

190 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP21-94-003

ORDER ON REMAND REINSTATING CERTIFICATE AND ABANDONMENT
AUTHORIZATION

(Issued January 24, 2025)

1. This case is before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).¹ The court vacated and remanded the Commission's orders authorizing the construction and operation of Transcontinental Gas Pipe Line Company, LLC's (Transco) Regional Energy Access Expansion Project (REAE Project or project)² for (1) failing to adequately consider, under the Natural Gas Act (NGA), evidence suggesting a lack of market need including New Jersey state laws mandating reductions in natural gas consumption,³ and (2) failing to adequately explain, under the National Environmental Policy Act (NEPA), the Commission's decision to not make a significance determination regarding greenhouse gas (GHG) emissions or discuss mitigation of GHG emissions.⁴ Based on the foregoing, the court instructed the Commission to revisit its public interest determination under NGA section 7.⁵ For the reasons discussed below, we continue to (1) find that the REAE Project is needed, (2) affirm the Commission's decision not to make a significance determination regarding GHG emission, (3) consider Transco's measures to reduce GHG emissions, and (4) conclude that the benefits outweigh the adverse impacts. Accordingly,

¹ *N.J. Conservation Found. v. FERC*, 111 F.4th 42 (D.C. Cir. 2024) (*N.J. Conservation Found.*).

² *Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,006 (2023) (Certificate Order); *Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,148 (2023) (Rehearing Order).

³ *N.J. Conservation Found.*, 111 F.4th at 58-62.

⁴ *Id.* at 54-57.

⁵ *Id.* at 62-63.

we reinstate the certificate and abandonment authority to Transco for the REAE Project as issued in the Certificate Order.

I. Background

A. Project and Commission Review

2. On March 26, 2021, Transco filed an application, pursuant to NGA sections 7(b) and 7(c)⁶ and Part 157 of the Commission's regulations,⁷ requesting authorization to construct and operate the REAE Project.⁸ The REAE Project is an incremental expansion of Transco's existing pipeline system consisting of two components: (1) modernization of certain compression facilities and (2) the construction of new facilities, together enabling the provision of 829,400 dekatherms per day (Dth/d) of incremental firm transportation service⁹ from northeastern Pennsylvania to multiple delivery points in New Jersey, Pennsylvania, and Maryland.¹⁰ The project comprises approximately 22.3 miles of 30-inch-diameter lateral pipeline and 13.8 miles of 42-inch-diameter loop pipeline in Pennsylvania; one new compressor station in New Jersey; modifications to five existing compressor stations in Pennsylvania and New Jersey; modifications to existing pipeline tie-ins, valves, regulators, and meter regulating stations in Pennsylvania, New Jersey, and Maryland; additional ancillary facilities such as regulation controls, valves, cathodic protection, communication facilities, and pig launchers and receivers in Pennsylvania; and the abandonment and replacement of certain existing compression facilities with higher horsepower compression at Compressor Stations 505 and 515.¹¹ Transco executed

⁶ 15 U.S.C. § 717f(b), (c).

⁷ 18 C.F.R. pt. 157 (2024).

⁸ Certificate Order, 182 FERC ¶ 61,006 at P 1. The proposed REAE Project also consisted of the abandonment and replacement of existing, less energy efficient compression facilities and the construction of new pipeline facilities. *Id.* For a more fulsome description of abandoned facilities, *see id.* P 5.

⁹ Under a firm service contract, service is expected without interruption under almost all operating conditions. Firm customers pay a monthly reservation charge regardless of whether they use their capacity. *N.J. Conservation Found.*, 111 F.4th at 59 & n.5.

¹⁰ Certificate Order, 182 FERC ¶ 61,006 at P 3.

¹¹ *Id.* PP 1, 4.

binding precedent agreements¹² for the full project capacity with eight project shippers for primary terms ranging from 15 to 17 years.¹³

3. On March 2, 2022, Commission staff issued a draft environmental impact statement (EIS) for the project.¹⁴ On July 29, 2022, Commission staff issued the final EIS.¹⁵ The final EIS concluded that construction and operation of the project would result in some adverse environmental impacts; however, the final EIS determined that most of the impacts would be temporary and would occur during construction (e.g., impacts on land use, traffic, and noise).¹⁶ With the exception of potential impacts on climate change, the final EIS concluded that impacts would be reduced to less than

¹² A precedent agreement is an agreement between a pipeline company and a prospective shipper of natural gas that involves the commitment by such shipper to enter into an agreement to pay certain charges in return for a firm transportation obligation. *See Transcon. Gas Pipe Line Co.*, 167 FERC ¶ 61,144, at P 11 & n.24 (2019) (“A precedent agreement is an agreement to execute a transportation service agreement with a shipper once the project has been approved.”).

