

186 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-495-000

ORDER ISSUING CERTIFICATE

(Issued January 18, 2024)

1. On August 9, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate the Texas to Louisiana Energy Pathway Project in Fort Bend, Hardin, and Victoria Counties, Texas (Texas to Louisiana Project). The project is designed to provide 364,400 dekatherms per day (Dth/d) of firm transportation service for a new customer through a combination of: (1) the conversion of IT Feeder System service to firm transportation service; (2) the turnback of firm transportation service by existing customers; and (3) the addition of incremental firm transportation service made possible by the construction of a new compressor station in Fort Bend County, Texas, and modifications to existing compressor stations in Hardin and Victoria Counties, Texas. For the reasons discussed below, we grant the requested certificate authorization, as amended, subject to the conditions discussed below.

I. Background and Proposal

2. Transco, a Delaware limited liability company with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of The Williams Companies, Inc. Transco is a natural gas company as defined by section 2(6) of the NGA³ engaged in the transportation of natural gas in interstate commerce and operates natural gas transportation facilities that extend from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina,

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2022).

³ 15 U.S.C. § 717a(6).

Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

3. The Texas to Louisiana Project is designed to provide 364,400 Dth/d of firm transportation service from an existing interconnection with Valley Crossing Pipeline, LLC (Valley Crossing) to the existing Compressor Station 65 Pooling Point. Transco will provide the proposed firm transportation service as follows. From the Valley Crossing Interconnect to Compressor Station 30, Transco will add 193,000 Dth/d of incremental firm transportation service by constructing and operating new compression facilities; converting 130,000 Dth/d of existing IT Feeder System service to firm transportation;⁴ and using 41,400 Dth/d of turn-back firm transportation service from an existing shipper. To provide the service from Compressor Station 30 to the Compressor Station 65 Pooling Point, Transco will construct and operate new compression facilities to provide 135,004 Dth/d of incremental firm transportation service and use 229,396 Dth/d of turn-back firm transportation service.⁵

4. Transco proposes to construct and operate Compressor Station 33, a new 15,900 horsepower (HP) natural gas-driven turbine compressor station in Fort Bend County, modify six existing compressor units at Compressor Station 40 in Hardin County, and

⁴ Transco states that IT Feeder System service was originally established to provide access to supply for Transco's former bundled sale customers (i.e., legacy customers) before it became solely a gas transporter (following implementation of the Commission's Order No. 636). The service currently provides receipt from Transco's production area supply laterals upstream of Stations 30, 45, 50, and 62 and on its mainline upstream of Station 30 and feeds firm receipt points on its mainline system from which Transco then provides firm transportation service to downstream markets. *See* Transco July 7, 2023 Conversion of IT Feeder Filing at 2, Docket No. RP23-886-000. The IT Feeder rate design was initially approved in conjunction with Transco's open-access blanket certificate and confirmed in Docket Nos. RP88-68-000, et al.; *Transcon. Gas Pipe Line Corp.*, 48 FERC ¶ 61,399 (1989); *see also Transcon. Gas Pipe Line Corp.*, 55 FERC ¶ 61,446 (1991).

⁵ The turnback capacity from Compressor Station 30 to the Compressor Station 65 Pooling Point will be a combination of the following: 132,724 Dth/d of capacity previously turned back by customers of Transco, posted by Transco as unsubscribed capacity, and then reserved by Transco for the project; 55,272 Dth/d of capacity turnback upon the project in-service date by shippers in response to Transco's reverse open season for the project from Compressor Station 30 to the Compressor Station 65 Pooling Point, and 41,400 Dth/d of capacity turnback from the Valley Crossing Interconnect to the Compressor Station 65 Pooling Point; together these amounts provide a total of 229,396 Dth/d of firm transportation service.

perform programming updates at Compressor Station 23 in Victoria County to allow for enhanced system operation in the northbound direction.⁶ Transco's target in-service date is the first quarter of 2025.

5. Transco estimates the total cost for the Texas to Louisiana Project to be approximately \$91,781,074.⁷

6. Prior to holding an open season, Transco executed a binding precedent agreement with an unaffiliated producer, EOG Resources, Inc.⁸ (EOG Resources), for a term of 15 years for the full project capacity. Transco states that the shipper will pay a negotiated rate for service on the project facilities. Transco held an open season and reverse open season from April 5 through April 25, 2022.⁹ In response to the open season, Transco received no bids for additional service, but received offers of turn back capacity for 41,400 Dth/d of firm transportation service from the Valley Crossing Interconnect to the Compressor Station 65 Pooling Point and 55,272 Dth/d of firm transportation service from Compressor Station 30 to the Compressor Station 65 Pooling Point.

II. Notice, Interventions, Protests, and Comments

7. Notice of Transco's application was issued on August 23, 2022, and published in the *Federal Register* on August 29, 2022, with interventions, comments, and protests due by September 13, 2022.¹⁰ Philadelphia Gas Works; NJR Energy Services Company; New Jersey Natural Gas Company; National Grid Gas Delivery Companies; Energy Transfer LP; Chevron U.S.A. Inc.; Atlanta Gas Light Company and Virginia Natural Gas, Inc.; Sierra Club; and Arena Energy, LLC, QuarterNorth Energy, LLC, Walter Oil & Gas Corporation, and W&T Offshore, Inc. (these four entities are collectively referred to as the Producer Coalition) filed timely motions to intervene.¹¹ The Municipal Gas

⁶ Transco states the modification to Compressor Station 23 will not require the installation of any facilities or physical work.

⁷ Transco Application Ex. P at 1.

⁸ Transco Feb. 7, 2023 Response to Data Request at 4.

⁹ Transco Application at 11.

¹⁰ 87 Fed. Reg. 52,759 (Aug. 29,2022).

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2022).

Authority of Georgia¹² and the Transco Municipal Group¹³ filed, jointly, an untimely motion to intervene, which was granted by Secretary's Notice on October 24, 2022.

8. The Producer Coalition's intervention included comments on Transco's proposal to convert IT Feeder System service to firm service, which are discussed below.

9. Sierra Club filed a protest in opposition to the project on July 21, 2021. Transco filed an answer to Sierra Club's protest.¹⁴ Although the Commission's Rules of Practice and Procedure do not permit answers to protests, we find good cause to waive our rules and accept the answer because it provides information that has assisted in our decision-making process.¹⁵

10. On December 23, 2022, Sierra Club filed a motion requesting that the Commission compel Transco to disclose information marked as privileged in Exhibit I of its application, which includes a copy of the precedent agreement with EOG Resources.¹⁶ Sierra Club argues that Transco's claim of privilege of the precedent agreement, including the name of the project shipper, prohibits its meaningful participation because Sierra Club cannot comment on the project need or end use if the project shipper is unknown. On January 9, 2023, Transco filed an answer to Sierra Club's motion requesting that the Commission deny the motion. Transco argues that Exhibit I contains commercially sensitive information and its claim of privilege is consistent with the

¹² The Municipal Gas Authority of Georgia consists of the following: the municipalities of Bowman, Buford, Commerce, Covington, Elberton, Hartwell, Lawrenceville, Madison, Monroe, Royston, Social Circle, Sugar Hill, Toccoa, Winder, and Tri-County Natural Gas Company (consisting of Crawfordville, Greensboro and Union Point), Georgia; the East Central Alabama Gas District, Alabama; the towns of Wadley and Rockford, Alabama; the Utilities Board of the City of Roanoke, Alabama; Wedowee Water, Sewer & Gas Board, Wedowee, Alabama; the City of Alexander City, Alabama; and the Maplesville Waterworks and Gas Board, Maplesville, Alabama

¹³ The Transco Municipal Group consists of the following City of Sylacauga, Alabama; the Commissions of Public Works of Greenwood, Greer, and Laurens, South Carolina; the City of Union, South Carolina; the Patriots Energy Group (consisting of the Natural Gas Authorities of Chester, Lancaster and York Counties, South Carolina); the cities of Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson, North Carolina; and the City of Danville, Virginia.

¹⁴ Transco Sept. 28, 2022 Answer.

¹⁵ See 18 C.F.R. § 385.213(a)(2) (2022).

¹⁶ Sierra Club Dec. 23, 2022 Motion to Disclose.

Commission's regulations. On February 7, 2023, Transco responded to a January 31, 2023 staff data request by providing the identity of the project shipper, EOG Resources, and indicating there have not been any changes to the intended use of the gas.¹⁷ As discussed below, the public record now includes the requested information; accordingly, Sierra Club's motion is dismissed as moot.

III. Discussion

11. Because Transco's proposed pipeline facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁸

A. Certificate Policy Statement

12. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁹ 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.

13. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on

¹⁷ In its application, Transco stated that the project "will enable the Project Shipper to supply a wide range of customers (which may include LNG terminals and industrial customers) along the Texas and Louisiana Gulf Coast and to gas and power utilities." Application at 7.

¹⁸ 15 U.S.C. § 717f(c), (e).

¹⁹ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (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).

subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities.²⁰ 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

14. As discussed above, the threshold requirement for applicants proposing new interstate gas pipeline facilities is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Transco proposes an incremental recourse rate which is higher than its existing applicable system recourse rate to recover the costs of the project. But Transco's proposed incremental rate includes the costs associated with the turnback capacity. Because these costs are associated with existing capacity and are thus already reflected in existing rates, the costs may not also be included in the incremental project's cost of service for purposes of establishing initial rates.²¹ Exclusion of these costs results in an incremental rate that is less than the existing system rates. In instances where an incremental rate calculated to recover project costs is less than the existing system rate, Commission policy requires that the system rate should be used as the initial recourse rate to ensure existing customers will not subsidize the new service.²² Accordingly, as discussed below, we will require Transco to use its existing system rate as the initial recourse rate for the project. This will ensure the project will not be subsidized by Transco's existing customers and that the threshold no-subsidy requirement is met.

²⁰ In 2021, the Commission established the Office of Public Participation (OPP) to support meaningful public engagement and participation in Commission proceedings. OPP provides members of the public, including environmental justice communities, with assistance in FERC proceedings—including navigating Commission processes and activities relating to the project.

²¹ *E.g., Tenn. Gas Pipeline Co., L.L.C.*, 161 FERC ¶ 61,265, at P 21 (2017) (explaining that the costs of incremental capacity should only include the incremental costs associated with the new facilities).

²² *E.g., Tex. Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., LLC*, 145 FERC ¶ 61,007, at P 30 (2013).

2. Project Need

15. The project will provide 364,400 Dth/d of firm transportation service on Transco's system from the Valley Crossing Interconnect to the Compressor Station 65 Pooling Point. Transco states that the shipper, EOG Resources, a producer, may supply gas to a wide range of customers, which could include power generators, industrial end-users, and liquified natural gas (LNG) terminals.²³

16. Transco signed a 15-year binding precedent agreement with EOG Resources for the full project capacity. A precedent agreement for 100% of the project's capacity is significant evidence of the need for the proposed project. We also find that the project benefits and enhances the efficiency of the domestic natural gas market in general because it will increase the volume of natural gas that can reach a pooling point, Compressor Station Pooling Point 65.²⁴

17. Sierra Club's protest asserts that the public is unable to assess information about market need because Transco's application withheld the name of the shipper as privileged²⁵ and that it is unknown whether the shipper is an affiliate of Transco.²⁶ Without this information, Sierra Club claims that the Commission is unable to properly

²³ Transco Application Resource Report 1 at 1-7.

²⁴ See *Equitrans, L.P.*, 183 FERC ¶ 61,200, at P 16 (2023). Natural gas pools are points on a pipeline's system where natural gas suppliers aggregate supplies for sale to buyers. These can be physical points on the pipeline system, such as the Henry Hub in Louisiana, but they are most often paper points, such as the Compressor Station 65 Pooling Point where this project's transportation path will terminate. Transco Application at 2. Pooling is an administratively efficient process that allows suppliers to aggregate supply together at one location on the pipeline system, rather than having to tie each individual well or receipt point to a buyer. See *Pipeline Serv. Obligations & Revisions to Reguls. Governing Self-Implementing Transp. Under Pt. 284 of the Commission's Reguls. & Regul. of Nat. Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (cross-referenced at 59 FERC ¶ 61,030, at *41). Each interstate pipeline is required to have a pooling service and the service is often free. Natural gas prices are often set for the market at the major pooling points on the interstate pipeline systems.

²⁵ Sierra Club Sept. 13, 2023 Protest at 3-4; Sierra Club Dec. 23, 2022 Answer at 3.

