

189 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang.

Natural Gas Pipeline Company of America LLC Docket No. CP24-8-000

ORDER ISSUING CERTIFICATE

(Issued November 21, 2024)

1. On October 18, 2023, Natural Gas Pipeline Company of America LLC (Natural) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² for authorization to construct, install, modify, and operate certain natural gas facilities at existing compressor stations in Montgomery and Liberty Counties, Texas (Texas-Louisiana Expansion Project). The project is designed to provide 467,000 dekatherms per day (Dth/d) of firm transportation service, through a combination of reserved existing unsubscribed capacity on various transportation paths on Natural's pipeline system and 300,000 Dth/d of new eastbound firm transportation service on Natural's Louisiana Line, in order to meet growing demand in the Texas and Louisiana Gulf Coast region. For the reasons discussed below, we grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

2. Natural, a limited liability company,³ is a natural gas company as defined by section 2(6) of the NGA,⁴ engaged in the transportation of natural gas in interstate commerce and subject to the Commission's jurisdiction. Natural operates natural gas transportation facilities that extend from New Mexico and Texas, through Oklahoma, Kansas, Nebraska, Iowa, Arkansas, and Missouri, to its termini in Illinois and Louisiana.

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2023).

³ Natural is owned by Kinder Morgan, Brookfield Infrastructure Partners, and ArchLight Capital Partners.

⁴ 15 U.S.C. § 717(a)(6).

3. Natural's Louisiana Line is composed of two 30-inch-diameter pipelines that extend east from Compressor Station 302 in Montgomery County, Texas, and terminate at the end of Natural's system in Vermilion Parish, Louisiana. Natural's Texas-Louisiana Expansion Project will create capacity to support 300,000 Dth/d of incremental firm transportation service eastbound on Segment 25 of its Louisiana Line.⁵ This capacity, when combined with the unsubscribed capacity Natural has reserved for the project from various locations on its system,⁶ will enable Natural to provide up to 467,000 Dth/d of firm transportation service for the project shippers.

4. Specifically, Natural proposes to:

- modify existing Compressor Station 302, located in Montgomery County, Texas, to increase the total certificated horsepower (HP) from 26,800 to 48,340 by (a) installing a new 18,340 HP electric motor driven (EMD) compressor unit; (b) uprating two existing EMD compressor units by 1,600 HP each;⁷ and (c) re-wheeling⁸ all three existing EMD compressor units;
- modify existing Compressor Station 343, located in Liberty County, Texas, by re-wheeling two existing EMD compressor units; and

⁵ Segment 25 refers to the segment of the Louisiana Line extending from Compressor Station 302 to the Texas-Louisiana border.

⁶ Natural has reserved existing unsubscribed capacity on a long-term basis as follows: (i) southbound capacity supporting 160,000 Dth/d of firm transportation service from various receipt points in its Iowa-Illinois Receipt Zone; (ii) southbound capacity supporting 65,000 Dth/d of firm transportation service from various receipt points in its Texas Oklahoma Receipt Zone; and (iii) northbound capacity supporting 242,000 Dth/d of firm transportation service from various receipt points in its South Texas Receipt Zone. *See* Application at 10-11. Natural also reserved existing unsubscribed eastbound capacity supporting the following increments of firm transportation service on a long-term basis along its Louisiana Line: (i) 167,125 Dth/d on Segment 25; (ii) 467,125 Dth/d on Segment 23; and (iii) 373,125 Dth/d on Segment 24. *See* Application Exhibit I (public) at 4.

⁷ Specifically, Natural will change the control settings related to the electrical voltage, amperage, and frequency, which control the maximum horsepower of the existing motor.

⁸ Re-wheeling compressor units refers to replacing the impellers to optimize centrifugal compression efficiency of the unit. An impeller is a part of a centrifugal pump that rotates to accelerate fluid outward from the center of rotation.

- install various auxiliary facilities under section 2.55(a) at existing Compressor Stations 302 and 343, including additional gas cooling equipment, motor control center buildings, new filter separators, and station yard piping.

5. On March 10, 2022, Natural held a non-binding open season to solicit interest in service on the Texas-Louisiana Expansion Project.⁹ In response to the open season, Natural executed two binding, long-term precedent agreements for a total of 337,000 Dth/d of firm transportation service with Devon Gas Services, L.P. (Devon) for 242,000 Dth/d and EDF Trading North America, LLC (EDF) for 95,000 Dth/d. Subsequently, Natural executed precedent agreements with Golden Pass LNG Terminal LLC (Golden Pass) for 50,000 Dth/d of firm transportation service and Delfin Midstream Inc. (Delfin) for 80,000 Dth/d. Delfin has since informed Natural that it may be unable to execute its service agreement for the full 80,000 Dth/d of firm transportation service.¹⁰ The precedent agreements with the other three project shippers amount to 387,000 Dth/d, or 83% of the proposed project's total capacity.¹¹ The project shippers have elected to pay negotiated rates.¹² Natural states that its proposal will allow it to meet the growing demand for transportation service in the Texas and Louisiana Gulf Coast area.¹³

6. The estimated cost of the Texas-Louisiana Expansion Project is approximately \$71,981,853. As further explained below, Natural proposes to use its existing reservation and commodity recourse charges under Rate Schedule Firm Transportation Service (FTS) as initial recourse rates for firm transportation service and its existing Rate Schedule ITS rate as the recourse rate for interruptible transportation service.¹⁴ Natural also requests a presumption of rolled-in rate treatment.¹⁵

⁹ Application at 10.

¹⁰ Natural August 26, 2024 Supplemental Information at 2.

¹¹ *Id.* Of the 300,000 Dth/d of new incremental firm transportation service, Natural executed precedent agreements for 220,000 Dth/d. Natural August 26, 2024 Supplemental Information at 2.

¹² These rates include the system-wide option under Rate Schedule FTS. Application at 15.

¹³ Application at 6.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 18; Natural February 2024 Supplemental Information at 2.