¹³ Certificate Order, 182 FERC ¶ 61,006 at P 7. Most of the project’s capacity (approximately 56%) is subscribed by New Jersey local distribution companies (LDC): New Jersey Natural Gas Co. (NJNG), South Jersey Gas Co. (South Jersey Gas), PSEG Power LLC (PSEG), and Elizabethtown Gas Co., LLC (Elizabethtown Gas). PECO Energy Company (PECO), a Pennsylvania LDC, and Baltimore Gas and Electric Company (Baltimore Gas), a Maryland LDC, have subscribed for 12% and 5%, respectively, of the project capacity. *Id.* P 8. The remaining capacity is subscribed by Sequent Energy Management LLC, formerly known as Williams Energy Resources, LLC (Sequent Energy) (18%), a natural gas marketer with a portfolio of various types of customers, and South Jersey Resources, LLC (South Jersey Resources) (9%), a natural gas marketer operating primarily in New Jersey but with wholesale customers throughout the region. *Id.*; *see also* Transco June 28, 2024 Negotiated Rate Service Agreements Containing Non-Conforming Provisions, Docket No. RP24-860-000 at 115 (stating that the entity cited in the Certificate Order, Williams Energy Resources LLC, is now known as Sequent Energy Management LLC). Both Sequent Energy and Transco are affiliates of The Williams Companies, Inc. The other seven shippers are not affiliated with Transco.

¹⁴ Notice of the draft EIS was published in the *Federal Register* on March 11, 2022. 87 Fed. Reg. 14004 (Mar. 11, 2022).

¹⁵ Notice of the final EIS was published in the *Federal Register* on August 4, 2022. 87 Fed. Reg. 47741 (Aug. 4, 2022).

¹⁶ Certificate Order, 182 FERC ¶ 61,006 at P 51.

significant levels through implementation of Transco's proposed avoidance, minimization, and mitigation measures and Commission staff recommendations.¹⁷ Commission staff disclosed an estimate of the social cost of GHGs, for informational purposes.¹⁸

4. On January 11, 2023, the Commission issued the Certificate Order granting the requested certificate for the project.¹⁹ The Commission found that Transco had demonstrated a need for the REAE Project,²⁰ based on evidence in the record, *i.e.*, the precedent agreements subscribing to 100% of the project's capacity, market studies, and comments.²¹ In making this decision, the Commission examined three market studies submitted as part of the record: the NJ Agencies Study (including the New Jersey Board of Public Utilities (NJ BPU) Decision);²² the NJCF Skipping Stone Study;²³ and the Transco Levitan Study.²⁴

5. The Transco Levitan Study found that the project's capacity is needed by LDC shippers in New Jersey and southeastern Pennsylvania to remedy shortfalls in capacity to

¹⁷ *Id.* (citing final EIS at ES-11, 5-1).

¹⁸ *Id.* P 69.

¹⁹ *Id.* at ordering para. A through K. The Commission also granted Transco's request for authorization to abandon certain facilities. *Id.* PP 16-17.

²⁰ *Id.* P 82.

²¹ *Id.* PP 21-35. As explained in the Certificate Order, shippers stated their support and need for the project. *Id.* P 21 (collating comments in support of the project from South Jersey Gas, Elizabethtown Gas, South Jersey Resources, NJNG, Exelon Corporation (the parent company of Baltimore Gas and PECO), and PSEG).

²² New Jersey Agencies July 11, 2022 Motion to Intervene and Lodge at 4 (NJ Agencies Study). Ultimately, the NJ BPU issued an order on June 6, 2022, accepting the NJ Agencies Study findings. Certificate Order, 182 FERC ¶ 61,006 at n.44.

²³ New Jersey Conservation Foundation (NJCF) July 22, 2022 Motion to Lodge at attach. B (NJCF Skipping Stone Study).