²⁶ Sierra Club Sept. 13, 2023 Protest at 3.

assess whether the project is needed, as vague assertions of benefits cannot support a need determination.²⁷

18. On January 31, 2023, Commission staff issued a data request asking Transco to identify in a public response the identity of the shipper and the type of shipper and associated end uses for the gas. On February 7, 2023, Transco responded, providing publicly the name of the shipper, EOG Resources, a producer, and stating that Transco had no further information on the end use for the gas. The public record now contains the name and type of shipper associated with the project,²⁸ and we find that the record contains adequate information to assess need.

19. Sierra Club asserts that Transco failed to include in its application an Exhibit H regarding gas supply and an Exhibit I regarding market data.²⁹ As to Exhibits H and I, the Commission's regulations provide that a company may file an abbreviated application and omit certain exhibits when those exhibits are not necessary to fully disclose the nature of the proposal.³⁰

20. Regarding the gas supply data required by the regulations in an Exhibit H, it includes information on total gas supply, specifically a description of the production areas accessible that contain existing or potential supplies for the proposed project.³¹ But since the advent of open access, natural gas shippers, not natural gas pipelines, have been responsible for obtaining the natural gas that will be transported, and therefore, Exhibit H is not needed to determine whether adequate natural gas is available to supply the proposed project.³²

21. Regarding the market data required by the regulations in an Exhibit I, it has not been the Commission's practice to reject as deficient an application for failure to include

²⁷ Sierra Club Sept. 13, 2023 Protest at 3 (citing *EDF v. FERC*, 2 F.4th 953, 962 (D.C. Cir. 2021)).

²⁸ Transco Feb. 7, 2023 Response to Commission staff Jan. 31, 2023 Data Request.

²⁹ Sierra Club Sept. 13, 2023 Protest at 3-4.

³⁰ 18 C.F.R. § 157.7 (2022).

³¹ 18 C.F.R. § 157.14(a)(11) (2022).

³² *Fla. Se. Connection, LLC, et al.*, 154 FERC ¶ 61,080, at P 56 (2016), *order on reh'g*, 156 FERC ¶ 61,160, (2016), *vacated on other grounds sub nom.*, *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017)

an Exhibit I.³³ Here, since the applicant supported its application with evidence of capacity subscribed under a precedent agreement, we will condition the certificate on the applicant's execution of a contract for the level of service and for the terms of service represented in the precedent agreement before commencing construction.³⁴ Because we balance a project's demonstrated benefits against its adverse impacts, the requirement that final service agreements be executed prior to the commencement of construction ensures that the evidence of need relied upon in assessing the balance was not illusory.³⁵

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

22. The Producers Coalition raises concerns about how Transco's proposal to convert existing IT Feeder System service to firm service will impact producer-shippers that currently use the IT Feeder System service.³⁶ It questions the validity of Transco's statement that it will continue to provide IT Feeder System service to shippers that choose to use the interruptible service.³⁷ Transco states that it held an open season for shippers using IT Feeder System service to subscribe for firm transportation service from the Valley Crossing Interconnect to Transco's Station 30 Pooling Point and did not receive any bids in response.³⁸

23. The Producers Coalition will be able to continue to use IT Feeder System service where available. The Commission recently accepted Transco's *pro forma* tariff revisions to allow the conversion of IT Feeder System service to firm transportation service on its system upstream of the IT Feeder System compressor stations (Compressor stations 30, 45, 50, 62, and 65) and clarified that the conversion would be consistent with the NGA, precedent, and the Commission's regulations.³⁹ The Commission observed that IT Feeder Service customers could be "interrupted by new customers with primary firm service," but that interruptible service, including IT Feeder System service, is inferior to

³³ *E. Shore Nat. Gas Co.*, 132 FERC ¶ 61,204, at P 13 (2010).

³⁴ *See Tenn. Gas Pipeline Co., L.L.C.*, 170 FERC ¶ 61,141, at P 9 & ordering para. (B)(4) (2020).

³⁵ *See Tex. Gas Transmission, LLC*, 181 FERC ¶ 61,049, at P 23 (2022)

³⁶ Producers Coalition Intervention at 5.

³⁷ *Id.*

³⁸ Transco Application at 17.

³⁹ *Transcont. Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,109, at PP 13-15 (2023).

firm service.⁴⁰ Here, we find that Transco took appropriate steps to address any impacts on IT Feeder System customers by holding an open season for those customers to purchase firm service; Transco received no bids.

24. As discussed below, we will require Transco to charge its system recourse rate and not its proposed incremental recourse rate because the latter rate improperly included costs associated with turnback capacity. With those costs removed, the incremental recourse rate is lower than the system recourse rate. Charging the higher system recourse rate will protect Transco's existing customers from subsidizing the costs of the project and prevent any double recovery of costs. We also find that there will be no adverse impact on other pipelines in the region or their captive customers. The project will not affect or displace existing service on other pipelines, and no pipelines or their captive customers have objected to Transco's proposal.

25. We are further satisfied that Transco has taken steps sufficient to minimize adverse economic impacts on landowners and surrounding communities. Construction of Compressor Station 33 will temporarily impact approximately 60 acres of land and approximately 18 acres are required for the permanent operation of the station. Transco states that it acquired the land necessary for construction and operation of this compressor station. The modifications at existing Compressor Station 40 will require the use of approximately 12 acres of land within the existing fence line of the station for parking and the staging of materials.

4. Certificate Policy Statement Conclusion

26. The Texas to Louisiana Project will provide 364,400 Dth/d of firm transportation service from Valley Crossing to Transco's Compressor Station 65 Pooling Point. Transco entered into a precedent agreement with EOG Resources for 100% of the project's capacity. Accordingly, we find that there is a demonstrated need for the Texas to Louisiana Project and, further, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project will have minimal economic impacts on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement, and we analyze the environmental impacts of the project below.⁴¹

⁴⁰ *Id.* P 14.

⁴¹ *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).

B. Rates

1. Initial Recourse Rates

27. Transco proposes an incremental recourse rate under its Rate Schedule FT to recover costs attributable to the project.⁴² Transco proposes a daily incremental firm recourse reservation charge under Rate Schedule FT of \$0.22154 per Dth/day, and an applicable usage charge of \$0.00157 per Dth/day for Zone 1 to Zone 3, based on a 100% load factor. Transco derived its proposed incremental firm recourse reservation charge based on a fixed first-year cost of service of \$29,465,828⁴³ and an annual design capacity of 133,006,000 Dth.⁴⁴ Transco's proposed incremental charges are based on cost-of-service factors approved by the Commission including: an onshore depreciation rate of 3.00% for Solar turbine compressors and 2.50% for all other onshore transmission facilities, including negative salvage;⁴⁵ and a pre-tax return of 12.83%, which reflects a 12.50% return on equity.⁴⁶

28. We have reviewed Transco's proposed cost of service and initial incremental rates, which includes \$12,602,133 of costs related to Zone 1 to Zone 3 turnback capacity.⁴⁷ Commission policy requires that for an NGA section 7 proceeding, costs associated with existing capacity that is used for an incremental project should not be included in the

⁴² Transco did not include *pro forma* tariff records as part of its application, as required by section 157.14(a)(19)(i)(B) of the Commission's regulations.

⁴³ The total cost of service includes \$12,602,133 related to Zone 1 to Zone 3 turnback capacity costs. Application at Ex. P, page 1 of 3, Line No. 15.

⁴⁴ The annual design capacity is calculated by multiplying the daily capacity (364,440) by the number of days in a year (365).

⁴⁵ Stated depreciation rates included in the Stipulation and Agreement (Settlement) approved by the Commission on March 24, 2020 in Docket No. RP18-1126-000, et al. See *Transcon. Gas Pipe Line Co., LLC*, 170 FERC ¶ 61,245 (2020).

⁴⁶ Transco notes that use of a 12.83% pre-tax return reflects the ROE and income tax rates approved in its Settlement (Article V, section A) and is consistent with its approved initial rates filed for its Leidy South Project, the first expansion project filed by Transco after its Settlement.

⁴⁷ Transco states that it derives the Zone 1 to Zone 3 turnback capacity cost by multiplying the turnback capacity of 229,396 Dth/day by Transco's current Zone 1 to Zone 3 system transportation rate of \$0.15051 by 365 days, and that this calculation excludes the tracked electric power rate. Application at Ex. P, page 1 of 3, n.2.

incremental project's cost of service for purposes of establishing initial rates and that the initial incremental recourse rates should be designed to reflect only the incremental costs associated with the project.⁴⁸ Therefore, the costs related to existing Zone 1 to Zone 3 turnback capacity should be removed from the project's cost of service used in Transco's proposed incremental rate calculations.⁴⁹

29. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.⁵⁰ With removal of the turnback capacity costs, Transco's revised incremental recourse rate would be lower than the existing system recourse rate. Using Transco's cost of service model, we estimate the initial incremental recourse rate, without the turnback capacity, to be \$0.12836 per Dth/day (including a reservation charge of \$0.12679 per Dth/day and a usage charge of \$0.00157 per Dth/day) while the existing system recourse rate is \$0.15800 per Dth/day (including a reservation charge of \$0.15051 per Dth/day and a usage charge of \$0.00749 per Dth/day). Where, as here, the estimated incremental recourse rate is lower than the system recourse rate, the Commission has found it appropriate to establish the existing system rate as the initial recourse rate.⁵¹ We therefore reject Transco's proposed incremental recourse rate and require Transco to use the existing system recourse rate (reservation charge and usage charge) under Rate Schedule FT for Zone 1 to Zone 3 as the initial recourse rate for service using the project. We find that use of the existing system recourse rate will protect Transco's captive customers from subsidizing the cost of the project. In addition, Transco is directed to charge the applicable system interruptible rate for the project.

⁴⁸ *E.g., Tenn. Gas Pipeline Co., L.L.C.*, 161 FERC ¶ 61,265 at P 21 (explaining that the costs of incremental capacity should only include the incremental costs associated with the new facilities); *Tex. E. Transmission, LP*, 165 FERC ¶ 61,132, at P 19 (2018); *Transcont. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,006, at P 41 (2023); *Transcont. Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051, at P 45 (2019); *Transcont. Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221, at P 25 (2018).

⁴⁹ While the Commission rejects Transco's proposal to include in the incremental recourse rates the costs associated with the turnback capacity, this finding is without prejudice to Transco proposing in its next NGA section 4 rate proceeding an incremental rate design that reallocates those costs, which are already included in Transco's currently effective system rates, to the rates for the subject services.

⁵⁰ Certificate Policy Statement, 88 FERC ¶ 61,22, at n.12.

⁵¹ *See, e.g., Tex. Gas Transmission, LLC*, 152 FERC ¶ 61,160 at P 30; *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 at P 30.

2. Fuel Retention and Electric Power Rates

30. Transco proposes to apply its generally applicable system fuel retention and electric power rates to the project. Transco requests a predetermination of rolled-in rate treatment of project fuel.⁵² In support of its proposal, Transco submitted a fuel study that modeled the impact of the project on system compressor fuel and electric power consumption.⁵³ The fuel study demonstrates that the project would result in an overall 39.78% reduction in system fuel use (system compressor fuel and electric power consumption) attributable to existing customers.⁵⁴ Transco has shown that the project will yield a net system fuel benefit to existing system customers. Therefore, we will approve Transco's proposal to charge its generally applicable system fuel retention percentage and system electric power rates for the project. Further, we grant Transco's requested predetermination of rolled-in rate treatment for the fuel retention and electric power costs associated with the project in a future NGA section 4 rate case, absent a significant change in circumstances.

3. Predetermination of Rolled-in Rates

31. As Transco requested an incremental rate in its application, it did not request a predetermination that it may roll the costs of the project into its rates in a future NGA section 4 rate case. However, based on the changes to the initial recourse rate described above and consistent with longstanding Commission policy, we will evaluate whether to issue a predetermination of rolled-in rate treatment.⁵⁵

32. To support a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the project cost. To make this determination, we compare the project cost to the revenues generated using actual contract volumes and either the maximum

⁵² Application Ex. Z-1 at 2.

⁵³ *Id.*

⁵⁴ *Id.* at 2.

⁵⁵ See, e.g., *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 at P 31 n.41.

recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.⁵⁶

33. In evaluating the project, we find that the incremental revenues from Transco's project will exceed the incremental cost of service. Therefore, we will approve a presumption of rolled-in rate treatment for the cost of the project in a future NGA section 4 rate case, absent a significant change in circumstances.

4. Reporting Incremental Costs

34. We require Transco to keep separate books and accounting of costs and revenues attributable to the capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.⁵⁷ 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. 710.⁵⁸

5. Negotiated Rates

35. Transco proposes to provide service to EOG under a negotiated rate agreement. Transco must file either the negotiated rate agreement or tariff records setting forth the

⁵⁶ See, e.g., *Nat. Gas Pipeline Co. of Am., LLC*, 154 FERC ¶ 61,220, at P 25 (2016).