II. Notice, Interventions, Protests, and Comments

7. Notice of Natural's application was issued on October 31, 2023, and published in the *Federal Register* on November 6, 2023, with comments, interventions, and protests due November 21, 2023.¹⁶ EDF, Northern Illinois Gas Company doing business as Nicor Gas Company, Antero Resources Corporation and MU Marketing LLC, NJR Energy Services Company, LLC, American Gas Association, and NRG Business Marketing LLC filed timely, unopposed motions to intervene.¹⁷ Golden Pass filed a late motion to intervene on March 7, 2024, which was granted pursuant to Rule 214(d).¹⁸

III. Discussion

8. Because the proposed facilities for the Texas-Louisiana Expansion Project will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁹

A. Certificate Policy Statement

9. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.²⁰ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed

¹⁶ 88 Fed. Reg. 76205 (Nov. 6, 2023).

¹⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2024).

¹⁸ April 1, 2024 Notice Granting Late Intervention.

¹⁹ 15 U.S.C. § 717f(c), (e).

²⁰ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000). 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). The Commission stated that it will not apply the draft policy statements to pending applications or applications filed before the Commission issues any final guidance, *id.* P 2, and the Commission is not required to do so. *See Healthy Gulf v. FERC*, 107 F.4th 1033, 1040-41 (D.C. Cir. 2024) (upholding the Commission's decision not to apply the draft policy statements); *Ala. Mun. Distrib. Grp. v. FERC*, 100 F.4th 207, 214-15 (D.C. Cir. 2024) (same).

project will serve the public interest. It explains that, in deciding whether 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.

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

1. No Subsidy Requirement and Project Need

11. 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. The Commission has determined that, in general, where a pipeline proposes to charge incremental rates for new construction that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that existing shippers will not subsidize the project.²¹ 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

12. As discussed below, Natural has demonstrated that the illustrative incremental rates for the Texas-Louisiana Expansion Project are lower than its existing system rates

²¹ See, e.g., *Transcon. Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,066, at P 12 (2023).

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).

under Rate Schedule FTS.²³ Accordingly, we find that Natural's proposal to charge its existing Rate Schedule FTS reservation and usage charges as the initial recourse rates for firm transportation service, and its existing Rate Schedule ITS rate as the recourse rate for interruptible transportation service for the project, will not result in existing customers subsidizing the Texas-Louisiana Expansion Project.

13. Natural's proposed expansion is designed to meet the demand for natural gas transportation service in the Texas and Louisiana Gulf Coast region.²⁴ Natural has entered into long-term precedent agreements with unaffiliated shippers for 83% of the project's capacity.²⁵ No comments were filed questioning the need for the project. Accordingly, we find that Natural sufficiently demonstrates need for the project.

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

14. We find that Natural's Texas-Louisiana Expansion Project will not adversely affect service to its existing shippers, or other pipelines and their captive customers. Natural designed the project to provide additional, reliable firm transportation service for the expansion shippers without impacting services to existing customers. The project is not intended to replace existing service but will provide additional incremental service for the shippers.²⁶ We also find that there will be no adverse impact on other pipelines in the region or their captive customers because the project will not displace existing service on

²³ See discussion *infra* Part III.B.

²⁴ Natural Application at 6, 27. Natural states that “[g]iven the location of its mainline facilities and existing reserved capacity, Natural is uniquely positioned to meet the growing demand for transportation service along the Texas and Louisiana Gulf Coast.” *Id.* at 10. Specifically, Natural will “provid[e] access to natural gas supplies from both the south end and north end of Natural’s system as well as increased market diversity given Natural’s access to LNG export facilities along the Louisiana Line.” *Id.* at 28-29.

²⁵ See, e.g., *Enable Gas Transmission, LLC*, 175 FERC ¶ 61,183, at P 30 (2021) (finding a long-term precedent agreement for approximately 67% of the project’s capacity demonstrated a need for the proposed project); *Double E Pipeline, LLC*, 173 FERC ¶ 61,074, at P 35 (2020) (finding a 10-year, firm precedent agreement for approximately 74% of the project’s capacity adequately demonstrated that the project was needed). See also *Sierra Club v. FERC*, 38 F.4th 220, 230 (D.C. Cir. 2022) (affirming the Commission’s finding that a long-term precedent agreement for 80% of the project’s capacity showed an actual need for the project).

²⁶ Application at 27.

other pipelines. No pipelines or their captive customers have objected to Natural's proposal.

15. We are further satisfied that Natural has taken appropriate steps to minimize adverse economic impacts on landowners and surrounding communities. Natural designed the project to fit within its existing footprint or on property it owns, thus limiting the extent of potential project impacts on landowners.²⁷ Construction of the project is expected to affect approximately 51.15 acres of land during construction (all within the existing fencelines of the two compressor stations), including 3.37 acres of existing operational land.²⁸ Less than 2 acres will have new, permanent impacts.²⁹ No landowner has protested the application.

3. Certificate Policy Statement Conclusion

16. The proposed project will provide up to 300,000 Dth/d of new firm natural gas transportation service. Natural entered into precedent agreements with Devon, EDF, and Golden Pass for 83% of the project's total capacity. Accordingly, we find that Natural has shown a need for the project. Further, the project will not have adverse impacts on existing shippers or other pipelines and their existing customers and will have minimal economic impacts on the interests of landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.³⁰

B. Rates

1. Initial Rates

17. Natural proposes to use its existing Rate Schedule FTS³¹ reservation and usage charges as the initial maximum recourse rate for firm transportation service and its

²⁷ *Id.*

²⁸ Natural October 2023 Ex. F-1 Resource Report 1 at 1-7.

²⁹ *Id.* at 1-7 to 1-8.