²⁴ Transco April 22, 2022 Response to Additional Information Request at attach. 1D (Transco Levitan Study); *see also* Certificate Order, 182 FERC ¶ 61,006 at PP 21-34 (discussing project need).

meet design day requirements²⁵ and to alleviate constraints in meeting natural gas-fired generation demand during extreme cold events.²⁶ After a review, the Commission concluded that the Transco Levitan Study was consistent with traditional LDC supply planning.²⁷

6. The NJ Agencies Study found that new pipeline capacity into New Jersey was unnecessary because sufficient capacity already exists to serve the state's LDCs and would continue to be sufficient if gains in energy efficiency were realized and non-pipeline alternatives were made available.²⁸ The Commission found various flaws with this study. The Commission explained that the study projected higher energy efficiency gains and fewer oil-to-natural gas conversions for heating purposes than assumed by the LDCs, leading to lower projected demand for natural gas,²⁹ and assumed, without evidence, that total off-system peaking resources³⁰ would remain available at a constant

²⁵ The "design day" is the basis for planning gas capacity requirements. It therefore reflects the highest gas demand an LDC expects to be obligated to serve on an extremely cold winter day. Each LDC uses its own criteria to define design day, but which is generally defined in a similar, but not uniform way. The coldest day in 30 years is a commonly used design day standard. In a recent American Gas Association survey of U.S. natural gas utilities, three used a 1-in-50 year risk of occurrence, 24 employed a 1-in-30 year, four used a 1-in-20 year, two used a 1-in-15 year, and four used a 1-in-10 year occurrence probability. Fourteen companies utilized an alternative period criterion, ranging from 20 years to 1-in-90 years, and 16 companies used other methodologies including multilinear regression, design day weather standard, historical peak and severe weather event. American Gas Association, *Energy Analysis: LDC Supply Portfolio Management during the 2018-2019 Winter Heating Season* 14 (Dec. 2019), <https://www.aga.org/research-policy/resource-library/lcd-supply-portfolio-management-during-the-2018-19-winter-heating-season-december-2019/>; see Certificate Order, 182 FERC ¶ 61,006 at n.41.

²⁶ Certificate Order, 182 FERC ¶ 61,006 at P 21 (citing Transco Levitan Study at 52).

²⁷ *Id.* P 27.

²⁸ *Id.* P 28 (citing NJ Agencies Study at 79).

²⁹ *Id.* (citing NJ Agencies Study at 48).

³⁰ Off-system peaking resources are third party supplies of natural gas purchased under short-term contracts and used by LDCs to supplement their own storage and pipeline transportation entitlements. *N.J. Conservation Found.*, 111 F.4th at 59 & n.4.

619 thousand dekatherms per day (MDth/d).³¹ The Commission also found that there was no requirement under New Jersey law that LDCs adopt non-pipeline alternatives and, further, that the NJ Agencies Study focused on firm demand in determining available capacity and thus omitted from its analysis interruptible natural gas generator and industrial demand, even though, as the NJ Agencies Study acknowledges, generator and industrial loads are the largest source of growth in natural gas demand in New Jersey.³²

7. The Commission also identified several deficiencies in the NJCF Skipping Stone Study. The NJCF Skipping Stone Study based its conclusion that there are sufficient quantities of natural gas on the assumption that large volumes of capacity associated with non-New Jersey LDC firm contracts that pass through New Jersey should be counted as available to New Jersey LDCs even if the primary, firm delivery points for the gas are not in New Jersey.³³ Customers downstream of New Jersey have entered firm contracts for capacity, and the Commission found that the NJCF Skipping Stone Study's assumptions ignored the fact that if the downstream firm capacity customers exercise their rights to the capacity, then New Jersey LDCs will not be able to rely on it.³⁴ The Commission also concluded that the NJCF Skipping Stone Study did not address future reliability needs because it ignored design day planning principles—i.e., it made no effort to estimate the highest gas demand an LDC may be obligated to serve on an extremely cold winter day—and, instead, focused exclusively on historical peak demand from LDCs (which is less than design day demand) and ignored demand from other customers, including electric generators and industrials.³⁵ Based on the foregoing, the Commission concluded that the NJCF Skipping Stone Study significantly understated the need for additional pipeline capacity.³⁶

8. After considering all evidence in the record,³⁷ including each of the studies and the binding precedent agreements with eight shippers for 100% of the project capacity, the

³¹ Certificate Order, 182 FERC ¶ 61,006 at P 29 (citing NJ Agencies Study at 98).