⁵⁷ 18 C.F.R. § 154.309 (2022). See *Gulf S. Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (*Gulf South*) (for projects that use existing system rates for the initial rates the Commission's requirement for separate books and accounting applies only to internal books and records).

⁵⁸ *Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008). In *Gulf South*, the Commission clarified that a pipeline charging its existing system rates for a project is not required to provide books and accounting consistent with Order No. 710. However, a pipeline is required to maintain its internal books and accounting such that it would have the ability to include this information in a future FERC Form No. 2 if the rate treatment for the project is changed in a future rate proceeding.

essential elements of the agreement in accordance with the Alternative Rate Policy Statement⁵⁹ and the Commission's negotiated rate policies.⁶⁰

6. Conversion of IT Feeder System Service to Firm Transportation Service

36. Transco requests to convert 130,000 Dth/d of IT Feeder System service from the Valley Crossing Interconnect to Compressor Station 30 to firm transportation service. Transco held an open season for shippers using IT Feeder System service to subscribe for firm transportation service from the Valley Crossing Interconnect to Transco's Station 30 Pooling Point.⁶¹ In a separate proceeding,⁶² Transco stated that the conversion of IT Feeder System service is consistent with Opinion No. 405, which authorized Transco to implement firm transportation service on its production area supply laterals through a limited NGA section 4 filing and requires Transco to hold an open season for all interested parties, with priority given to its legacy customers.⁶³ The Commission agreed and Transco received authorization under its tariff to convert IT Feeder System service to firm service.⁶⁴ Given that Transco held an open season allowing IT Feeder System users the opportunity to bid for firm service and Transco's tariff allows for the conversion of IT Feeder System service, we will approve Transco's request to convert the 130,000 Dth/d of IT Feeder System service.

⁵⁹ *Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regulation of Negotiated Transportation Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁶⁰ *Nat. Gas Pipelines 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, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

⁶¹ Transco Application at 17.

⁶² Transco July 7, 2023 Conversion of IT Feeder Filing at 3, Docket No. RP23-886-000

⁶³ *Transcon. Gas Pipe Line Corp.*, 76 FERC ¶ 61,021, at 61,062 (1996).

⁶⁴ *Transcon. Gas Pipe Line Corp.*, 184 FERC ¶ 61,109 at PP 13-15.

C. Environmental Analysis

37. On November 16, 2022, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Texas to Louisiana Energy Pathway Project, Request for Comments on Environmental Issues, Notice of Public Scoping Session, and Schedule for Environmental Review*. The notice was published in the *Federal Register*, announced a public comment session, and opened a 30-day public comment period, with comments due on December 16, 2022.⁶⁵ The notice was mailed to: federal, state, and local officials; agency representatives; Native American tribes; local libraries and newspapers; potentially affected property owners; and other stakeholders who had indicated an interest in the project. Mr. Louis Heckmann, an adjacent landowner, and the Texas Parks and Wildlife Division filed written scoping comments. Mr. Heckmann expressed concern over how the proposed project would affect the safety of nearby residences, air quality and noise, public roads, surface water drainage, and property values. The Texas Parks and Wildlife Division recommended that the environmental document address non-native plant species; wildlife; state and federally listed rare, threatened, and endangered species' habitat; bird nesting; erosion controls; open excavations, temporary lighting; and vegetation clearing.

38. On December 15, 2022, Commission staff conducted a public scoping session in Richmond, Texas, providing the public with an opportunity to learn about the project and comment on environmental issues that should be addressed in the environmental document. Mr. and Mrs. James Gilbrandsen raised concerns regarding water ponding and drainage issues at the proposed Compressor Station 33 site. A transcript of the scoping session was entered into the public record on January 4, 2023.

39. Based on the extent of the proposed project and the limited issues identified during scoping of the proposed project, on January 27, 2023, the Commission issued a *Notice to Prepare an Environmental Assessment and Revised Schedule for Environmental Review of the Texas to Louisiana Energy Pathway Project* (Notice of Schedule). The Notice of Schedule was published in the *Federal Register* and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.⁶⁶ The January 27 notice announced that Commission staff would prepare an Environmental Assessment (EA) in lieu of an Environmental Impact Statement (EIS) for the project, and set a revised date of June 9, 2023, for completion of the EA. The Commission received no additional comments in response to the Notice of Schedule.

⁶⁵ 87 Fed. Reg. 71,596 (Nov. 23, 2022).

⁶⁶ 88 Fed. Reg. 7429 (Feb. 3, 2023).

40. Pursuant to the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an EA for the Texas to Louisiana Project, which was issued on June 9, 2023. A Notice of Availability of the EA was published in the *Federal Register*⁶⁷ and was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, environmental justice,⁶⁸ cumulative impacts, and alternatives. All substantive environmental comments raised by the commenters during the scoping process were addressed in the EA. With regard to climate change impacts, the EA does not characterize the project's GHG emissions as significant or insignificant, but we disclose the reasonably foreseeable emissions below.⁶⁹ For the remainder of resources assessed, the EA concludes that with the recommended mitigation measures, project impacts would be reduced to less-than-significant levels. As further discussed below, with regard to environmental justice communities, project construction impacts, including those associated with visual resources, socioeconomics, air quality, and noise would be temporary and less than significant. Permanent impacts on environmental justice communities, including those associated with visual resources, noise, and air quality from operation of the new compressor at Compressor Station 33 and modifications to the six existing compressor units at Compressor Station 40 would be less than significant.

41. The Sierra Club and the Texas Commission on Environmental Quality (Texas CEQ) filed comments in response to the EA. The Sierra Club asserts that an EIS should have been completed instead of an EA, that the EA should have included a broader scope and purpose for the project with a wider range of alternatives, that the EA incorrectly evaluated electric-powered compression at Compression Station 33;⁷⁰ and that the

⁶⁷ 88 Fed. Reg. 39,249 (June 15, 2023).

⁶⁸ 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 62-94.

⁶⁹ EA at 82-84, 85.

⁷⁰ On March 27, 2023, prior to issuance of the EA, the Sierra Club filed comments in response to several data responses from Transco. Sierra Club asserts that Transco had not adequately assessed the feasibility of electric motor driven compression for the

significance of impacts on climate change and environmental justice communities from emissions and greenhouse gases (GHG) should have been more adequately analyzed. The Texas CEQ comments that the EA should address Transco's measures to prevent surface and groundwater contamination and to dispose of debris or waste associated with the project. These comments are addressed below.

42. A few days before Commission staff issued the EA, Congress enacted the *Fiscal Responsibility Act of 2023*.⁷¹ A section titled "Builder Act" amended NEPA in several ways.⁷² 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.⁷³

project or provided the necessary information on the end use of the gas transported by the project. EA at 92.

⁷¹ 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).

⁷² See FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10, at § 321 (June 3, 2023) (providing the "Builder Act").

⁷³ 42 U.S.C. § 4332(c)(i).

The Commission has complied with its NEPA responsibilities under both versions of the statute.⁷⁴

1. Request for an Environmental Impact Statement

43. Sierra Club states that the Commission should have completed an EIS, rather than an EA, and that by issuing an EA, Commission staff predetermined that the project would not have a significant environmental impact. Sierra Club states that an EIS should have been prepared because the project will have significant foreseeable environmental impacts related to GHG emissions. Further, it asserts that an EA provides less time for public review and comment than an EIS.

44. NEPA requires that a federal agency must prepare an EIS if a proposed agency action has a reasonably foreseeable significant impact on the quality of the human environment.⁷⁵ NEPA allows a federal agency to prepare an EA if a proposed agency action does not have a reasonably foreseeable significant effect on the quality of the human environment or if the significance of such effect is unknown.⁷⁶

45. Here, Commission staff prepared an EA to determine whether the Texas to Louisiana Project would have a significant impact on the human environment and thus require the preparation of an EIS. The EA assesses the potential impacts of the project on a variety of resources, including impacts on land use, environmental justice, and air quality and noise, and the EA determines that the construction, abandonment, and operation would not constitute a major federal action significantly affecting the quality of the human environment.⁷⁷ Accordingly, an EIS is not required.

46. Sierra Club also asserts that the Commission should have prepared an EIS because an EIS allows for more opportunity for public participation, including an additional opportunity to file a timely motion to intervene during the period for comment on the draft EIS. While Sierra Club is correct that the Commission's regulations do consider

⁷⁴ We note that the Council on Environmental Quality recently published a Notice of Proposed Rulemaking to revise its regulations implementing NEPA, including to implement the Builder Act amendments. 88 Fed. Reg. 49,924 (July 31, 2023). The Commission will monitor this proceeding to inform the Commission's practices going forward.

⁷⁵ 42 U.S.C. § 4336(b)(1).

⁷⁶ *Id.* § 4336(b)(2).

⁷⁷ EA at 95.

such a motion to be timely if it deals with environmental issues,⁷⁸ here the issuance of an EA, rather than an EIS, provided sufficient opportunity for public participation. As Sierra Club acknowledges, the Notice of Availability of the EA provided a 30-day comment period and noted that late motions to intervene could be filed pursuant to the Commission's regulations. Following issuance of the EA, the Commission received two comments, one from Sierra Club and one from Texas CEQ, which are addressed below. No other comments were received and no one filed an untimely motion to intervene after the EA was issued.

2. Purpose and Need and Alternatives

47. Sierra Club argues that the EA improperly adopts Transco's narrow definition of the project's purpose and need and asserts that the Commission cannot adopt Transco's goals without considering the Commission's statutory duties and the goals of the NGA.⁷⁹ Sierra Club comments that the EA's focus on the applicant's goals violates NEPA because it winnows out any alternative, even pipelines with similar capacity or pipelines with different receipt and delivery points and any non-gas alternatives.⁸⁰ Sierra Club questions why the Commission has considered non-gas alternatives (e.g., nuclear energy, photovoltaic, or wind power sources) in other dockets but does not analyze those alternatives in this proceeding.⁸¹

48. When an agency is asked to consider a specific proposal, the needs and goals of the applicant should be taken into account.⁸² An applicant's statement of purpose and need informs the choice of alternatives considered by the Commission under NEPA.⁸³ Courts have upheld federal agencies' use of applicants' project purpose and need in environmental documents and as the basis for evaluating alternatives.⁸⁴

⁷⁸ 18 C.F.R. § 380.10(a)(1) (2022).

⁷⁹ Sierra Club July 10, 2023 Comments at 6.

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 6.

⁸² *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

⁸³ CEQ advises that "a reasonable range of alternatives depends on the nature of the proposal and the facts in each case." *CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).

⁸⁴ *E.g., City of Grapevine v. U.S. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir.

49. We recognize that a project’s purpose and need may not be so narrowly defined as to preclude consideration of reasonable alternatives. Nonetheless, an agency need only consider alternatives that will bring about the ends of the proposed action, and this determination is “shaped by the application at issue and by the function that the agency plays in the decisional process.”⁸⁵ Moreover, because the alternatives considered under NEPA are informed both by “the project sponsor’s goals,”⁸⁶ and “the goals that Congress has set for the agency,”⁸⁷ *i.e.*, the goals set in enacting the NGA, the Commission’s consideration of alternatives appropriately includes the no-action alternative and alternatives that achieve the purpose of the project.

50. NEPA requires that agencies include “a detailed statement” of “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.”⁸⁸ The Commission has satisfied these procedural requirements.

51. Alternatives may be eliminated if they will not achieve a project’s goals or are otherwise unreasonable.⁸⁹ As stated in the EA, the project’s purpose is to serve the firm transportation requirements of the shipper.⁹⁰ Non-gas alternatives were excluded because these alternatives do not provide for the transportation of natural gas and would not

1994); *Citizens Against Burlington, Inc.*, 938 F.2d at 199.

⁸⁵ *Citizens Against Burlington, Inc.*, 938 F.2d at 199; *see also Sierra Club v. U.S. Forest Serv.*, 897 F.3d 582, 598-99 (4th Cir. 2018) (finding the statement of purpose and need for a Commission-jurisdictional natural gas pipeline project that explained where the gas must come from, where it will go, and how much the project would deliver, allowed for a sufficiently wide range of alternatives but was narrow enough that there were not an infinite number of alternatives).

⁸⁶ *Citizens Against Burlington*, 938 F.2d at 196.

⁸⁷ *Sierra Club*, 897 F.3d at 598-99.

⁸⁸ 42 U.S.C. § 4332(c)(iii).

⁸⁹ *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1182 (D.C. Cir. 2023) (*Alaska LNG*) (“Because some alternatives will be impractical or fail to further the proposed action’s purpose, agencies may reject unreasonable alternatives after only brief discussion.”).