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

³¹ Natural's Rate Schedule FTS offers Peak rates, effective November through March, and Off-Peak rates, effective April through October.

existing Rate Schedule ITS rate as the recourse rate for interruptible transportation service provided on the capacity to be used for the Texas-Louisiana Expansion Project. Natural calculated an illustrative incremental monthly reservation charge of \$3.7443 per Dth and an illustrative incremental usage charge of \$0.0021 per Dth.³² The illustrative charges are based on an estimated first-year incremental reservation cost of service of \$13,479,492, a usage cost of \$218,050, annual reservation billing determinants of 3,600,000 Dth, and usage volumes of 104,025,000 Dth.³³ The cost of service reflects a transmission depreciation rate of 2.10% and pre-tax rate of return of 14.98%.³⁴

18. The Commission has generally held that the applicable system recourse rate is appropriate for a project if the estimated cost-based rate is less than the current system rate. Otherwise, the pipeline is required to establish an incremental rate to ensure that there is no subsidization from existing shippers.³⁵ Natural's illustrative incremental reservation and usage charges of \$3.7443 and \$0.0021 per Dth are lower than the currently effective Rate Schedule FTS reservation and usage charges of \$8.0363 and \$0.0029 per Dth.³⁶

19. We have reviewed Natural's proposed cost of service and initial rates and find that they are consistent with Commission policy. Because the rate analysis demonstrates that the maximum Rate Schedule FTS system recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges, we approve Natural's request to use its existing system charges under Rate Schedule FTS as the initial recourse charges for the Texas-Louisiana Expansion Project. In addition, we approve Natural's request to use its existing interruptible rate under Rate Schedule ITS for service using the expansion capacity.

³² Natural Application, Revised Ex. N at 4.

³³ *Id.*

³⁴ Natural's depreciation and negative salvage rates were established in its settlement approved by the Commission in Docket No. RP22-1222. *See Nat. Gas Pipeline Co. of Am. LLC*, 181 FERC ¶ 61,070 (2022). Natural's pre-tax rate of return was established in its settlement approved by the Commission in Docket No. RP95-326. *See Nat. Gas Pipeline Co. of Am. LLC*, 72 FERC ¶ 61,072 (1995).

³⁵ Certificate Policy Statement, 88 FERC at 61,746.

³⁶ Application Revised Ex. N at 4.

2. Fuel

20. Natural proposes to establish an incremental fuel retention rate of 2.47% for service on the project facilities. Natural states this rate includes an incremental fuel rate of 2.01% to cover the incremental fuel Natural expects to incur for expansion shippers plus a gas lost and unaccounted for rate of 0.46% based on Natural's currently applicable retention factor for gas lost and unaccounted for.³⁷ In support of its proposal, Natural provides a fuel study showing its pre-expansion and post-expansion fuel usage and the calculation of its proposed fuel retention rate. Because Natural's incremental fuel retention rate of 2.47% is greater than the existing tariff fuel rate of 1.01%,³⁸ we will approve Natural's request to establish its proposed incremental fuel retention rate for the Texas-Louisiana Expansion Project.

3. Pre-determination of Rolled-in Rates

21. Natural requests a pre-determination of rolled-in rate treatment for costs associated with the Texas-Louisiana Expansion Project. To support a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling the costs associated with the construction and operation of new facilities into system rates 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 costs. To make this determination, we compare the project costs to the revenues generated using actual contract volumes and either the maximum recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.³⁹

22. In support of this request, Natural calculated an estimated first-year cost of service of \$13,697,542 and first-year projected revenues of \$37,977,249, which results in revenues exceeding the cost of service by \$24,279,707.⁴⁰ Natural's projected revenues are based on the maximum tariff rates for a shipper electing the System-Wide (SW) option,⁴¹ as the negotiated rates are greater than the maximum tariff rates. Because the

³⁷ Natural Gas Pipeline Company of America LLC, FERC Gas Tariff, Part 4.17 (Currently Effective Rates-Transportation Fuel Retention) (4.1.0).

³⁸ Application at 19; Ex. Z-2 at 2.

³⁹ *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

⁴⁰ Application Revised Ex. N at 3. As noted above, Delfin may be unable to execute its service agreement. Therefore, Commission staff revised Natural's calculated revenues to remove the revenues from the Delfin precedent agreement.

⁴¹ Natural notes the project shippers have elected to pay negotiated rates that include the SW Option. The SW Option provides shippers with a right to all receipt and

first-year revenues exceed the first-year cost of service of the Texas-Louisiana Expansion Project, we grant Natural's request for a predetermination of rolled-in rate treatment for the project in Natural's next NGA section 4 rate case, absent any significant change in circumstances.

4. Reporting Incremental Costs

23. We require Natural to keep separate books and accounting of costs and revenues attributable to the capacity created by the Texas-Louisiana Expansion Project in the same manner as required by section 154.309 of the Commission's regulations.⁴² 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. 710.⁴³

5. Negotiated Rates

24. Natural proposes to provide service on the Texas-Louisiana Expansion Project to multiple shippers under negotiated rate agreements. Natural must file either its negotiated rate agreements or tariff records setting forth the essential terms of the

delivery points on Natural's system on a secondary out-of-path basis. The recourse rates for the SW Option under Rate Schedule FTS are higher than Natural's FTS recourse rates without this option.

⁴² 18 C.F.R. § 154.309 (2024). See *Gulf S. Pipeline Co., LLC*, 173 FERC ¶ 61,049, at P 6 (2020) (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).

⁴³ See *Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008) (cross-referenced at 122 FERC ¶ 61,262). 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.

agreements in accordance with the Alternative Rate Policy Statement⁴⁴ and the Commission's negotiated rate policies.⁴⁵

6. Request for Predetermination of Nonconforming Provisions

a. Creditworthiness Provisions

25. Natural states that the precedent agreements with each project shipper contain provisions addressing credit support and assurance requirements that are different than the creditworthiness provisions in Natural's tariff. Specifically, Natural states these provisions require the project shippers to provide security in an amount equivalent to 24 months of reservation charges if the project shipper fails to demonstrate creditworthiness in accordance with the provisions of its tariff. Natural requests a predetermination from the Commission that the non-conforming creditworthiness provisions in the precedent agreements with the project shippers are permissible.

26. In *Columbia*,⁴⁶ the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.

⁴⁴ *Alternatives to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regul. of Negotiated Transportation Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁵ *Nat. Gas Pipelines Negotiated Rate Policies & Practices; Modification of Negotiated Rate Pol'y*, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

⁴⁶ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001); see also, *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001).

