 2024).¹⁷⁸ As discussed in the final EIS, a temporary influx of about 270 to 360 workers at its peak could increase the demand for community services such as housing, law enforcement, and medical care during construction.¹⁷⁹ Tennessee proposes to work with local law enforcement, fire departments, and emergency medical services prior to construction to coordinate the development of its Emergency Response Plan.¹⁸⁰ Additionally, there would be an increase in the use of area roads by heavy construction equipment and associated vehicles, resulting in short term impacts on roadways, lasting the duration of construction.¹⁸¹ Tennessee proposes to utilize flagmen and signage to alert motorists of project activities and detours, where needed, and follow traffic control measures (e.g., weight and speed limits) to ensure the safety of construction personnel and motorists.¹⁸² Therefore, socioeconomic and traffic-related impacts on the population, including environmental justice communities, would be temporary and less than significant.¹⁸³ The final EIS concluded that environmental justice communities in the

¹⁷⁵ *Id.* at 4-80 – 4-81.

¹⁷⁶ *Id.* at 4-81.

¹⁷⁷ *Id.* at 4-125.

¹⁷⁸ *Id.* at 4-66 – 4-67.

¹⁷⁹ *Id.* at 4-66 – 4-67.

¹⁸⁰ *Id.* at 4-67.

¹⁸¹ *Id.* at 4-67 – 4-68.

¹⁸² *Id.* at 4-68.

¹⁸³ *Id.*

study area would also experience cumulative impacts on socioeconomics and traffic; however, these impacts would be less than significant.¹⁸⁴ We agree.

c. Air Emissions

70. Generally, construction air emissions would result in short-term, localized impacts in the immediate vicinity of construction work areas and are not expected to exceed general conformity applicability thresholds under the Clean Air Act.¹⁸⁵ Tennessee is required to implement a Fugitive Dust Control Plan, and Tennessee states that it will use vehicles and equipment that is gasoline or diesel fuel compliant with current federal regulations and that it will only operate construction vehicles and equipment with required emission control devices.¹⁸⁶

71. As discussed in the final EIS, operational emissions would be limited to fugitive emissions of natural gas attributable to leaks on project components.¹⁸⁷ The final EIS concluded, and we agree, that the air quality impacts from construction and the operation of project facilities would not result in a significant impact on air quality in the region, including air quality impacts on environmental justice communities.¹⁸⁸ The final EIS also concluded that environmental justice communities in the study area would experience cumulative impacts related to air quality during construction; however, these impacts would not be significant.¹⁸⁹ We agree.

d. Noise Impacts

72. The final EIS concluded, and we agree, that due to the limited duration of construction activities and distance to noise-sensitive areas (NSA), the project would not result in significant noise impacts on the surrounding area, including environmental justice communities.¹⁹⁰ With respect to noise levels during construction activities for the proposed pipeline facilities, increase in noise levels at the closest residences would be

¹⁸⁴ *Id.* at 4-124.

¹⁸⁵ *Id.* at 4-97.

¹⁸⁶ *Id.* at 4-85, 4-98 – 4-99.

¹⁸⁷ *Id.* at 4-99.

¹⁸⁸ *Id.* 4-82

¹⁸⁹ *Id.* at 4-125.

¹⁹⁰ *Id.* at 4-83.

temporary, generally lasting approximately three to four weeks at any given location along the right-of-way.¹⁹¹

73. All three of the proposed horizontal directional drilling (HDD) activities would occur within environmental justice block groups; however, only one of the three HDDs could result in increased noise levels at a residence/NSA.¹⁹² Based on the noise modeling results, the noise levels at this NSA (milepost 22.4), if left unmitigated, could result in levels that exceed Commission requirements.¹⁹³ Therefore, Tennessee has proposed noise mitigation at this location.¹⁹⁴ Nighttime guided bore or HDD activities would not be conducted in areas where NSAs are present.¹⁹⁵