⁹⁰ EA at 1.

feasibly achieve the project's aims, nor were they supported by any detail. For these reasons, we disagree that the EA should have considered non-gas alternatives.

52. As part of the NEPA analysis, the EA evaluated the following alternatives to the proposed project: (1) a no-action alternative; (2) system alternatives, (3) a pipeline loop alternative; (4) aboveground site alternatives for Compressor Station 33, and (5) an electric-motor-driven alternative for Compressor Station 33. Even though the no-action alternative would result in fewer environmental impacts than the proposed project, it would not meet the project's objectives. As to system alternatives, the EA reasonably concluded that shifting the project's proposed capacity to another pipeline system would require an expansion or construction of new facilities.⁹¹ The EA found that the system alternatives would not offer a significant environmental advantage over the proposed project.⁹² Moreover, the Commission has recognized that "[u]nsupported, hypothetical alternatives are not reasonable alternatives that warrant further NEPA consideration."⁹³ Sierra Club does not support the energy efficiency and non-gas alternatives in any detail. For these reasons, we disagree that the EA should have considered non-gas alternatives.

53. Sierra Club claims that the EA incorrectly evaluated the electric-motor-driven alternative for Compressor Station 33. It disagrees with the EA's conclusions as to why the proposed natural-gas-powered compressor units are preferred over electric-powered compressor units at Compressor Station 33 asserting that: (1) the EA wrongly estimates the emissions of nitrogen oxides (NO_x) and sulfur dioxides due to electric-powered compression from non-jurisdictional electricity sources; (2) the EA wrongly estimates emissions because future grid emissions would decrease with the transition to renewable energy, and the EA fails to consider the use of onsite solar; (3) the EA incorrectly assumes that natural-gas-powered units would be more reliable than electric-powered units given a hypothetical power outage;⁹⁴ and (4) the EA does not balance the negative impacts of additional land acreage required for an electric-powered station with the

⁹¹ *Id.* at 87. Construction would be required for another pipeline system to provide service to the shipper's requested receipt and delivery points. Moreover, the electronic bulletin boards of other interstate pipeline systems in the area do not indicate, and there is no evidence, that it would be feasible for another system to provide the requested service using existing unsubscribed capacity.

⁹² *Id.* at 87-88

⁹³ *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173, at P 19 (2023) (internal quotation and citation omitted).

⁹⁴ Sierra Club July 10, 2023 Comments at 7.

potential benefits of using electricity rather than natural gas to power the compressor units.

54. We disagree with Sierra Club's arguments objecting to the EA's estimates of emissions. Sierra Club states that Commission staff's use of the AVERT database to calculate the emissions attributable to electric-powered compressor units at Compressor Station 33 yields an over-estimate of emissions based on the current mix of generation sources and that future grid-based emissions would be lower given the transition to renewable energy. NEPA does not require that the studies, metrics, and models on which an agency relies be universally accepted or otherwise uncontested.⁹⁵ Instead, NEPA permits agencies to rely on quantitative and qualitative information commensurate with the impact,⁹⁶ even where that evidence has certain limitations when assessing the significance of their actions,⁹⁷ and an agency's determination is entitled to deference.⁹⁸ Here, we find staff's use of AVERT, which is maintained by the Environmental Protection Agency (EPA), to compare the difference in emissions between electric-powered and natural gas-powered compressor units is consistent with NEPA. The EA found that the proposed use of an electric-powered compressor unit would not result in a marked reduction of local air emission effects compared to a gas-powered compressor

⁹⁵ *Sierra Club v. U.S. Dep't of Transp.*, 753 F.2d 120, 128 (D.C. Cir. 1985) ("It is clearly within the expertise and discretion of the agency to determine proper testing methods."); *see also Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 289 (4th Cir. 1999) ("Agencies are entitled to select their own methodology as long as that methodology is reasonable. The reviewing court must give deference to an agency's decision.").

⁹⁶ 40 C.F.R. § 1502.15 (2022).

⁹⁷ *See Spiller v. White*, 352 F.3d 235, 244 n.5 (5th Cir. 2003) (rejecting petitioner's contention that the significance determination must be objective, factual, and quantitative and should not involve any qualitative judgment calls).

⁹⁸ *See La. Crawfish Producers Ass'n-West v. Rowan*, 463 F.3d 352, 355 (5th Cir. 2006) (NEPA-related decisions are accorded a considerable degree of deference); *Spiller*, 352 F.3d at 244 n.5 ("We should note that our deference to the [l]ead [a]gencies['] fact-finding and conclusions includes deference to their judgment as to whether any particular environmental impact of the proposed pipeline rises to the level of significance"); *Powder River Basin Res. Council v. U.S. Bureau of Land Mgmt.*, 37 F.Supp. 3d 59, 74 (D.D.C. 2014) (agencies are afforded discretion to use their expertise to determine the best method to evaluate the significance of an impact to a particular resource, so long as that method is reasonable).

unit.⁹⁹ Sierra Club also states that some portion of the electricity to power the compressor station, if the electric-powered alternative is selected, could be generated by on-site solar. As stated above, the Commission does not consider alternatives that lack detail and are unsupported and hypothetical, such as the use of solar power as a back-up generation source.

55. Sierra Club argues that the EA's reliance on Transco's statement that electric-powered compressor units are not as reliable as gas-powered units is unfounded.¹⁰⁰ It also questions why Transco has not accounted for the availability of backup generators, on-site solar, or batteries to provide power during an electrical grid outage.¹⁰¹

56. Inherent in using gas-powered compressors for a natural gas project is the ability of the company to directly access the fuel source for the operation of the compressor, instead of relying on a third-party source for the delivery of electricity to power an electric compressor.¹⁰² As for the reliability of an electric-powered compressor station, Transco states that its nearby Compressor Station 32, 13 miles southwest of Compressor Station 33, uses electric-powered compressors and that in 2021, Compressor Station 32 went offline 11 times due to the loss of power purchased from a third party.¹⁰³ Transco also states that this area is often subject to unplanned outages due to tropical storms and hurricanes.¹⁰⁴ It asserts that if it used electric-powered compressors at the proposed compressor station, an outage at the compressor station could result in approximately a 10 percent reduction in the design flow through the station.¹⁰⁵

57. In terms of balancing the additional land acreage needed for transmission to the electric-driven compressor units with the benefits of electric power, Sierra Club argues that the EA should have analyzed whether the transmission line for the electric-powered compressor units could be collocated within an existing right-of-way to reduce the total

⁹⁹ EA at 93 (noting a large increase in sulfur dioxide emissions associated with an electric-powered compressor).

¹⁰⁰ Sierra Club July 10, 2023 Comments at 7.

¹⁰¹ Sierra Club Mar. 29, 2023 Comments on Transco Environmental Information Request Response at 2.

¹⁰² See *Tex. E. Transmission, LP*, 184 FERC ¶ 61,187, at P 68 (2023).

¹⁰³ Transco Application Resource Report 10 at 10-23.

¹⁰⁴ *Id.* at 10-22.

¹⁰⁵ *Id.* at 10-23.

land impacted. With this balance, Sierra Club believes that staff's conclusion regarding the electric-powered compressor units would be more favorable.¹⁰⁶ The electric-powered compressors would require approximately two miles of additional electric transmission lines, resulting in additional landowner easements and land use impacts as contrasted with the proposed gas-fired compressor unit.¹⁰⁷ While Sierra Club disagrees with this calculation, the record lacks information to support Sierra Club's contention that the transmission lines could be collocated within an existing right-of-way corridor.

58. In sum, we affirm the finding that the use of electric-powered compressors would not result in a significant environmental advantage over the proposed use of gas-powered compressor units because of reliability concerns and the land use and air quality impacts from use of electric compression. Accordingly, we conclude that Transco's proposed gas-fired compressors are the preferred alternative to meet the project's objectives.

3. Water Quality and Waste Disposal

59. Texas CEQ states that the EA should include a description of the actions that would be taken to prevent surface and groundwater quality degradation. The EA addressed groundwater and surface water impacts.¹⁰⁸ The EA stated that construction of Compressor Station 33 includes the approximately 18 acres of permanent conversion of ground surface from vegetative cover to impervious surface but concluded that operation of Compressor Station 33 is not expected to affect groundwater recharge in the area because the permanent footprint is a small, defined area.¹⁰⁹ The EA indicated that no groundwater wells were located within 1 mile of Compressor Station 33.¹¹⁰

60. To reduce potential for impact, Transco is required to implement its *Environmental Construction Plan*, which includes its project-specific *Upland Erosion Control, Revegetation and Maintenance Plan* (Transco Plan), project-specific *Wetland and Waterbody Construction and Maintenance Procedures* (Transco Procedures), and project-specific *Construction Spill Prevention and Response Procedures for Oil and Hazardous Materials Plan*.¹¹¹ The EA concluded that impacts on surface waters, public

¹⁰⁶ Sierra Club July 10, 2023 Comment at 8.

¹⁰⁷ *Id.*

¹⁰⁸ EA at 18-22.

¹⁰⁹ *Id.* at 19-20.

¹¹⁰ *Id.* at 18.

¹¹¹ *Id.* at 6. Transco's Plan and Procedures are based on the Commission's Plan and Procedures—a set of baseline construction and mitigation measures developed to

water supply service area groundwater wells, wellhead protection areas, or sole-source aquifers during construction would not be significant.¹¹² We agree.

61. Texas CEQ comments that waste and debris generated by the project should be transported to an authorized disposal facility. Transco's Plan requires that construction debris be removed from all construction work areas.¹¹³ Transco will transport construction waste, debris, and trash to an authorized disposal facility.

4. Environmental Justice

a. Identification of Environmental Justice Communities

62. 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).¹¹⁴ Executive Order 14008 also directs agencies to develop "programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."¹¹⁵ Environmental justice is "the fair treatment and meaningful involvement of

minimize the potential environmental impacts of construction on upland areas, wetlands, and waterbodies. FERC, *May 2013 Environmental Guidelines*, <https://www.ferc.gov/industries-data/natural-gas/environmental-overview/environmental-guidelines>.

¹¹² EA at 18-20.

¹¹³ Transco Application Appendix 1C-Transco Plan at V.A.3, V.A.6.

¹¹⁴ 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* 15 U.S.C. § 717f; *see also* 18 C.F.R. § 380.12(g) (2022) (requiring applicants for projects involving significant aboveground facilities to submit information about the socioeconomic impact area of a project for the Commission's consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

¹¹⁵ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021). The term "environmental justice community" includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also

all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹¹⁶

63. Consistent with the Council on Environmental Quality (CEQ)¹¹⁷ and EPA¹¹⁸ guidance, the Commission’s methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income

includes, but may not be limited to minority populations, low-income populations, or Indigenous peoples. *See* Environmental Protection Agency, EJ 2020 Glossary (July 31, 2023), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

¹¹⁶ Environmental Protection Agency, *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.*

¹¹⁷ 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. There were opportunities for public involvement during the Commission’s environmental review processes. A scoping period was open from November 16 to December 16, 2022, and a public comment session was held on December 15, 2022 in Richmond, Texas. Transco also published newspaper advertisements of its application in the Fort Bend Herald and placed a copy of its application in the East Bernard Library.

¹¹⁸ *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.

populations)¹¹⁹ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.¹²⁰ 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.¹²¹

64. 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.

65. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2021 U.S. Census American Community Survey data¹²² for the race, ethnicity, and poverty data at the state, county, and block group level.¹²³

¹¹⁹ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

¹²⁰ See *Promising Practices* at 21-25.

¹²¹ Here, Commission staff selected Fort Bend and Wharton County, Texas for Compressor Station 33 and Hardin County, Texas for Compressor Station 40 as the reference communities to ensure that affected environmental justice communities are properly identified. EA at 39. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

¹²² U.S. Census Bureau, American Community Survey 2017-2021 ACS 5-Year Estimates Detailed Tables, File# B17017, *Poverty Status in the Past 12 Months by Household Type by Age of Householder*, and File# B03002 *Hispanic or Latino origin by race*: <https://data.census.gov/table?q=b17017&tid=ACSDT5Y2021.B17017>; <https://data.census.gov/table?q=b03002&tid=ACSDT5Y2021.B03002>.

¹²³ Commission staff evaluated environmental justice impacts on census block groups within a 5-kilometer radius for Compression Station 33 and a 1-mile radius for Compressor Station 40 as the appropriate units of geographic analyses for assessing the facilities' impacts on environmental justice communities given the likely concentration of visual, socioeconomic (including traffic), air quality, and noise impacts. Modeling of the expected air emissions associated with the Compressor Station 33 estimated that the 1-hour nitrogen dioxide (NO₂) concentration was below the significant impact level at 479

Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

66. Once staff collected the block group level data, staff conducted an impacts analysis for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionately high and adverse on environmental justice communities and also whether those impacts were significant.¹²⁴ Commission staff assessed whether impacts on 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*.¹²⁵ Identified project impacts and proposed mitigation measures are discussed below.