³² *Id.* P 31.

³³ *Id.* P 32 (citing NJCF Skipping Stone Study at 12).

³⁴ *Id.*

³⁵ *Id.* P 33.

³⁶ *Id.*

³⁷ The Commission also considered comments filed by South Jersey Gas, Elizabethtown Gas, South Jersey Resources Group, NJNG, Exelon Corporation (the parent company of Baltimore Gas and PECO), and PSEG in support of and explaining the need for the project. Moreover, the Commission also considered arguments by the NJ

Commission found that the construction and operation of the project would provide more reliable service on peak winter days and would increase supply diversity.³⁸

9. The Commission further found that the project would not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits would outweigh any adverse economic effects on landowners and surrounding communities.³⁹ The Commission analyzed the technical aspects of the project and concluded that it had been appropriately designed to achieve its intended purpose.⁴⁰

10. The Commission also accepted, with some modifications, the environmental recommendations in the final EIS and included them as conditions in Appendix B to the order.⁴¹ The Commission agreed with the conclusions presented in the final EIS and found that the project, if implemented as described in the final EIS, was an environmentally acceptable action.⁴² The Commission found that the construction emissions, direct operational emissions, and the emissions from the downstream combustion of the gas transported by the project were reasonably foreseeable emissions.⁴³ Nevertheless, the Commission did not characterize these emissions as significant or insignificant.⁴⁴

11. After balancing the concerns of all interested parties and weighing the need for and benefits derived from the project against the potential adverse consequences, including environmental impacts and impacts to landowners, the Commission found

BPU and other commenters asserting that additional gas capacity was not needed in light of New Jersey's emission reduction requirements and current pipeline capacity. *See id.* PP 23-25.

³⁸ *Id.* PP 21, 25, 34.

³⁹ *Id.* P 82.

⁴⁰ *Id.*

⁴¹ *Id.* P 81.

⁴² *Id.*

⁴³ *Id.* P 67.

⁴⁴ *Id.* P 73.

under NGA section 7 that the public convenience and necessity required approval of Transco's REAE Project, subject to the conditions in the Certificate Order.⁴⁵

B. Rehearing Order and Project Completion

12. On February 10, 2023, the following groups filed requests for rehearing of the Certificate Order: (1) NJCF, New Jersey League of Conservation Voters, Aquashicola Pohopoco Watershed Conservancy, and affected landowner Catherine Folio (together, NJCF); (2) Delaware Riverkeeper Network and Maya K. van Rossum (together, Riverkeeper); and (3) Food & Water Watch and Sierra Club (together, Sierra Club).⁴⁶ On February 10, 2023, the NJ BPU and the New Jersey Division of the Rate Counsel (Rate Counsel) (together, New Jersey Agencies) filed a motion for clarification of certain aspects of the Certificate Order.

13. NJCF, Riverkeeper, and Sierra Club disputed the Commission's analysis and findings of project need.⁴⁷ Specifically, they argued, among other things, that the Commission failed to: (1) give appropriate weight to the NJ Agencies Study and the NJCF Skipping Stone Study and evaluate why the current supply of off-system peaking sources is insufficient to meet the potential demand created by extreme weather events;⁴⁸ (2) address allegations of self-dealing and, specifically, profiteering;⁴⁹ and (3) account for New Jersey LDCs' requirement to provide safe and reliable service under New Jersey law.⁵⁰ NJCF, Riverkeeper, and Sierra Club also raised several arguments under NEPA, alleging, among other things, that the Commission did not properly assess the

⁴⁵ *Id.* P 82.

⁴⁶ With its rehearing request, NJCF submitted a motion for a stay of the Certificate Order until the conclusion of judicial review. *See* NJCF Rehearing Request at 51-59. In its rehearing request, Sierra Club requested the Commission stay the Certificate Order pending the final disposition of its rehearing request. *See* Sierra Club Rehearing Request at 1, 3, 26.

⁴⁷ NJCF Rehearing Request at 12-36; Riverkeeper Rehearing Request at 6-9; Sierra Club Rehearing Request at 5-7. *See* Certificate Order, 182 FERC ¶ 61,006 at PP 21-35.