27. We find that the incorporation of the non-conforming provisions described above constitutes a material deviation from Natural's *pro forma* service agreement. However, the Commission's policy with regards to creditworthiness allows pipelines to enter into alternative credit arrangements for expansion projects.⁴⁷ Therefore, we find the non-conforming provisions related to creditworthiness identified by Natural permissible because they do not present a risk of undue discrimination, do not affect the operational conditions of providing service, and do not result in any customer receiving a different quality of service.⁴⁸

28. Before providing service to any project shipper under a non-conforming agreement, Natural must file an executed copy of the non-conforming service agreement and identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. Consistent with section 154.112 of the Commission's regulations, Natural must also file a tariff record identifying the agreements as non-conforming agreements. In addition, we emphasize that the above determination relates only to those items as described by Natural in its application and not to the entirety of the precedent agreement, or the language contained in the precedent agreement.⁴⁹

b. Temporary Capacity Release Provisions

29. Natural proposes to incorporate a new tariff provision specifically related to the temporary release of the project capacity under the project shippers' Rate Schedule FTS agreements. The provision provides that any replacement shippers acquiring released capacity from a project shipper shall be subject to the same negotiated fuel rate provisions as the project shipper.⁵⁰ Natural states that, in the event there is a temporary release of the project shipper's capacity, the replacement shipper should assume the negotiated fuel charges agreed to by the project shipper. Natural states that the provision

⁴⁷ *Pol'y Statement on Creditworthiness for Interstate Nat. Gas Pipelines Ord. Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005)

⁴⁸ *See, e.g., Calpine Energy Servs., L.P., v. S. Nat. Gas Co.*, 103 FERC ¶ 61,273, at P 32 (2003).

⁴⁹ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. *See, e.g., Tenn. Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

⁵⁰ *See* Application Ex. P, pt. I.

will allow Natural to retain the benefit of its negotiated rate agreements with project shippers supporting the construction of the Texas-Louisiana Expansion Project. Natural explains it is an intermediary and facilitator under the capacity release mechanism and should remain neutral from a fuel collection standpoint.

30. In addition, Natural states that the Commission has approved similar negotiated fuel rate provisions⁵¹ and that its proposal is consistent with Commission precedent providing that replacement shippers be subject to the same negotiated usage or fuel rate as the releasing shipper.⁵² Accordingly, Natural states that the capacity release provision related to the release of project capacity is just and reasonable and should be approved.

31. The Commission has found that pipelines may, on a case by case basis, require that a replacement shipper pay the same negotiated usage and fuel charge as the releasing shipper, especially where the replacement shipper is expected to use the capacity in a similar manner as the releasing shipper.⁵³ Accordingly, we find that the incorporation of the proposed capacity release provision is necessary to reflect the unique circumstances involved with the construction of new infrastructure and to ensure the viability of the Texas-Louisiana Expansion Project.⁵⁴ As a result, we approve the language contained in the *pro forma* tariff record. To implement Natural's proposed capacity release provisions, Natural must file an actual tariff record.

C. Environmental Analysis

32. On November 30, 2023, the Commission issued a *Notice of Scoping for the Texas-Louisiana Expansion Project and Request for Comments on Environmental Issues*. The notice was published in the *Federal Register*⁵⁵ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and

⁵¹ Natural Application at 20 (citing *Nat. Gas Pipeline Co. of Am. LLC*, 170 FERC ¶ 61,147, at PP 37-39 (2020)).

⁵² *Id.* at 21 (citing *Texas E. Transmission, LP*, 129 FERC ¶ 61,031 (2009) (finding that pipelines may, on a case by case basis, give a replacement shipper the same negotiated usage and fuel charges as the releasing shipper, especially where the replacement shipper is expected to use the capacity in a similar manner as the releasing shipper)).

⁵³ *Tex. E. Transmission, LP*, 129 FERC ¶ 61,031, at P 19 (2009).

⁵⁴ See, e.g., *Tenn. Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 32; *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 82 (2008).

⁵⁵ 88 Fed. Reg. 84812 (Dec. 6, 2023).

public interest groups; Native American tribes; local libraries and newspapers; and potentially affected property owners. We received comments from the U.S. Environmental Protection Agency (EPA) and the Texas Wildlife Resources Agency. Additionally, the Alabama-Coushatta Tribe of Texas requested to be updated with any new developments related to the Texas-Louisiana Expansion Project.⁵⁶

33. The primary issues raised during scoping included potential impacts on air quality and climate change, vegetation, soils, surface water, environmental justice communities, wildlife and federal and state-listed species, and impacts related to construction noise, reliability, and safety. We also received comments related to permits, approvals, and regulatory requirements.

34. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵⁷ Commission staff prepared an Environmental Assessment (EA) for the proposed project, which was issued on June 6, 2024. The notice of availability of the EA was published in the *Federal Register* and established a 30-day comment period.⁵⁸ The notice 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, socioeconomics, environmental justice,⁵⁹ air quality, noise, safety, cumulative

⁵⁶ Alabama-Coushatta Tribe of Texas May 9, 2024 Comments (stating that the Tribe does not “have the resources to devote [its] full attention to this project or it is outside of its current urgent need scope of work reference point.”).

⁵⁷ 42 U.S.C. §§ 4321 *et seq.*; *see also* 18 C.F.R. pt. 380 (2023) (Commission’s regulations implementing NEPA). On May 1, 2024, CEQ issued updated regulations that went into effect for new NEPA processes begun after July 1, 2024. 40 C.F.R. § 1506.12 (2024). This action is subject to CEQ’s previous regulations; thus, citations throughout this order will refer to the 2023 regulations. *See* 18 C.F.R. § 380.1 (stating that the Commission will comply with CEQ regulations); *but see Marin Audubon Society v. FAA*, No. 23-1067, 2024 WL 4745044, Slip op. at 20 (D.C. Cir. Nov. 12, 2024) (holding that CEQ had no lawful authority to promulgate binding regulations and questioning but not deciding whether another agency could permissibly adopt CEQ’s regulations or incorporate them by reference).

⁵⁸ 89 Fed. Reg. 49870 (June 12, 2024).