67. The Commission's environmental staff identified four out of the seven U.S. Census block groups¹²⁶ within the geographic scope of the project, where the

feet beyond the fenceline. The nearest residence is approximately 2,534 feet to the southwest. EA at 9. The selected 5-kilometer buffer for Compressor Station 33 provides a conservative analysis. Compressor Station 40 would not result in an increase in air emissions; thus, the 1-mile radius is appropriate. Staff determined these buffer distances are the appropriate areas of evaluation for this project as it would encompass the construction and operation-related air and noise emissions and visual impacts associated with construction and operation activities.

¹²⁴ 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”).

¹²⁵ *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be “predominantly borne by minority populations or low-income populations”). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

¹²⁶ Census block groups are statistical divisions of census tracts that generally contain between 600 and 3,000 people. U.S. Census Bureau, 2022. *Glossary: Block Group*, https://www.census.gov/programs-surveys/geography/about/glossary.html#par_textimage_4.

population exceeds the defined thresholds for minority and/or low-income communities, and are, therefore, environmental justice communities.¹²⁷

68. Commission staff identified that Compressor Station 33 is not within an environmental justice community; however, two out of four of the block groups within the geographic scope of the project impacts are considered environmental justice communities. One block group is considered an environmental justice community based on the minority threshold (Census Tract 6754.02, Block Group 1) and one block group is considered an environmental justice community based on the minority and low-income threshold (Census Tract 6758, Block Group 2). Compressor Station 40 is located within two census block groups and one is an environmental justice community (Census Tract 301, Block Group 2) based on the low-income threshold, and within the geographic scope of another environmental justice community (Census Tract 302, Block Group 1) based on the minority threshold.

69. The EA determined that potential impacts on the identified environmental justice communities may include visual impacts, socioeconomic impacts including traffic impacts, and air and noise impacts from construction and operation.¹²⁸ Commission staff concluded that environmental justice concerns are not present for other resource areas such as geology, soils, groundwater, surface water, wetlands, wildlife, fisheries, land use, or cultural resources due to the minimal overall impact the project would have on these resources. We concur with this determination.

b. Visual Resources

70. Compressor Station 33 will be about 0.5 mile west of the closest environmental justice community (Census Tract 6758, Block Group 2). The closest residence within an environmental justice community is about 0.85 mile to the east of Compressor Station 33 on Tavener Road. Given the distance from Compressor Station 33, it is likely the construction activities and operation of Compressor Station 33 will constitute a change in the visual character of the area near this residence. In addition, there are currently no trees or other natural features that could provide visual screening, so the new Compressor Station 33 could be visible from Tavener Road.¹²⁹ Users of Tavener Road, which is

¹²⁷ EA at 39.

¹²⁸ *Id.* at 43.

¹²⁹ Appendix A of the EA includes visual simulations of the site for Compressor Station 33 and how it currently appears, how it would appear after construction and after ten years. *Id.* at app. A; *see also* Transco Feb. 21, 2023 Response to Commission staff Feb. 1, 2023 Data Request at 12, 13.

approximately 0.5 mile from Compressor Station 33, will likely include individuals from environmental justice communities.

71. Once in operation, the most visible structure from the greatest distances to the nearby communities surrounding Compressor Station 33 will be the 100-foot-high communication tower. The communication tower will be a prominent feature in the area due to the flat terrain, but the lattice structure of the tower is broken up and consists of many small pieces, reducing contrast with the background and allowing the viewer to essentially see through the structure, as opposed to viewing one smooth surface. Following construction, to minimize the visual impacts of the Compressor Station 33 on the surrounding area, Transco will plant evergreen vegetative screening surrounding the compressor station perimeter. The EA noted that Compressor Station 33 will be visible for several years until trees intended for screening mature.¹³⁰

72. Compressor Station 40 is directly adjacent to State Highway 105 in Hardin County, which borders an environmental justice community. The closest residence within an environmental justice community is approximately 0.5 mile to the northeast of the site in Census Tract 301, Block Group 2. Given the distance of the residence and the presence of trees along State Highway 105 and on the residential property, the residence will likely have limited views of the station. Additionally, the proposed modifications to Compressor Station 40 will result in no operational changes to the existing viewshed.

73. Based on the distance to environmental justice communities and mitigation proposed by Transco at Compressor Station 33 and the distance and limited views from nearby residences at Compressor Station 40, the EA concluded that potential visual impacts on the environmental justice communities would be less than significant.¹³¹ We agree.

c. Socioeconomics

74. With respect to socioeconomic impacts, construction of the project is anticipated to last approximately one year and may temporarily increase the regional population by about 55 workers. Existing housing and public services are expected to adequately meet this increase; however, project impacts on environmental justice populations may result in increased traffic. Construction of Compressor Station 33 will increase average daily trips along rural Albert Marek Road and Tavener Road by up to 140 round trips per day.¹³² Increased use of Tavener Road will result in a higher volume of traffic, increased

¹³⁰ EA at 32.

¹³¹ *Id.* at 44.

¹³² *Id.* at 34.

commute times, and greater risk of vehicle accidents and will adversely affect local residents, including the bordering environmental justice community. The EA explained that these impacts would be limited to daytime periods of active construction over the 12-month construction period and would be less than significant.¹³³

75. Construction activities at Compressor Station 40 are anticipated to take about 5 months and the anticipated workforce will average 10 workers with a peak workforce of 25. This increase will represent a minor increase in traffic on local roads. The EA concluded that socioeconomic impacts on the identified environmental justice communities would be less than significant due to the limited scope of the modifications, limited construction period, and implementation of mitigation measures.

76. We agree that construction activities at both compressor station sites would cause less than significant adverse socioeconomic impacts on environmental justice communities and note that the following mitigation measures would be implemented including: obtaining required road use and driveway permits, as applicable; monitoring for and responding to damages attributable to construction traffic; installing signage to alert motorists of construction conditions; and employing flaggers to safely direct traffic in the event of any lane closures.¹³⁴

d. Air Quality

77. Sierra Club contends that the EA does not adequately support the conclusion that air quality impacts will be less than significant. Specifically, Sierra Club notes that impacts lasting one year can be considered significant, especially when those impacts affect environmental justice communities. As defined in the EA, temporary impacts generally occur during construction with the resource returning to a condition similar to pre-construction almost immediately following construction activities.¹³⁵

78. Construction emissions will occur over the duration of construction activity at the new Compressor Station 33 and existing Compressor Station 40 but will occur intermittently and at different emission rates depending upon the construction phase. Construction at Compressor Station 33 is expected to last for up to 12 months and at Compressor Station 40 construction is expected to last for up to 5 months. Construction emissions will result in short-term, localized impacts in the immediate vicinity of

¹³³ *Id.* at 44-45.

¹³⁴ *Id.*

¹³⁵ *Id.* at 13. The EA defines short-term impacts as those that continue for up to three years following construction and long term impacts as those that would require more than three years to recover.

construction work areas around Compressor Station 33 and Compressor Station 40. The nearest residence within an environmental justice community identified near Compressor Station 33 is about 0.85 mile east of the compressor station, and the nearest residence within an environmental justice community identified near Compressor Station 40 is about 0.50 mile northeast, which is farther than projected impacts from construction emissions.¹³⁶ Fugitive dust and other emissions due to construction activities generally do not pose a significant increase in regional pollutant levels; however, local pollutant levels could increase. In accordance with Transco's Fugitive Dust Control Plan, dust suppression techniques such as watering the construction work areas would be used as necessary in construction zones to minimize the impacts of fugitive dust on sensitive areas. Additionally, the project construction emissions are below the applicable *de minimis* thresholds,¹³⁷ and the project does not trigger General Conformity review for ozone.¹³⁸

79. Given the temporary and intermittent nature of construction emissions, the nearest residence within an environmental justice community's proximity to the construction activity, the minor volume of construction emissions that are less than the *de minimis* thresholds for General Conformity review, and the mitigation measures described above and more fully detailed in the EA, the EA concludes that emissions from construction-related activities for the project would not significantly affect local or regional air quality for environmental justice communities. We agree.

80. For operational emissions, Transco conducted dispersion modeling analyses for the new Compressor Station 33, which, while not within an environmental justice community, is within 0.5 mile of a block group designated as an environmental justice community. The modeling was completed to assess air quality impacts and show compliance with the applicable National Ambient Air Quality Standards (NAAQS). Based on the results and Commission staff's evaluation, the EA concludes that there will not be significant impacts on air quality from the operation of the new station. We agree. No changes to operational emissions at the existing Compressor Station 40 are expected.

81. The EA concluded that construction and operation of the project would not have significant adverse air quality impacts on local residents and the surrounding communities, including environmental justice communities. We agree.

¹³⁶ *Id.* at 45.

¹³⁷ The thresholds for General Conformity review are established by EPA's regulations. *See* 40 C.F.R. § 93.153 (2022).

¹³⁸ EA at 55.

e. Noise

82. Construction of Compressor Station 33 will affect noise levels both during construction and operation. The sound level impacts on noise sensitive areas (NSA) due to the construction activities will depend on the type of equipment used, the duration of use for each piece of equipment, the number of construction vehicles and machines used simultaneously, and the distance between the sound source and receptor. The magnitude and frequency of environmental noise may vary considerably over the course of the day, throughout the week, and across seasons, in part due to changing weather conditions and the effects of seasonal vegetative cover. Construction is anticipated to last about 12 months. The closest NSA within an environmental justice community (NSA #3) is about 0.85 mile northeast of Compressor Station 33.¹³⁹

83. Construction of the Compressor Station 33 is not expected to result in noise exceeding 55 decibels on the A-weighted scale (dBA) day-night sound level (L_{dn}) at any nearby NSA, including NSA #3.¹⁴⁰ Given the distance to NSA #3 and that construction would occur primarily during daytime hours, the EA concludes that noise impacts incurred during construction of Compressor Station 33 will not be significant.¹⁴¹ We agree.

84. Noise from operation of the Compressor Station 33 is not expected to exceed 55 dBA L_{dn} at any nearby NSA, including NSA #3. Operation of Compressor Station 33 could cause an audible (7.2 dBA L_{dn}) increase in sound levels at NSA #3.¹⁴² Environmental Condition 13 requires Transco to file a noise survey to verify the actual noise levels from operation of Compressor Station 33 at full load to ensure compliance with our noise standards and our noise level restriction of 55 dBA L_{dn} .

85. Construction noise at Compressor Station 40 will be limited to the presence of construction traffic as modifications will occur within the existing compressor station building, and no extra workspaces will be needed outside of the existing fence line. Construction at this station is anticipated to last about 5 months.

86. Transco's modifications to Compressor Station 40 will be limited to existing compressors to accommodate new flow conditions because of additional volume for the project, and no additional horsepower is required. Therefore, these modifications are not

¹³⁹ *Id.* at 46.

¹⁴⁰ *Id.* at 65.

¹⁴¹ *Id.* at 47.

¹⁴² *Id.* at 67.

expected to result in measurable changes in noise impacts. Nonetheless, a hunting camp was constructed after the original acoustic study was prepared in 2001, therefore, we are including Environmental Condition 12, which requires Transco to conduct a new noise survey to confirm that noise levels are below 55 dBA L_{dn} at nearby NSAs, or if they are above 55 dBA L_{dn} (e.g., at the hunting camp), that noise levels post-modification would not increase above existing levels. We will also require, in Environmental Condition 13, that Transco file a noise survey to verify the actual noise levels from operation of Compressor Station 40 at full load to ensure compliance with our noise standards and our noise level restriction of 55 dBA L_{dn}.

87. With Transco's adherence to Environmental Conditions 12 and 13, we find that project construction would not have a significant adverse effect on noise levels on the area population, including environmental justice communities, and project operation would not have a significant adverse effect on noise levels in the vicinity of environmental justice communities.¹⁴³

f. Cumulative Impacts

88. With respect to cumulative impacts, the EA identified three projects that are within the geographic scope of influence for cumulative impacts on environmental justice communities, but only one project, CenterPoint's electric transmission facilities to supply Compressor Station 33, would temporally overlap with the Texas to Louisiana Project. The EA concluded that these projects, along with the Texas to Louisiana Project, could result in cumulative impacts to visual resources, traffic, noise, and construction air quality on environmental justice communities.¹⁴⁴

89. As to visual resources, the EA concluded that the construction of the Compressor Station 33 and CenterPoint's electric transmission facilities would have a temporal overlap with visual resources effects, but the impacts would be similar to those described for Compressor Station 33 itself.¹⁴⁵ Therefore, the overall visual resources impacts on environmental justice communities would be less than significant.