⁴⁸ NJCF Rehearing Request at 13-21; Riverkeeper Rehearing Request at 6-9; Sierra Club Rehearing Request at 5-7.

⁴⁹ NJCF Rehearing Request at 13-14, 21-22, 25-29.

⁵⁰ *Id.* at 14, 30-32.

significance of GHG emissions⁵¹ and did not properly consider measures to mitigate the project's climate change impacts.⁵²

14. On March 17, 2023, the Commission issued the Rehearing Order. The Commission affirmed the Certificate Order's consideration of the three market studies. The Commission continued to find that the NJ Agencies Study did not account for potentially offsetting effects that undercut its claim that gas demand will not increase, such as increased demand from natural gas-fired generators in the region stemming from increased electrical demand resulting from building electrification,⁵³ failure to fully achieve New Jersey's energy efficiency goals,⁵⁴ and the unavailability of reliable off-system peaking resources.⁵⁵

15. The Commission also affirmed its finding that the NJCF Skipping Stone Study was deficient. After further analysis, the Commission found that the study was "not persuasive with respect to need because it focuses on flexibility of supply options during times in which the system is not constrained—rather than examining supply options during times when the system is constrained" (e.g. during severe winter weather).⁵⁶ The Commission also determined that the study "overestimates the amount of natural gas available to New Jersey" and "does not properly consider design day principles, instead, focusing on historical peak day figures."⁵⁷ The Commission further explained that the LDCs' future ability to obtain sufficient off-system gas for peak load requirements is uncertain because it is contracted for on a short-term basis,⁵⁸ and that any assumption that such resources would remain constant in the future ignores the potential for extreme weather.⁵⁹ The Commission, after due consideration of all three studies as further

⁵¹ Riverkeeper Rehearing Request at 38-46; Sierra Club Rehearing Request at 21-24.

⁵² Riverkeeper Rehearing Request at 46-48.

⁵³ Rehearing Order, 182 FERC ¶ 61,148 at P 37.

⁵⁴ *Id.* PP 37, 39.

⁵⁵ *Id.* P 38.

⁵⁶ *Id.* P 44.

⁵⁷ *Id.*; *see also id.* PP 45-52.

⁵⁸ *Id.* PP 38, 65.

⁵⁹ *Id.* P 65.

analyzed in the Rehearing Order, found that the Transco Levitan Study was the more persuasive market study and most closely aligned with the Commission's market analysis.⁶⁰ With regard to arguments concerning profiteering, the Commission responded that if "there is ample supply of transportation capacity in New Jersey making the REAE project redundant, then there would be no market for New Jersey Natural Gas to "offload" its capacity to, let alone above market prices."⁶¹ The Commission also explained that "retail regulators tend to require the sharing of revenues from such off-system resales of capacity with the captive customers who paid for the underlying assets."⁶² The Commission found that the foregoing cut against NJCF's arguments that profiteering is the motive for the LDCs to contract for this capacity.⁶³

16. The Commission also found that New Jersey's initiatives and climate laws, including the New Jersey Global Warming Response Act and the NJ BPU Energy Master Plan, did not undercut the Commission's finding of need for the REAE Project, consistent with its approach in similar proceedings.⁶⁴ Specifically, the Commission explained that New Jersey law requires LDCs to reduce natural gas consumption by 0.75% annually but the state has not prescribed methods for achieving that target.⁶⁵

17. After considering this evidence, the Commission emphasized that the project was 100% subscribed, that such evidence constituted "significant evidence,"⁶⁶ and that the precedent agreements were not outweighed by other record evidence regarding need.⁶⁷ Accordingly, the Commission affirmed that construction and operation of the REAE

⁶⁰ *Id.* P 41.

⁶¹ *Id.* P 65 & n.191.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* P 70; *see, e.g., Gas Transmission Nw. LLC*, 181 FERC ¶ 61,234, at PP 14-15 (2022); *Tenn. Gas Pipeline Co.*, 179 FERC ¶ 61,041, at P 17, *order on reh'g*, 181 FERC ¶ 61,051, at PP 15-17 (2022); *Iroquois Gas Transmission Sys.*, 178 FERC ¶ 61,200, at P 15 (2022).