⁵⁹ Under NEPA, the Commission considers impacts to all potentially affected communities. Consistent with Executive Orders 12,898, 14,008, and 14,096, the Commission separately identifies and addresses disproportionate and adverse human

impacts, climate change, and alternatives. The analysis in the EA addressed all substantive environmental comments and concluded that the project would not constitute a major federal action significantly affecting the quality of the human environment.⁶⁰

35. We received comments on the EA from Natural and EPA. Natural requested that the Commission modify requirements for potential noise impacts, while EPA commented on effects associated with air emissions, surface water and discharge permitting, impacts from pesticides and non-native species, and impacts on environmental justice communities. We address these comments below.⁶¹

1. Air Quality

36. EPA recommends that all non-road engines be certified as in compliance with EPA Tier 4 regulations for new and in-use non-road regulations, found at 40 CFR Parts 89 and 1039, or Category 3 regulations for new and in-use marine compression-ignition engines, found at Parts 94 and 1042.⁶² As stated in the EA, in 2010, EPA required the sulfur concentration in diesel fuels be lowered from historical concentration of 500 parts

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); Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023). *See infra* P 48.

⁶⁰ EA at 77. Commission staff could not determine whether the impacts from greenhouse gas emissions attributable to the project would be significant or insignificant. *Id.* at 72-73; *see* 42 U.S.C. § 4336(b)(2) (“An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. . . .”) We note that NEPA does not require the Commission to classify every environmental impact as significant or insignificant, *see Food & Water Watch v. FERC*, 104 F.4th 336, 346 (D.C. Cir. 2024); *see also Transcon. Gas Pipe Line Co.*, 187 FERC ¶ 61,200, at P 33 (2024) (applying *Food & Water Watch* in the context of an environmental assessment).

⁶¹ We note that EPA also recommended that the Commission create a comparison chart disclosing impacts on environmental justice populations. EPA July 8, 2024 Comments. We decline to do so. We do not agree that a chart or table would be the best way to disclose these impacts to the public. The EA, as summarized herein, provides a concise narrative discussion of the effects that could affect environmental justice communities, which include impacts related to socioeconomics, traffic, visual resources, air quality, and noise. EA at 43-46.

⁶² EPA July 8, 2024 Comments at 1-2.

per million to 15 parts per million (ultra-low sulfur diesel fuel), which allows diesel engines to meet current Tier 4 emission requirements.⁶³ Natural has committed to using ultra-low-sulfur diesel in all non-road engines, which would be in compliance with Tier 4 regulations.⁶⁴ No marine compression-ignition engines (or other watercraft engines) would be used onsite during construction or operation.

37. Additionally, EPA asks that if Natural conducts any land-clearing activities that would result in the use of open burning to dispose of woody debris, Natural should coordinate with the Texas Commission on Environmental Quality to consider air quality conditions, such as atmospheric inversions, prior to performing open burning activities.⁶⁵ As stated in the EA, Natural does not propose any open burning activities for the project.⁶⁶

38. EPA also recommends that Natural take measures to prevent particulate matter (PM) emissions during construction, such as applying water to disturbed areas and unpaved roads.⁶⁷ Natural has agreed to apply water to disturbed surfaces to minimize fugitive dust emissions, as required in its *Fugitive Dust Control Plan*.⁶⁸ Natural has also committed to additional mitigation measures to reduce PM emissions, including reduced vehicle speeds on all unpaved roads, covering open-body trucks loading and hauling construction debris, and maintaining construction entrances and the right-of-way.⁶⁹

2. Noise Impacts

39. Natural requests that the Commission modify staff's recommendation to include standard condition no. 12. This standard condition requires that "the noise from *all the equipment operated at full capacity*" shall not exceed a day-night sound level (L_{dn}) of 55 A-weighted decibels (dBA) at the nearby noise sensitive areas.⁷⁰ Natural asks the

⁶³ EA at 50-51.

⁶⁴ Natural Feb. 29, 2024 Response to Jan. 10, 2024 Data Request at 5-22.

⁶⁵ EPA July 8, 2024 Comments at 1-2.

⁶⁶ EA at B-2.

⁶⁷ EPA July 8, 2024 Comments at 2.

⁶⁸ EA at 51.

⁶⁹ *Id.*

⁷⁰ EA at 56.

Commission to modify this condition to instead require that noise not exceed existing ambient levels because ambient noise from existing non-project related noise sources is already above 55 dBA.⁷¹

40. We note the condition is only applicable to noise attributable to the compressor station equipment, as modified by the project, and does not apply to other background ambient noise sources that affect total noise in the surrounding environment. Thus, even though the existing ambient noise levels are above 55 dBA L_{dn} at nearby noise sensitive areas, the condition is necessary to ensure project-related noise associated with compressor station equipment remains at acceptable levels. The EA's recommendation is included in the appendix to this order as condition no. 12.

3. Surface Water Discharge Permitting

41. EPA asks whether the project would require a National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit from the Texas Commission on Environmental Quality, as the permit was not listed in section A.11 of the EA.⁷² Table A.11-1⁷³ of the EA lists the major federal, state, and local permits, approvals, and consultations for construction and operation of the project.

42. Regardless of whether certain permits appear in table A.11-1, Natural is responsible for obtaining and abiding by all permits and approvals required for construction and operation of the project.⁷⁴ Natural stated that a Stormwater General Permit (TXR150000) is not required for the project because uncontaminated stormwater runoff is exempt under Section 402(1)(2) of the Clean Water Act, and no other discharges are anticipated.⁷⁵ As discussed in the EA, Natural has committed to other mitigation measures to reduce stormwater impacts, including consulting the Texas Commission on Environmental Quality Texas on its Stormwater Pollution Prevention Plan from prior to the start of construction.⁷⁶

⁷¹ Natural July 1, 2024 Comments at 1.

⁷² EPA July 8, 2024 Comments at 2.

⁷³ *Id.* at tbl. A.11-1 at 12.

⁷⁴ *Id.* at 17.

⁷⁵ Natural July 24, 2024 Supplemental Information Response (citing 40 C.F.R. § 122.26 (a)(2)(ii) (2024)).

⁷⁶ *See* Environmental Condition 1 (requiring Natural “follow the construction procedures and mitigation measures described in its application and supplements”);

4. Impacts from Pesticides and Non-native Species

43. EPA recommends that its Bulletins Live⁷⁷ geodatabase be used during Endangered Species Act (ESA) consultation and pesticide applications to identify any Pesticide Use Limitation Areas (PULA) for products with Endangered Species Protection Bulletins.⁷⁸ The Bulletins Live website shows there are no areas within either Liberty or Montgomery Counties, Texas that may contain PULAs.