90. As to traffic impacts, the EA concluded that increased traffic from the combined projects would impact environmental justice communities, but that impacts on traffic patterns would be limited to periods of active construction with a minimal number of

¹⁴³ EA at 47.

¹⁴⁴ *Id.* at 77.

¹⁴⁵ *Id.*

workers at a given site.¹⁴⁶ Therefore, the overall cumulative traffic impacts on environmental justice communities would be less than significant.

91. As to air quality impacts, the EA concluded that the potential for cumulative construction emissions impacts would be greatest during site preparation when fugitive dust production would likely be at its peak should the Texas to Louisiana Project facilities and the CenterPoint Project be constructed at the same time. The CenterPoint Project would not have operational air impacts. Based on the temporary and highly localized nature of construction emissions and based on the implementation of proposed mitigation measures, the cumulative air quality impacts on environmental justice communities during construction would not be significant.¹⁴⁷

92. As to noise impacts, the EA concluded that construction of all projects' facilities within the geographic scope for environmental justice could require the use of construction equipment that would generate noise, and that cumulative impacts on noise could occur where the location and timing of those noise effects overlap. Therefore, construction of the project, when considered with other projects in the geographic scope, would not significantly contribute to cumulative noise impacts on local residents and the surrounding communities, including environmental justice populations because of the temporary nature of construction and the majority of construction will occur during daylight hours.¹⁴⁸

93. We accept the EA's findings about potential cumulative impacts to environmental justice communities.

g. Environmental Justice Conclusions

94. As described throughout the EA, the project would have a range of impacts on the environment and individuals living in the vicinity of the project, including environmental justice communities. Impacts associated with the construction and operation of Compressor Station 33 on environmental justice communities would not be disproportionately high and adverse as they would not be predominantly borne by environmental justice communities. Also, impacts associated with the modifications at the existing Compressor Station 40 on environmental justice communities would not be disproportionately high and adverse as they would not be predominantly borne by environmental justice communities. The EA concluded that the project impacts on environmental justice communities associated with visual, socioeconomics, traffic, air

¹⁴⁶ *Id.* at 77-78.

¹⁴⁷ *Id.* at 210-211.

¹⁴⁸ *Id.* at 79.

quality, and noise from construction and operation of Compressor Station 33 and operation of Compressor Station 40 would be less than significant. We agree.

5. Greenhouse Gas Emissions and Climate Change

95. The 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.”¹⁴⁹ 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.”¹⁵⁰

96. The EA found that GHG emissions from construction and operation are reasonably foreseeable effects of the Texas to Louisiana Project.¹⁵¹ The new facilities would create 193,000 Dth/d of incremental firm transportation service from the Valley Crossing Interconnect to Transco’s existing Compressor Station 30 in Wharton County, Texas, and 135,400 Dth/d of incremental firm transportation service from Compressor Station 30 to the Compressor Station 65 Pooling Point. Construction activities associated with the new facilities are estimated to result in emissions of 3,951 metric tons of carbon dioxide equivalents (CO₂e) over the duration of construction.¹⁵² In later years, project operations are estimated to result in emissions of 72,344 metric tons of CO₂e per year.¹⁵³

¹⁴⁹ 40 C.F.R. § 1508.1(g) (2022).

¹⁵⁰ *Id.* § 1508.1(aa). See generally *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (explaining that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” and that “[t]he Court analogized this requirement to the ‘familiar doctrine of proximate cause from tort law’”) (citation omitted); *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (*Sabal Trail*) (“FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

¹⁵¹ EA at 81.

¹⁵² *Id.*

¹⁵³ *Id.* The EA states that the operational emissions are based on the assumption that the proposed facilities are operated at maximum annual capacity and include fugitive emissions. 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 limited periods of full demand.

The EA estimates that the social cost of GHGs from construction and operation of the project is either \$19,563,786 (assuming a discount rate of 5%), \$70,629,672 (assuming a discount rate of 3%), \$105,611,138 (assuming a discount rate of 2.5%) or \$212,306,721 (using the 95th percentile of the social cost of GHGs with a discount rate of 3%).¹⁵⁴

97. The EA also found that potential downstream emissions associated with the end-use of the gas are not reasonably foreseeable effects of the project.¹⁵⁵ In its comments, Sierra Club asserts that the EA's failure to consider downstream emissions contradicts the Commission's prior instances of finding downstream emissions reasonably foreseeable.¹⁵⁶ It argues that the Commission cannot claim that information is not available about downstream emissions because the Commission failed to press Transco on the downstream uses of the natural gas.¹⁵⁷ Sierra Club questions why the EA proceeds to then provide a downstream estimate for the 193,000 Dth/d of incremental capacity but not use this information to inform its analysis.¹⁵⁸

98. We agree with the EA's finding that downstream GHG emissions are not reasonably foreseeable. As the EA noted, Transco states that the natural gas to be transported will be delivered to the Compressor Station 65 Pooling Point and may ultimately be used for LNG export, power generation, or industrial natural gas consumption. Transco states that the shipper, producer EOG Resources, has not identified specific end-use markets that could be indirectly served by the project-

¹⁵⁴ See *id.* at 84; see *id.* for a description of the method and assumptions staff uses 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).

¹⁵⁵ See *id.* at 81-82; see also *ANR Pipeline Co.*, 179 FERC 61,040, at PP 13, 45 (2022) (excluding from the calculation of reasonably foreseeable downstream emissions the emissions associated with capacity that would "supply . . . other U.S. markets" along the pipeline system).

¹⁵⁶ Sierra Club July 10, 2023 Comments on EA at 10.

¹⁵⁷ *Id.* at 11. Sierra Club acknowledges that Commission staff issued a data request on January 31, 2023 requesting that Transco provide additional information on the shipper's intended end use of the gas to be transported by the project. In a February 7, 2023 response, Transco stated that it had no further information. See *infra* at P 10.

¹⁵⁸ *Id.* at 11-12.

transported gas. Transco stated that shipments for EOG Resources will be delivered for further transportation on the interstate grid to unknown destinations and for unknown end uses.¹⁵⁹ The EA appropriately found that there is no identified specific end-use for project-transported gas.¹⁶⁰ The Commission is not responsible for a downstream emissions analysis when it cannot identify the end users of gas because any resultant emissions are not reasonably foreseeable.¹⁶¹

99. Sierra Club states that the EA should have estimated upstream emissions from production as they are reasonably foreseeable.¹⁶² Sierra Club relies on comments from the EPA filed in other certificate proceedings stating that the Commission should consider using generic estimates to calculate upstream emissions.¹⁶³ We agree with the EA's finding that upstream GHG emissions are not reasonably foreseeable effects of the project. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ's regulations.¹⁶⁴ Here, whether there will be any incremental development of production wells associated with the project transportation capacity subscribed by EOG Resources is unknown. Based on the lack of information showing that the project would induce additional production, we conclude that upstream GHG emissions are not reasonably foreseeable.

¹⁵⁹ *Id.* at 25

¹⁶⁰ EA at 81.

¹⁶¹ *Del. Riverkeeper Network v. FERC*, 45 F.4th 104,110 (D.C. Cir. 2022) (upholding the Commission's conclusion that downstream emissions are not reasonably foreseeable when the Commission is unable to identify the end users of natural gas). Commission staff voluntarily disclosed an estimate of possible downstream emissions.

¹⁶² Sierra Club July 10, 2023 Comments on EA at 8.

¹⁶³ *Id.* at 9 (citing EPA's June 14, 2023 Comments on the Northern Lights 2023 Expansion Project; EPA's Nov. 19, 2021 Comments on the Regional Energy Access Project).

¹⁶⁴ *E.g.*, *Equitrans, L.P.*, 183 FERC ¶ 61,200 at P 42; *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).

100. As we have done in prior certificate orders, the EA compares estimated project GHG emissions to the total GHG emissions of the United States as a whole and at the state level. This comparison allows us to place project emissions in context. At a national level, 5,586 million metric tons of CO_{2e} were emitted in 2021 (inclusive of CO_{2e} sources and sinks).¹⁶⁵ Construction emissions from the Texas to Louisiana Project could potentially increase CO_{2e} emissions based on the 2021 national levels by 0.00007%.¹⁶⁶ In subsequent years, project operations based on the maximum direct GHG emissions of the project could potentially increase emissions by 0.001% based on the 2021 national levels.

101. At a state level, 663.5 million metric tons of energy-related CO₂ were emitted in 2021 in Texas.¹⁶⁷ Construction emissions from the project could potentially increase CO₂ emissions based on the state's 2021 levels by 0.0006%. In later years, project operations could potentially increase emissions by 0.01%.¹⁶⁸

102. Sierra Club notes that the EPA recommends that agencies avoid comparisons between the project's GHG emissions and state and national emissions inventory totals.¹⁶⁹ We disagree because the Commission's approach has been upheld as reasonable on judicial review.¹⁷⁰

103. Sierra Club states that the EA violates both NEPA and the NGA by failing to determine whether the GHG emissions and the social cost of GHGs from the project are

¹⁶⁵ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021* at ES-5 (Table ES-2) (April 2023), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2021>.

¹⁶⁶ EA at 82.

¹⁶⁷ U.S. Energy Information Administration, *Table 1, State Energy-Related Carbon Dioxide Emissions by Year, Unadjusted: Texas* (Mar. 21, 2023), <https://www.eia.gov/environment/emissions/state/>.

¹⁶⁸ EA at 82.

¹⁶⁹ *Id.* at 15.

¹⁷⁰ *Alaska LNG*, 67 F.4th at 1184 (discussing *EarthReports*, 828 F.3d 949) (“Rather than use the social cost of carbon, the Commission compared the Project’s direct emissions with existing Alaskan and nationwide emissions . . . [the Commission’s] approach was reasonable and mirrors analysis we have previously upheld.”); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 310 (D.C. Cir. 2013) (upholding evaluation of GHG emissions as a percentage of state and nation-wide emissions).

“significant.”¹⁷¹ It alleges that the Commission’s analysis must effectively demonstrate that the public benefit outweighs the deleterious environmental effects to the local communities.¹⁷² Sierra Club also asserts that the EA estimates the impact significance of other environmental factors and should be able to use a similar methodology to estimate the project’s impacts related to climate change.¹⁷³

104. We clarify that for informational purposes, Commission staff disclosed an estimate of the social cost of GHGs.¹⁷⁴ Although we have recognized in some past orders that social cost of GHGs may have utility in certain contexts such as rulemakings,¹⁷⁵ 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.¹⁷⁶ Currently, however, there are no criteria to identify what monetized values are significant for NEPA purposes.¹⁷⁷ Nor are we aware of any other currently scientifically

¹⁷¹ Sierra Club July 10, 2023 Comments on EA at 12-16.

¹⁷² *Id.* at 12.

¹⁷³ *Id.* at 13-14.

¹⁷⁴ EA at 83-84. We note that “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 4-209. To the extent the Final EIS contains any language indicating otherwise, such language is superseded and controlled by this order.

¹⁷⁵ *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 35-37 (2018).

¹⁷⁶ *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *aff’d sub nom. Appalachian Voices v. FERC*, No. 15-1271, 2019 WL 847199 (D.C. Cir. 2019) (unpublished); *Del. Riverkeeper Network v. FERC*, 45 F.4th at 111. 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.”

¹⁷⁷ *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051 at P 37; *see also Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, *order on reh’g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff’d, Appalachian Voices v. FERC*, 2019 WL 847199, at * 2 (unpublished) (“[The Commission] gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”); *EarthReports v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (accepting the Commission’s explanation why the social cost of carbon tool would not be appropriate or informative for project-specific review,

accepted method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions.¹⁷⁸ The D.C. Circuit has repeatedly upheld the Commission's decisions not to use the social cost of carbon, including to assess significance.¹⁷⁹ In fact, the D.C. Circuit recently affirmed the Commission's decision to not analyze the social cost of carbon in its NEPA analysis,¹⁸⁰ 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."¹⁸¹

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).

¹⁷⁸ *See, e.g., LA Storage, LLC*, 182 FERC ¶ 61,026 at P 14 ("there are currently no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria").