74. The final EIS stated that noise associated with the operation of the Pressure Regulation Station would result in increased noise levels above the ambient level at the two residents in close proximity to this new aboveground facility; however, the estimated noise levels would not exceed the Commission's noise level limit of a day-night sound level of 55 decibels on the A-weighted scale at these NSAs.¹⁹⁶ To ensure that the actual noise levels meet this requirement, the final EIS recommended operational noise level surveys for the Pressure Regulation Station,¹⁹⁷ and we include this requirement in the appendix to this order as environmental condition 14. Therefore, operation of the aboveground facilities would not result in significant noise impacts on the surrounding community, including environmental justice communities.¹⁹⁸ The final EIS also concluded that environmental justice communities in the study area would experience cumulative impacts on noise; however, these impacts would not be significant.¹⁹⁹ We agree.

¹⁹¹ *Id.* at 4-82.

¹⁹² *Id.* at 4-83.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 4-105

¹⁹⁵ *Id.* at 4-83.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 4-125.

e. **Environmental Justice Conclusion**

75. As described in the final EIS, the project would have a range of impacts on the environment and on individuals living in the vicinity of the project facilities, including environmental justice communities.²⁰⁰ The final EIS concluded that the visual, socioeconomic, air quality, and noise impacts from construction and operation of a portion of the pipeline; construction and operation of new Pressure Regulator Station and the associated pig launcher/receiver; and use of the two Construction Contractor Yards, which are located within identified environmental justice communities, would be disproportionately high and adverse as the impacts would be predominately borne by environmental justice communities.²⁰¹ However, the impacts associated with these facilities would be less than significant.²⁰² We accept these conclusions.

7. **Environmental Impacts Conclusion**

76. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the project, as well as the other information in the record. We are accepting the environmental recommendations in the final EIS, as modified herein, and are including them as conditions in the appendix to this order. Based on the analysis in the final EIS, as supplemented or clarified herein,²⁰³ we conclude that if constructed and operated in accordance with Tennessee's application and supplements, and in compliance with the environmental conditions in the appendix to this order, the project is an environmentally acceptable action.

IV. Conclusion

77. The proposed project will enable Tennessee to provide up to 245,040 Dth/d of firm transportation service from Tennessee's mainline system to a new natural gas-fired power plant that would be constructed and operated by TVA, which we find sufficient to demonstrate 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 impacts on the interests of landowners and surrounding communities. Based on the discussion above, we find under section 7 of the NGA that the public convenience and

²⁰⁰ *Id.* at 4-85.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Although the analysis in the EIS provides substantial evidence for our conclusions in this order, it is the order itself that serves as our record of decision. The order supersedes any inconsistent discussion, analysis, or finding in the EIS.

necessity requires approval of Tennessee's Cumberland Project, subject to the conditions in this order.

78. As noted above, the project is an environmentally acceptable action and 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.

79. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁰⁴

80. 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 to Tennessee, authorizing it to construct and operate the proposed Cumberland 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.

²⁰⁴ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Tennessee's:

- (1) completion of construction of the proposed facilities and making them available for service within three years of the date of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) compliance with the environmental conditions listed in the appendix of this order.

(C) Tennessee shall file a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in its signed precedent agreements, prior to commencing construction.

(D) Tennessee's proposal to charge an incremental recourse reservation charge and an incremental recourse usage charge as initial recourse charges for the Cumberland Project under Rate Schedule FT-IL is approved.

(E) When Tennessee makes its first fuel tracker filing after the in-service date of the Cumberland Project, it must explain how it will estimate and recover costs associated with any fuel loss retention percentages over the Cumberland Project facilities.

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

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

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

Appendix
Environmental Conditions

As recommended in the final Environmental Impact Statement (EIS) for the Cumberland Project (Project) and modified herein, this authorization includes the following conditions:

1. Tennessee 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 EIS, unless modified by the Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), 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**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel would be informed of the EI's authority and have been or would 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 EIS. **As soon as they are available, and before the start of construction**, Tennessee shall file with the

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

Tennessee'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. Tennessee'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 facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee 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. **Within 60 days of the acceptance of the authorization and before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee.

Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
 - b. how Tennessee would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
 - c. the number of EIs assigned, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Tennessee would give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee would 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 on-site personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Tennessee shall employ at least one EI per construction spread. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions; permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Tennessee's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints 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 Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
9. Tennessee shall develop and implement an environmental complaint resolution procedure, and file such procedure with the Secretary, for review and approval by the Director of OEP, or the Director's designee. The procedure shall provide

landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Tennessee shall mail the complaint procedures to each landowner whose property will be crossed by the project.

- a. In its letter to affected landowners, Tennessee shall:
 - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - ii. instruct the landowners that if they are not satisfied with the response, they should call Tennessee's Hotline; the letter should indicate how soon to expect a response; and
 - iii. instruct the landowners that if they are still not satisfied with the response from Tennessee's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
 - b. In addition, Tennessee shall include in its **weekly** status report a copy of a table that contains the following information for each problem/concern:
 - i. the identity of the caller and date of the call;
 - ii. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - iii. a description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
10. Tennessee 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, Tennessee must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
11. Tennessee must receive written authorization from the Director of OEP, or the Director's designee, **before placing the Project into service**. Such authorization would 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.

12. **Within 30 days of placing the authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Tennessee has complied with or would 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.
13. All conditions attached to the water quality certification issued by the Tennessee Department of Environment and Conservation, 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 this Certificate Order. Prior to construction, Tennessee 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.
14. Tennessee shall file a noise survey with the Secretary **no later than 60 days** after placing the Pressure Regulation Station in service. If a full load condition noise survey is not possible, Tennessee shall provide an interim survey at the maximum possible load and provide the full load survey **within six months**. If the noise attributable to the operation of the Pressure Regulation Station under interim or full load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at the noise sensitive areas, Tennessee shall file a report on what changes are needed and shall install additional noise controls to meet the level **within one year** of the in-service date. Tennessee shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP22-493-000

(Issued January 18, 2024)

CLEMENTS, Commissioner, *dissenting in part*:

1. I concur with the result of today's Order, but I dissent from Paragraph 55, which addresses the Commission's ability to assess the significance of the impacts of greenhouse gas (GHG) emissions.¹ This is the same language I have criticized many times. It does not improve with age.

2. In my concurrence in *Transco*, I explained the history of the language in Paragraph 55 of the Order,² which is part of the so-called "Driftwood compromise."³ In *Driftwood*, the majority abruptly 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.⁴ I have dissented from this language in *Driftwood* and subsequent orders because (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 docket⁵ addressing methods for doing so; and (2) the language departs from previous Commission precedent without reasoned explanation, thereby violating the Administrative Procedure Act.⁶ I dissent from Paragraph 55 of this Order for the same reasons.

¹ *Tennessee Gas Pipeline Company, LLC*, 186 FERC ¶ 61,046, at P 55 (2023) (Order).

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

³ *See id.* (Phillips, Chairman, and Christie, Comm'r, concurring at PP 1-2).

⁴ *See Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

⁵ Docket No. PL21-3.

⁶ *See Driftwood*, 183 FERC ¶ 61,049 (Clements, Comm'r, dissenting at PP 2-3 & n.161); *see also ANR Pipeline Co.*, 185 FERC ¶ 61,191 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,133 (2023)

For these reasons, I respectfully dissent in part.

Allison Clements
Commissioner

(Clements, Comm'r, dissenting in part at PP 2-4); *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,130 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *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 Nw., 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 Glob. Plaquemines LNG, LLC*, 185 FERC ¶ 61,037 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Texas E. Transmission, LP*, 185 FERC ¶ 61,038 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Trailblazer Pipeline Co.*, 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 Glob. Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *N. Natural Gas Co.*, 184 FERC ¶ 61,186 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Texas E. 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 at PP 14-15).