44. Additionally, EPA recommends that the U.S. Bureau of Land Management's (BLM) Noxious and Invasive Weed Management Plan be implemented during application of pesticide.⁷⁹ The project is not on BLM lands, and this plan is not applicable to the private lands affected by the project. However, we note that the EA states that Natural would implement its project-specific *Noxious and Invasive Weed Management Plan* to minimize the establishment and spread of invasive and noxious plant species.⁸⁰ This plan includes incorporating noxious weed management information into pre-construction environmental training; flagging infested areas prior to construction; ensuring that construction equipment is free of soil and debris prior to bringing it onsite; and restoring disturbed areas immediately after construction, thus mitigating against non-native plants and keeping vegetation and seeds native. We find this plan acceptable to minimize the establishment and spread of invasive and noxious plant species.

5. Environmental Justice

45. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Orders (EO) 12898 and 14096, which direct federal agencies to identify and address disproportionate and adverse human health or environmental effects

Application at Exhibit J at 1 (stating that Natural will consult with Texas CEQ on a Stormwater Pollution Prevention Plan). *See also* EA at 9, 12 (noting that Natural would obtain applicable Stormwater Pollution Prevention Plans prior to the beginning of construction).

⁷⁷ EPA Bulletins Live website - accessed on July 10, 2024 at: <https://www.epa.gov/endangered-species/bulletins-live-two-view-bulletins>.

⁷⁸ EPA July 8, 2024 Comments at 3.

⁷⁹ *Id.*

⁸⁰ EA at 18.

of their actions on environmental justice communities.⁸¹ EO 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionate and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”⁸² Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁸³

⁸¹ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14,096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

⁸² Exec. Order No. 14,008, 86 Fed. Reg. 7619, at 7629 (Jan. 27, 2021). The term “environmental justice community” includes communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous people. *See* EPA, *EJ 2020 Glossary* (Feb. 20, 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>.

⁸³ *See* EPA, *EJ 2020 Glossary* (Feb. 2024), <https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf>. 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.*

46. Consistent with the Council on Environmental Quality (CEQ)⁸⁴ and EPA⁸⁵ guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)⁸⁶ exist in the project area; (2) whether impacts on environmental justice communities are disproportionate and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50 percent and the meaningfully greater analysis methods to identify minority populations.⁸⁷ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50 percent; or (2) the aggregate minority population in the block group affected is 10 percent higher than the aggregate minority population percentage in the counties.⁸⁸

⁸⁴ 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 multiple opportunities for public involvement during the Commission's environmental review process. The Commission issued a *Notice of Application and Establishing Intervention Deadline* as well as a *Notice of Scoping*, which were published in the Federal Register. The *Notice of Scoping* was mailed to federal and state resource agencies; elected officials; environmental groups and non-governmental organizations; Native American Tribes; potentially affected landowners; local libraries and newspapers; and other stakeholders. In addition, to engage local communities near the project, the *Notice of Scoping* was mailed to civic organizations, public health services such as food banks, social services, business and trade associations, school boards, farm bureau, associations of business and industry, environmental justice organizations, and rotary. *See supra* P 37.

⁸⁵ *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.

⁸⁶ *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.

⁸⁷ *See Promising Practices* at 21-25.

⁸⁸ Here, Commission staff selected Montgomery and Liberty Counties, Texas as the reference communities to ensure that affected environmental justice communities are

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

48. To identify potential environmental justice communities during preparation of the EA, Commission staff used 2023 U.S. Census American Community Survey data⁸⁹ for the race, ethnicity, and poverty data at the state, county, and block group level.⁹⁰ 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.⁹¹

49. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionate and adverse on environmental justice communities and also whether those impacts were significant.⁹² Commission staff assessed whether

properly identified. EA at 39.

⁸⁹ U.S. Census Bureau, American Community Survey 2023 ACS 5-Year Estimates Detailed Tables, File# B17017, *Poverty Status in the Past 12 Months by Household Type by Age of Householder*, <https://data.census.gov/cedsci/table?q=B17017>; File #B03002 *Hispanic or Latino Origin By Race*, <https://data.census.gov/cedsci/table?q=b03002>.

⁹⁰ For this project, Commission staff determined that the appropriate units of geographic analysis for assessing project impacts on the environmental justice communities was census block groups within 1 mile of Compressor Station 302 and Compressor Station 343. This distance is sufficiently broad for these facilities considering the extent of socioeconomics, visual, air quality, and noise impacts on environmental justice communities. See EA at 39.

⁹¹ EPA, *Purposes and Uses of EJScreen* (Jan. 9, 2024), <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen> ("Screening tools should be used for a 'screening-level' look. Screening is a useful first step in understanding or highlighting locations that may be candidates for further review.").

⁹² An agency may determine in some circumstances that impacts are disproportionate and adverse, but not significant within the meaning of NEPA, and in other circumstances an agency may determine that an impact is *both* disproportionate and

impacts to an environmental justice community were disproportionate and adverse based on whether those impacts were predominately borne by that community, consistent with the EPA's recommendations in *Promising Practices*.⁹³ Identified project impacts and proposed mitigation measures are discussed below.

50. The Commission's environmental staff identified six block groups within the geographic scope of analysis, of which five block groups exceeded the defined threshold for minority or low-income communities and are therefore environmental justice communities.⁹⁴

51. Project facilities and all associated workspaces for Compressor Stations 302 and 343 are located within 1 mile of environmental justice communities based on the minority and low-income threshold (Census Tract 6926.01, Block Group 3), minority threshold (Census Tract 6926.01, Block Group 2, Census Tract 6927.01, Block Group 2, and Census Tract 6927.02, Block Group 3) and low-income threshold (Census Tract 7014, Block Group 6).

52. The EA's discussion of impacts on the identified environmental justice communities in proximity to the project facilities focuses on socioeconomics, visual resources, traffic, air quality, noise impacts, and cumulative impacts.⁹⁵ The EA does not focus on environmental justice concerns for other resource areas due to the minimal overall impact the project would have on those resource areas.

a. Socioeconomics

53. As described in the EA, Natural anticipates that approximately 160 full-time workers would be employed at the project site during the peak of construction.⁹⁶ Natural estimates that approximately 10% of the total workforce would be local residents.⁹⁷

adverse and significant within the meaning of NEPA. *See Promising Practices* at 33.