¹⁷⁹ *See, e.g., Alaska LNG* 67 F.4th at 1184 (explaining that "the Commission compared the Project's direct emissions with existing Alaskan and nationwide emissions," "declined to apply the social cost of carbon for the same reasons it had given in a previous order"; describing those reasons as: (1) "the lack of consensus about how to apply the social cost of carbon on a long time horizon," (2) that "the social cost of carbon places a dollar value on carbon emissions but does not measure environmental impacts as such," and (3) "FERC has no established criteria for translating these dollar values into an assessment of environmental impacts"; and recognizing that the Commission's "approach was reasonable and mirrors analysis . . . previously upheld" and that the Commission "had no obligation in this case to consider the social cost of carbon") (citations omitted); *EarthReports*, 828 F.3d at 956 (upholding the Commission's decision not to use the social cost of carbon tool due to a lack of standardized criteria or methodologies, among other things)); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104 (also upholding the Commission's decision not to use the social cost of carbon); *Appalachian Voices v. FERC*, 2019 WL 847199 (unpublished) (same).

¹⁸⁰ *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.").

¹⁸¹ *Id.*

105. We note that there currently are no accepted tools or methods for the Commission to use to determine significance; therefore, the Commission is not herein characterizing these emissions as significant or insignificant.¹⁸² Accordingly, we have taken the required “hard look” and have satisfied our obligations under NEPA.

6. Air Quality

106. Sierra Club argues that the EA fails to adequately analyze impacts of the project’s criteria pollutant emissions under the NAAQS.¹⁸³ It asserts that portions of the project are in an area designated as nonattainment for ozone NAAQS, and that the EA incorrectly notes the attainment status of Fort Bend County, Texas, where Compressor Station 33 will be located, as marginal nonattainment with the 2015 ozone standard and serious nonattainment with the 2008 ozone standard.¹⁸⁴ Sierra Club states that the correct classification of Fort Bend County is moderate nonattainment for the 2015 ozone standard and severe nonattainment for the 2008 standard and questions if these changes would affect the Commission’s determination that Compressor Station 33 would only be required to comport with the minor New Source Review permitting process.¹⁸⁵

107. Sierra Club is correct that in October 2022 the EPA reclassified the air quality control region for Fort Bend County, Texas, to moderate nonattainment for the 2015 ozone standard and severe nonattainment with the 2008 ozone standard.¹⁸⁶ In the EA, Table 7 provides attainment statuses for the air quality control regions associated with the project, which did not reflect the EPA’s reclassification.¹⁸⁷ Nonetheless, the General

¹⁸² The February 18, 2022 Interim GHG Policy Statement, *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022), which proposed to establish a NEPA significance threshold of 100,000 tons per year of CO_{2e} as a matter of policy, has been converted to draft status, and opened to further public comment. Order on Draft Policy Statements, 178 FERC ¶ 61,197 at P 2.

¹⁸³ Sierra Club July 10, 2023 Comments on EA at 16-20.

¹⁸⁴ *Id.* at 17.

¹⁸⁵ *Id.*

¹⁸⁶ *Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards*, 87 Fed. Reg. 60,926 (Oct. 7, 2022).

¹⁸⁷ The footnote states that “in anticipation of EPA’s proposed redesignation of the Houston-Galveston Intrastate Air Quality Control Region [of which Fort Bend County is within] from serious to severe for the 2008 standards and marginal to moderate

Conformity Applicability Analysis in Table 8 of the EA uses the correct applicable threshold for severe non-attainment areas of 25 tons per year of volatile organic compounds and nitrogen oxides (NO_x).¹⁸⁸ Texas CEQ confirmed in its comments on the EA that “emissions from this proposed action are expected to be *de minimis* and a General Conformity determination is not required.”¹⁸⁹ Thus, we affirm the conclusion in the EA that the project’s applicable emissions are below the *de minimus* thresholds for severe nonattainment areas and do not trigger General Conformity review for ozone, and we conclude that no further analysis is required.

108. Sierra Club also states that the EA relies on a comparison of modeled pollutant concentrations to the EPA’s Significant Impact Levels (SIL) to assert that project emissions will comply with the NAAQS and that there will not be significant air quality impacts.¹⁹⁰ Sierra Club further notes that the EA does not examine whether reliance on the SILs is appropriate for this project.¹⁹¹ It argues that even small amounts of new pollution that are less than the SILs could cause an area to violate the NAAQS.¹⁹²

109. Commission staff’s evaluation does not rely on the SILs as Sierra Club suggests. SILs are defined concentrations of criteria pollutants in the ambient air that are considered inconsequential in comparison to the NAAQS.¹⁹³ SILs are a compliance tool used to simplify modeling¹⁹⁴ and represent a low quantity of the NAAQS. For most

for the 2015 standard, the General Conformity analysis included . . . is based on the more stringent classifications being proposed by the EPA.” EA at 51 (Table 7, footnote c).

¹⁸⁸ 40 C.F.R. § 93.153; EA at 55 (tbl. 8).

¹⁸⁹ Texas CEQ July 13, 2023 Comments at 1.

¹⁹⁰ Sierra Club July 10, 2023 Comments on EA at 17-18.

¹⁹¹ *Id.* at 18.

¹⁹² *Id.*

¹⁹³ 40 C.F.R. § 51.165(b)(2) (2022); EPA, *Guidance Concerning the Implementation of the 1-hour NO₂ NAAQS for the PSD Program* (June 29, 2010), <https://www.epa.gov/sites/default/files/2020-09/documents/appwno2.pdf>.

¹⁹⁴ Per 40 C.F.R. pt. 51 (2022), Appendix W – Guideline on Air Quality Models, Section 8.1.2 a.: “the modeling domain or project’s impact area shall include all locations where the emissions of a pollutant from the new or modifying source(s) may cause a significant ambient impact.” Further, per Section 9.2.3 c, “The receptors that indicate the location of significant ambient impacts should be used to define the modeling domain for

projects, use of the SILs as a screening tool is a conservative method to evaluate if air impacts could potentially be significant. For example, the SIL for 1-hour NO₂ is 7.5 micrograms per cubic meter, which is just 4% of the NAAQS (188 micrograms per cubic meter). When making a conclusion to determine a project's compliance with the NAAQS, Commission staff uses the project's maximum concentration in addition to the existing background concentration and compares this to the NAAQS; staff does not use the SILs.

110. As stated in the EA, the ambient concentration for NO₂ in the air quality control region for the project comprises 34% of the 1-hour NAAQS.¹⁹⁵ In this case, the addition of the maximum modeled concentration of NO₂ from the project to the existing ambient concentration would result in a total NO₂ concentration of 37% of the 1-hour NAAQS.¹⁹⁶ Therefore, the project would not result in an exceedance of the NAAQS and would not result in significant impacts on air quality.¹⁹⁷

111. Sierra Club further argues that the EA does not fully explain the air dispersion modeling, or how it determined “representative ambient background concentrations” for use in determining NAAQS compliance.¹⁹⁸

112. Transco's application includes detail about the air modeling assumptions as well as the justification for the selection of each air monitor used in the NAAQS analysis; Transco selected a different monitor for each pollutant based on the best available data for that pollutant. With the exception of NO₂, all of the monitors selected were the nearest monitor to Compressor Station 33 and are representative of the ambient conditions at Compressor Station 33.¹⁹⁹ A farther NO₂ monitor was selected because it was considered more representative of the project area based on surrounding land use and primary wind direction and would provide a more conservative NAAQS compliance assessment for the following reasons: (1) the monitor was selected from a more developed area than the Compressor Station 33 site, which typically indicates a higher background concentration of pollutants and (2) the monitor is downwind from the

use in the cumulative impact analysis.”

¹⁹⁵ EA at 62.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 61-62.

¹⁹⁸ Sierra Club July 10, 2023 Comments on EA at 18.

¹⁹⁹ Transco Application Resource Report 9, tbl. 9.2-4, Fig. 9.2-1.

Houston metropolitan area.²⁰⁰ Therefore, we conclude that the monitors selected for use in determining NAAQS compliance were appropriate and justified.

7. Environmental Impacts Conclusion

113. Based on the analysis in the EA as supplemented or clarified herein,²⁰¹ we conclude that if constructed and operated in accordance with Transco's application and supplements and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.²⁰²

IV. Conclusion

114. The proposed project will enable Transco to provide firm transportation service from its existing interconnection with Valley Crossing Pipeline to its existing Compressor Station 65 Pooling Point through a combination of incremental firm transportation service, previously turned back firm transportation service, and the conversion of IT Feeder System service to firm transportation service. We find that Transco has demonstrated a need for the Texas to Louisiana Project, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project 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 necessity requires approval of the Texas to Louisiana Project, subject to the conditions in this order.

115. As noted above, our approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended in our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. 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 construction and

²⁰⁰ *Id.*

²⁰¹ Although the analysis in the EA 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 in the EA.

²⁰² We are not making a significance determination regarding GHG impacts for the reasons discussed in *supra* PP 95-105.

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.

116. 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.²⁰³

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

The Commission orders:

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

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

- (1) completion of construction of the proposed facilities and making them available for service within 2 years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

²⁰³ 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).

- (3) compliance with the environmental conditions listed in the appendix to this order; and
- (4) making a filing affirming that the parties have executed firm service agreements for volumes and service terms equivalent to those in the precedent agreement before commencing construction.

(C) Transco is required to charge its existing system recourse rate as the initial recourse rate for firm transportation service using the project capacity, as more fully discussed above. Transco is also directed to charge the applicable system interruptible rate for the project capacity.

(D) Transco's proposal to charge its generally applicable system fuel retention and electric power rates for transportation on the project is approved.

(E) Transco's proposal to convert IT Feeder System service to firm service is approved.

(F) A predetermination is issued for Transco to roll the costs of the project into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances.

(G) Transco shall keep separate books and accounting of costs attributable to the proposed services, as more fully described above.

(H) Sierra Club's motion to disclose is dismissed as moot.

(I) Transco shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

Appendix

Environmental Conditions

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

1. Transcontinental Gas Pipe Line Company, LLC (Transco) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of 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 activities associated with abandonment and restoration of the Texas to Louisiana Energy Pathway Project (project). This authority shall allow:

the modification of conditions of the order;

 - e. stop-work authority; and
 - f. 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 impacts resulting from project construction and operation.
3. **Prior to any construction,** Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for 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.

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all 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/figures/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 authorization and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Transco must file revisions to its plan **as schedules change**. The plan shall identify:
 - a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
 - b. how Transco will incorporate these requirements into the contract bid

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

restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any scheduled changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered, and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of non-compliance, and Transco's response.
9. Transco must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or

- b. identifying which of the conditions in the order Transco has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Transco shall conduct and file with the Secretary a noise survey of Compressor Station 40 and nearby noise sensitive areas (NSA), when Compressor Station 40 is operated at full load. Include a plot plan identifying the noise measurement locations and list the time of day, duration of measurements, weather conditions, wind speed and direction, and other noise sources present during the survey. The noise survey report shall include sound level measurements collected during daytime and nighttime periods at the closest NSAs to Compressor Station 40.
13. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing the new Compressor Station 33 and modified Compressor Station 40 in service. If full load condition noise surveys are not possible, Transco shall provide interim surveys at the maximum possible horsepower load **within 60 days** and provide the full load survey **within 6 months**. If the noise attributable to the operation of the new Compressor Station 33 or modified Compressor Station 40 under interim or full horsepower load conditions exceed a day-night noise average (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby NSAs, Transco shall file a report on what changes are needed and install additional noise controls to meet that level **within 1 year** of the facility's in-service date. Transco shall confirm compliance with the L_{dn} of 55 dBA requirements by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-495-000

(Issued January 18, 2024)

CLEMENTS, Commissioner, *dissenting*:

1. I dissent from the Order¹ for two reasons. First, the administrative record is insufficient to support the Order’s conclusion that the Texas to Louisiana Project is required by the public convenience and necessity. Second, the majority’s insistence that there are no acceptable tools for determining the significance of greenhouse gas (GHG) emissions is unsupported and arbitrary.

2. The Natural Gas Act (NGA) provides that, before issuing a certificate authorizing a proposed natural gas project, the Commission must find that the project “is or will be required by the present or future public convenience and necessity.”² As the Supreme Court has explained, the Commission must consider “all factors bearing on the public interest” in determining the public convenience and necessity.³ According to the Court, the statutory standard “connotes a flexible balancing process.”⁴ In 1999, the Commission adopted its Certificate Policy Statement establishing how it will balance a project’s public benefits against its potential adverse effects, including environmental impacts.⁵ For the reasons explained below, the majority’s public interest determination contravenes the Certificate Policy Statement.

3. According to the Certificate Policy Statement, to demonstrate that a proposed project is in the public interest, “*an applicant must show public benefits* that would be

¹ *Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,047 (2024) (Order).

² NGA § 7(e), 15 U.S.C. § 717f(e).

³ *Atl. Refin. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959).

⁴ *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 23 (1961).

⁵ *See Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

achieved by the project that are proportional to the project's adverse impacts.”⁶ Transco has failed to meet that evidentiary burden. Transco's precedent agreement with gas producer EOG Resources, Inc. (EOG) is the sole evidence in the record supporting the need for, and benefit of, the Texas to Louisiana Project. To be sure, the precedent agreement is evidence of EOG's need (or at least desire) for service from Transco, but it is not sufficient evidence of the *public's* potential benefit from the project.

4. The Certificate Policy Statement calls for the submission of “relevant *evidence*” of public benefits, and states “[v]ague assertions of public benefits will not be sufficient.”⁷ Transco submitted no evidence substantiating the public benefits claimed in its certificate application.⁸ Indeed, there is scant evidence that new construction is actually necessary to serve EOG.⁹ Unlike the more typical certificate proceedings in which I voted to

⁶ Certificate Policy Statement, 88 FERC ¶ 61,227, at 61,748 (emphasis added).

⁷ *Id.* (emphasis added).

⁸ Transco's certificate application states that the project will enable EOG “to supply a wide range of customers (which may include LNG terminals and industrial customers) along the Texas and Louisiana Gulf Coast and to gas and power utilities. In providing access to incremental natural gas supply, the Project will increase supply competition to existing and developing markets as well as increase resiliency and reliability in the markets the Project Shipper will serve.” Transco Application at 7-8.

⁹ In its certificate application, Transco states that “[a]ccess to markets from Project Shipper's production basins is currently constrained by limited pipeline infrastructure, and the low scheduling priority and potential intermittency or unavailability of interruptible transportation renders it inadequate for Project Shipper to reliably serve its customers.” Transco Application at 11. Transco submitted no evidence substantiating this statement. Staff's environmental assessment (EA) for the project stated that staff reviewed other pipeline systems in the vicinity of Transco's proposed project and concluded they would be unable to serve the same supply points without construction of additional facilities. EA at 87-88. According to the EA, “[i]t is *anticipated* that these pipelines are at capacity, but none of these entities have offered any information for the record to demonstrate their feasibility to meet the Project's objectives.” *Id.* at 87. (emphasis added). The EA does not cite to any source material, making it impossible to fully understand and confirm the accuracy of the EA's analysis. Apparently to bolster the EA after the fact, the Order explains that the electronic bulletin boards (EBBs) of other interstate pipelines in the area do not indicate they have capacity available. *See* Order, 186 FERC ¶ 61,047 at P 52 n.91. However, the Order fails to mention that EBBs show only *next day* capacity availability and reveal nothing about long-term availability. Neither the EA nor the Order reflects whether there has been any consideration of EOG's ability to enter into a package of transportation agreements on two or more pipeline

approve a certificate, where project shippers submitted supporting statements explaining their need for the project,¹⁰ EOG has filed nothing. For its part, Transco makes only “vague assertions” of public benefits, none of which can be credited under the Certificate Policy Statement.

5. The Certificate Policy Statement further provides that “the evidence necessary to establish the need for the project will usually include a market study.”¹¹ None was submitted in this proceeding. The majority’s *ipse dixit* finding that the project will “enhance[] the efficiency of the domestic natural gas market in general”¹² is drawn from thin air.

6. The Commission’s ability to assess the public convenience and necessity in this case is severely undermined by EOG’s failure to identify “specific end-use markets that could be indirectly served by the project-transported gas.”¹³ As the Supreme Court has found, the Commission may consider the end use of gas in its public interest determinations under section 7 of the NGA.¹⁴ And it behooves project applicants to

systems as an alternative to the agreement with Transco. Simply put, the unsupported statements in Transco’s application, the EA, and the Order do not constitute substantial evidence of a capacity constraint preventing EOG from reaching whatever markets it plans to serve (which is itself unknown).

¹⁰ For example, in *Equitrans, L.P.*, 183 FERC ¶ 61,200, at PP 10, 15 (2023), the project’s anchor shipper, EQT, filed a supporting statement explaining its need for the project. Moreover, Equitrans, the project sponsor, submitted information from the U.S. Energy Information Administration (EIA) showing increasing demand for natural gas in the target market. *Id.* at P 15 n.13. The Certificate Policy Statement specifically cites EIA market growth projections as acceptable evidence of need. Certificate Policy Statement, 88 FERC ¶ 61,227, at 61,748.

¹¹ *Id.*

¹² Order, 186 FERC ¶ 61,047 at P 16.

¹³ *See id.* at P 98.

¹⁴ *See FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. at 31 (holding that the Commission did not abuse its discretion in considering end use among other factors in determining the public convenience and necessity). Subsequent legislation deregulating natural gas prices did not alter the Commission’s authority under section 7 of the NGA. Neither the Natural Gas Policy Act of 1978 (NGPA) nor the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act) affected the Commission’s jurisdiction over interstate natural gas pipelines, including its authority to consider end use in section 7 certificate decisions. *See* NGPA, 15 U.S.C. §§ 3301-3432; Decontrol Act, Pub. L. No.

provide that information to us. For example, the Commission can readily understand the public benefit of building new pipeline capacity to serve a local distribution company or a gas-fueled electric power plant. Here, we have no information on how the gas will be used, making the paucity of record evidence on public benefits all the more damaging to Transco's cause.¹⁵

7. It is well-established that a precedent agreement for 100% of a project's capacity provides "significant evidence of the need for [a] proposed project," as the Order finds here.¹⁶ However, as the D.C. Circuit has observed, that does not mean that a precedent agreement is "always *sufficient* to show that construction of a proposed new pipeline 'is or will be required by the present or future public convenience and necessity.'"¹⁷ Most cases holding that the Commission could rely on precedent agreements to establish need or public benefit are distinguishable from this case because the Commission in those instances either had information concerning the end use of the gas to be transported or had additional evidence supporting its need finding or both.¹⁸ What makes this case

101-60, 103 Stat. 157 (1989). Both the Senate and House Reports for the latter statute stated that the legislation "does not deregulate natural gas pipelines." S. Rep. No. 101-38, at 8 (1989); H.R. Rep. No. 101-29, at 4 (1989).

¹⁵ The record in this case raises more questions for me than it answers. For example, the Order finds there is too little information available about the sources of EOG's gas and the customers for that gas to find either the upstream or downstream greenhouse gas emissions associated with the project to be foreseeable. *See* Order, 186 FERC ¶ 61,047 at PP 98-99. How, then, for purposes of showing "market support" and "public benefits" in its certificate application, does Transco know that EOG's "gas volumes are produced at a relatively uniform rate, are sold to its customers accordingly, and require reliable, consistent access to markets"? *See* Transco Application at 11, 21.

¹⁶ Order, 186 FERC ¶ 61,047 at P 16.

¹⁷ *Env'tl Def. Fund v. FERC*, 2 F.4th 953, 972 (D.C. Cir. 2021) (emphasis in original) (finding that the Commission acted arbitrarily in failing to "look behind" affiliate precedent in particular circumstances presented).

¹⁸ *See, e.g., Township of Bordentown v. FERC*, 903 F.3d 234, 263 (3d Cir. 2018) (precedent agreement was with a natural gas distribution company, which stated it entered into the agreement to enhance reliability and resiliency in a specific area of its service territory); *Meyersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1307 (D.C. Cir. 2015) (precedent agreements were with two municipal utilities and a natural gas distribution company); *City of Oberlin v. FERC*, 937 F.3d 599, 606 (D.C. Cir. 2019) (pipeline sponsor entered precedent agreements with eight shippers, including natural gas distribution companies and an electric utility company; the Commission described the

exceptional is the *combination* of no information on actual end use and the lack of any additional supporting evidence of public benefits beyond the precedent agreement. On this threadbare record, it is arbitrary and capricious for the Commission to conclude that the Texas to Louisiana Project is required by the public convenience and necessity.

8. The second reason for my dissent is the Order's unsatisfactory treatment of the project's GHG emissions. In my concurrence in the 2023 *Transco* order¹⁹, I explained the history of the language in Paragraph 104 of the Order, which is the so-called "*Driftwood* compromise."²⁰ In *Driftwood*, the majority suddenly adopted new language declaring that there are no methods for assessing the significance of GHG emissions, and particularly criticizing the Social Cost of GHGs protocol.²¹ 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 docket²² addressing methods for doing so; and (2) the language departs from previous Commission precedent without reasoned explanation, thereby violating the Administrative Procedure Act.²³ I dissent from Paragraph 104 of this Order for the same reasons.

shippers in *Nexus Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 41 (2017)).

¹⁹ See *Transcon. Gas Pipe Line Co.*, 184 FERC ¶ 61,066 (2023) (Clements, Comm'r, concurring at PP 2-3) (*Transco*).

²⁰ See *id.* (Phillips, Chairman, and Christie, Comm'r, concurring at PP 1-2).

²¹ See *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

²² Docket No. PL21-3.

²³ 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) (Clements, Comm'r, dissenting in part at PP 35, 44); *Transcon. Gas Pipe Line Co.*, 185 FERC ¶ 61,130 (2023) (Clements, Comm'r, dissenting in part at PP 100-101); *Texas LNG Brownsville LLC*, 185 FERC ¶ 61,079 (2023) (Clements, Comm'r, dissenting at PP 9-10); *Rio Grande LNG, LLC*, 185 FERC ¶ 61,080 (2023) (Clements, Comm'r, dissenting at PP 9-10); *Gas Transmission Northwest, LLC*, 185 FERC ¶ 61,035 (2023) (Clements, Comm'r, concurring in part and dissenting in part at PP 7-8); *WBI Energy Transmission, Inc.*, 185 FERC ¶ 61,036 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Venture Global Plaquemines LNG, LLC*, 185 FERC ¶ 61,037 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Texas Eastern Transmission, LP*, 185 FERC ¶

9. As I have said before, the Commission has not seriously studied whether the Social Cost of GHGs protocol or another tool can or should be used to determine significance. Rather, the majority simply decided there is no acceptable method, with no explanation of why the Commission departed from the approach taken in earlier certificate orders.²⁴ I cannot countenance the Commission's continued refusal to objectively consider potential methods for assessing the impacts of GHG emissions and transparently incorporate GHG impacts in its balancing of factors bearing on the public convenience and necessity under the Natural Gas Act.

10. Since joining the Commission, I have supported updating and revising the Certificate Policy Statement because the circumstances impacting the need for new pipeline capacity are far more complex than they were in 1999 and the Commission's policies and practices have not evolved to address that complexity.²⁵ As the U.S. energy system transition accelerates and new factors come into play (such as the increased demand for liquefied natural gas abroad), it is more important than ever that the

61,038 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Trailblazer Pipeline Company LLC*, 185 FERC ¶ 61,039 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Equitrans, L.P.*, 185 FERC ¶ 61,040 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Port Arthur LNG Phase II, LLC*, 184 FERC ¶ 61,184 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Venture Global Calcasieu Pass, LLC*, 184 FERC ¶ 61,185 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Northern Natural Gas Company*, 184 FERC ¶ 61,186 (2023) (Clements, Comm'r, dissenting in part at PP 2-3); *Texas Eastern Transmission, LP*, 184 FERC ¶ 61,187 (2023) (Clements, Comm'r, dissenting in part at PP 2-4); *Equitrans, L.P.*, 183 FERC ¶ 61,200 (2023) (Clements, Comm'r dissenting at PP 2-3); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (Clements, Comm'r, dissenting at PP 5-8); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 (2023) (Clements, Comm'r, dissenting at PP 14-15); *Texas LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023) (Clements, Comm'r, dissenting at PP 14-15).

²⁴ Before its decision in *Driftwood*, the Commission had explained that it was not determining the significance of GHG emissions because the issue of how to do so was under consideration in the GHG Policy Statement docket. *See, e.g., Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,006, at P 73 & n.174 (2023); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 46 & n.93 (2023). To depart from prior precedent without explanation violates the Administrative Procedure Act. *See, e.g., West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17 (D.C. Cir. 2014) (“[T]he Commission cannot depart from [prior] rulings without providing a reasoned analysis. . . .”) (citations omitted).

²⁵ *See Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,006 (2023) (Clements, Comm'r, concurring at P 1) (order granting certificate to Transco's Regional Energy Access Expansion project).

Commission have a full understanding of each proposed project’s potential benefits and costs, including environmental costs. While working to modernize the Certificate Policy Statement, the Commission must at least insist on adherence to the existing policy if it is serious about ensuring the *orderly* development of natural gas supplies.²⁶

For these reasons, I respectfully dissent.

Allison Clements
Commissioner

²⁶ See *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 669-70, 670 n.6 (1976) (a principal aim of the NGA is to encourage the “orderly development of plentiful supplies of . . . natural gas at reasonable prices,” and subsidiary purposes include environmental protection).