⁹³ There are various approaches to determining whether an action will cause a disproportionate and adverse impact. One recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations." *See id.* at 44-46.

⁹⁴ *See* EA tbl. B.8.4-1 at 40.

⁹⁵ *Id.* at 41.

⁹⁶ *Id.* at 44.

⁹⁷ *Id.*

Non-local workers relocating to the project area would result in a negligible and temporary impact on housing in the project area.⁹⁸ One new operations worker would be required for operation of the project.⁹⁹ Increased spending on lodging, food, and services would negligibly increase local economic activity in the environmental justice communities within the geographic scope of the project.¹⁰⁰ Given the project duration, scope and temporary workforce, the EA concludes that socioeconomic impacts on environmental justice communities would not be significant.¹⁰¹ We agree.

b. Traffic

54. As described in the EA, traffic impacts on environmental justice communities could result from Natural's use of several interstate and state highways, county, local, and private roads that provide access to the existing project facilities.¹⁰² These access roads include Interstate-69 and Interstate-45, along with State Highway 242/FM 1485 that would provide access to Compressor Station 302.¹⁰³ State Highway 61 and State Highway 90 would be used to access Compressor Station 343.¹⁰⁴ Increased use of these public roads would impact traffic near active work sites, especially during peak construction periods; however, the impacts would be limited to periods of active construction and would be temporary, over the course of a 12-month construction period.¹⁰⁵

55. Natural would maintain traffic flow according to all necessary permits and approvals from the appropriate traffic control agencies. Traffic impacts would cease upon project completion. Given the minor scope and short-term nature of Natural's

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 44.

¹⁰³ *Id.* at 35.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 44.

construction activities, the EA concludes, and we agree, that traffic impacts on the environmental justice communities would be less than significant.¹⁰⁶

c. Visual Impacts

56. As described in the EA, the project area is within Natural's property boundaries of existing natural gas infrastructure except for about 2 acres of temporary workspace outside the fenceline at Compressor Station 343, and all proposed workspaces are owned by Natural.¹⁰⁷ Visual impacts from construction activities would include the presence of the construction workforce and construction equipment; however, existing trees provide visual screening of the compressor stations from the closest residences in environmental justice communities, located about 610 feet southwest of Compressor Station 302 and 760 feet east of Compressor Station 343.¹⁰⁸ The project would have a temporary effect on visual resources with the presence of construction materials, on-site activities, and equipment being visible; however, no long-term visual effects are anticipated as the modifications would be limited to the existing operational footprint of each existing compressor stations.¹⁰⁹

57. Given the scale and scope of the project, the short construction period, and site-specific measures to be implemented by Natural, we agree with the EA's conclusion that visual impacts on environmental justice communities would be less than significant.¹¹⁰

d. Air Quality

58. Emissions during construction would increase pollutant concentrations in the surrounding environmental justice communities.¹¹¹ Construction emissions associated with the project would be temporary over the course of 12 months and cease at completion of construction.¹¹² Fugitive dust would be reduced by use of Natural's

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 44.

¹⁰⁸ *Id.* at 45.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 45.

¹¹¹ *Id.* at 67.

¹¹² *Id.*

Fugitive Dust Control Plan.¹¹³ No new operational emissions are associated with the proposed new compressor unit, to be located at Compressor Station 302, which would be electric-motor driven.¹¹⁴ Operational air emissions from modifying the existing gas-powered compressor units at both compressor stations would be limited to fugitive methane and carbon dioxide emissions from valves, connectors, pneumatic devices and tanks; and from blowdowns.¹¹⁵ Due to the temporary nature of construction emissions, implementation of Natural's proposed mitigation measures such as dust control and minimizing fugitive exhaust emissions, and a temporary increase in blowdown emissions, the EA concludes that the project would not have a significant impact on air quality within nearby environmental justice communities.¹¹⁶ We agree.

e. **Noise**

59. Construction noise would be localized to the vicinity of the project work areas and would attenuate rapidly with increasing distance from the noise source.¹¹⁷ Construction noise may be audible at the closest noise sensitive areas located about 610 feet southwest of Compressor Station 302 and about 760 feet east of Compressor Station 343. Natural would use mitigation measures to reduce construction noise impacts such as restricting primary construction to daytime hours, utilizing sound control devices, ensuring equipment engines are equipped with mufflers, minimizing idling, and maintaining construction equipment which prevents rattling, rumbling, and humming of deteriorating and inefficient equipment.¹¹⁸

60. As described in the EA, acoustical analysis of the proposed operational noise sources demonstrates there would be no perceptible increase in noise levels at noise sensitive areas.¹¹⁹ This is, in part, due to Natural's proposed mitigation measures, including the use of: (1) sound transmission walls, roofs, and doors; (2) building ventilation openings with standard acoustical louvers or silencers; and (3) ventilation

¹¹³ *Id.*

¹¹⁴ *Id.* at 52.

¹¹⁵ *Id.* at 45, 52.

¹¹⁶ *Id.* at 45.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 55.

systems installed with silencers.¹²⁰ To ensure that operational noise complies with the Commission's noise criterion, as discussed, Natural must conduct post-construction noise surveys of the modified compressor stations, as required by environmental condition no. 12 in the appendix to this order.

61. Based on the temporary and localized nature of construction activities and mitigation measures, as well as the undetectable change in operational noise at noise sensitive areas, the EA concludes, and we agree, that noise impacts on environmental justice communities from the project facilities would be less than significant.¹²¹

f. Land Impacts

62. EPA recommends that the Commission coordinate with environmental justice residents regarding pipelines encroaching onto their property or within the safety distance of their property.¹²² The Texas-Louisiana Expansion Project does not involve the construction of any new pipeline facilities or compressor stations. Rather, it comprises modifications at two existing compressor stations, with all construction activities taking place within the fencelines of these existing facilities and approximately 2 acres of temporary workspace outside of the fenceline at Compressor Station 343. Natural owns all land within the existing fenceline and the proposed temporary workspace. Consequently, there will be no encroachment by the project beyond existing footprints and it is not encroaching onto properties in environmental justice communities.¹²³

g. Environmental Justice Cumulative Impacts

63. The EA identifies seven infrastructure or transportation-related projects, the construction of which could potentially occur around the same timeframe and within underlying areas as the project and are within the same environmental justice communities.¹²⁴ This includes four Texas Department of Transportation Road Work projects and three Natural projects involving replacement and integrity work on its LA Line 1 and Line 2. Cumulatively, there would be a disproportionate and adverse impact on environmental justice communities during the period when construction of the projects overlap. However, construction impacts from Natural's project along with the

¹²⁰ *Id.*

¹²¹ *Id.* at 46.

¹²² EPA July 8, 2024 Comments at 3.

¹²³ EA at 43-46.

¹²⁴ *Id.* at 62-63 (tbl. B.12.1-2).

seven other projects within the geographic scope, would only overlap intermittently and would be mitigated by required compliance with applicable federal air quality and noise permit requirements.¹²⁵ Further, given the project's limited timeframe, limited scope comprising modifications to existing facilities, and implementation of overall mitigation measures discussed in the EA, the EA concludes, and we agree, that cumulative impacts would not be significant.¹²⁶

h. Environmental Justice Conclusion

64. The project would have a range of impacts on the environment and on individuals living in the vicinity of the project facilities, including environmental justice populations.¹²⁷ As stated in the EA, five census tract block groups out of the six block groups within the geographic scope of the project are environmental justice communities. Project activities within these communities include construction and modifications of Compressor Stations 302 and 343.¹²⁸

65. Impacts associated with the project activities discussed above would be disproportionate and adverse as they would be predominantly borne by environmental justice communities. However, the project construction impacts associated with socioeconomic impacts, traffic, visual impacts, air quality, and construction noise would be temporary and less than significant.¹²⁹ Similarly, the project's operational impacts¹³⁰ and the cumulative impacts on environmental justice communities¹³¹ would be less than

¹²⁵ With respect to mitigation of construction emissions, the EA states that proper maintenance of construction equipment and use of low-sulfur diesel fuel would reduce engine emissions, idling of construction vehicles would be limited, and that Natural would adhere to its Fugitive Dust Control Plan to minimize fugitive dust emissions. EA at 51. Mitigation for construction noise includes restricting primary construction to daytime hours, utilizing sound control devices, ensuring equipment engines are equipped with mufflers, minimizing idling, and maintaining construction equipment. EA at 46.

¹²⁶ *Id.* at 66.

¹²⁷ *Id.* at 43-46.

¹²⁸ *Id.*

¹²⁹ *Id.* at 46.

¹³⁰ *Id.* at 32, 46, 55.

¹³¹ *Id.* at 57-74.

significant. Furthermore, Natural has committed to implement mitigation measures as described in the EA.¹³² We agree with the conclusions in the EA.

6. Environmental Impacts Conclusion

66. We have reviewed the information and analysis contained in the EA, as well as the other information in the record, regarding potential environmental effects of the project. We accept the environmental recommendations in the EA, and are including them as conditions in an appendix to this order. Based on the analysis in the EA, as supplemented or clarified herein,¹³³ we conclude that if constructed and operated in accordance with Natural's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.¹³⁴

IV. Conclusion

67. We find that Natural has demonstrated a need for the Texas-Louisiana Expansion Project, which will improve system reliability and flexibility. Further, the project will not have adverse impacts on Natural's existing shippers or other pipelines and their existing customers, and the project's benefits will outweigh any adverse impacts on landowners and surrounding communities. Based on the discussion above, we conclude that, under section 7 of the NGA, the public convenience and necessity requires approval of the Texas-Louisiana Expansion Project, subject to the conditions in this order.

68. 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

¹³² *Id.* at 46.

¹³³ 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, analysis, or finding in the EA.

¹³⁴ We are unable to characterize whether the impacts from greenhouse gas emissions attributable to the project would be significant or insignificant as there currently are no accepted tools or methods to do so. EA at 72-73; *see also supra* note 63. Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023) (amending NEPA to provide that preparation of an EA is acceptable when the proposed 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.") (codified at 42 U.S.C. § 4336(b)(2)).

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 operation of the projects, 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.

69. 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.¹³⁵

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

The Commission orders:

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

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

- (1) completing construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) complying with all applicable Commission regulations under the

¹³⁵ 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).

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

(3) complying with the environmental conditions listed in the appendix to this order; and

(4) filing a written statement affirming that it has executed firm contracts for 387,000 Dth/d of capacity and terms of service represented in its filed precedent agreements, prior to commencing construction.

(C) Natural's proposal to use its existing system Rate Schedules FTS and ITS rates as the initial recourse rates for the Texas-Louisiana Expansion Project is approved.

(D) Natural's proposal to establish an incremental fuel retention rate for the Texas-Louisiana Expansion Project is approved.

(E) Natural's request for pre-approval of the non-conforming provisions included in its service agreements is granted, as described herein.

(F) Natural's proposed capacity release tariff provision is approved.

(G) A predetermination is granted to Natural to roll the costs of the Texas-Louisiana Expansion Project into its system rates in a future NGA section 4 rate case, absent a significant change in circumstances.

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

By the Commission.

(S E A L)

Carlos D. Clay,
Acting Deputy Secretary.

Appendix - Environmental Conditions

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

1. Natural Gas Pipeline Company of America LLC (Natural) 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. Natural must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Natural 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 EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Natural 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. Natural shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **before construction in or near that area.**

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Order and before construction begins**, Natural shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Natural must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Natural 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 Natural will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;

- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Natural 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 Natural's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Natural shall employ at least one EI per compressor station site. 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, Natural shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Natural's efforts to obtain the necessary federal authorizations;

- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. Natural 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, Natural must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project facilities 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**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Natural 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. After placing the new facilities into service, Natural shall conduct a noise survey at the modified CS 302 and CS 343 to verify that the noise from all the equipment operated at full capacity does not exceed a day-night sound level (L_{dn}) of 55 A-

weighted decibels (dBA) at the nearby noise sensitive areas (NSA). The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If a full load condition noise survey is not possible, Natural must provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If any of these noise levels are exceeded, Natural shall file a report on what changes are needed, and **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise level at the NSAs to or below an L_{dn} of 55 dBA. Natural shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

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