⁶⁵ Rehearing Order, 182 FERC ¶ 61,148 at P 70.

⁶⁶ *Id.* P 20.

⁶⁷ *Id.* P 34.

Project would provide more reliable service on peak winter days and would provide cost benefits by increasing supply diversity.⁶⁸

18. The Commission also affirmed that it had met its NEPA obligations and appropriately declined to label the emissions as significant or insignificant because it (1) fully disclosed the reasonably foreseeable GHG emissions associated with the project's construction, operation, and downstream emissions; (2) placed them in context; and (3) identified climate impacts in the region.⁶⁹ The Commission further affirmed it had met its NEPA obligations to discuss potential mitigation measures related to GHGs.⁷⁰

19. Based on the foregoing, the Commission continued to find that Transco has taken sufficient steps to minimize adverse impacts on landowners and surrounding communities, and that the benefits of the project in improving reliability and diversifying supply outweigh potential adverse effects.⁷¹

20. On March 16, 2023, after Transco affirmed that it has executed contracts with project shippers for the full capacity under its precedent agreements,⁷² the Commission issued a Notice to Proceed with Construction for tree felling (First Notice to Proceed) and on March 23, 2023, the Commission issued Notice to Proceed with Construction of all components of the project (Second Notice to Proceed) (together Notices to Proceed or Notices).

21. Riverkeeper and NJCF filed separate requests for rehearing of the Commission's Notices to Proceed. Riverkeeper also sought a stay of the Certificate Order and NJCF filed a motion for stay of the Notices to Proceed. On May 1, 2023, the Commission issued an order on rehearing, modifying its discussion in the Notices to Proceed but sustaining the result and denying the motions for stay.⁷³

⁶⁸ *Id.* PP 61, 70, 133.

⁶⁹ *Id.* P 106.

⁷⁰ *Id.* PP 108-110.

⁷¹ *Id.* P 133 (citing Certificate Order, 182 FERC ¶ 61,006 at P 37).

⁷² Certificate Order, 182 FERC ¶ 61,006 at ordering para. (E) (requiring that Transco affirm that it executed firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction).

⁷³ *Transcon. Gas Pipe Line Co.*, 183 FERC ¶ 61,071 (2023) (NTP Rehearing Order).

22. On March 20, 2023, and May 12, 2023, NJCF and Sierra Club, respectively, appealed the Commission's decision to the D.C. Circuit. On July 26, 2024, Commission staff authorized Transco to commence full service of the REAE Project.⁷⁴ On August 1, 2024, Transco placed the project into service.⁷⁵

C. The Court's Remand Order

23. On July 30, 2024, the D.C. Circuit vacated and remanded the Certificate Order, Rehearing Order, and NTP Rehearing Order, holding that the Commission's analysis of need under NGA section 7 and NEPA analysis of the project's GHG emissions were deficient under the Administrative Procedure Act (APA). Specifically, under the NGA and APA, the court found that the Commission (1) failed to account for evidence showing that current capacity is sufficient to meet New Jersey natural gas demands, (2) placed too much weight on precedent agreements with LDCs, and (3) did not give enough weight to New Jersey state-law requirements mandating reductions to natural gas usage by public utilities.⁷⁶ The court also determined that the Commission failed to adequately explain its decision to not make a significance determination regarding GHGs or discuss possible mitigation measures.⁷⁷ In light of these deficiencies, the court determined that the Commission's public interest determination under NGA section 7 was arbitrary and capricious, requiring the Commission to revisit its balancing of the adverse impacts and public benefits.⁷⁸

D. Request for Temporary Certificate

24. On September 6, 2024, Transco filed an application requesting that the Commission issue a temporary certificate of public convenience and necessity under NGA section 7(c)(1)(B) authorizing continued service using the REAE project for Transco's customers until the Commission responded to the court's directives in *New*

⁷⁴ Commission July 26, 2024 Letter Order Granting Transco Request to Place Facilities into Service.

⁷⁵ Transco August 2, 2024 Notice of Commencement of Full Service.

⁷⁶ *N.J. Conservation Found.*, 111 F.4th at 58-59.

⁷⁷ *Id.* at 54-57. The court also found that the Commission did not err in not calculating upstream emissions from added gas extraction and downstream emissions of ozone or ozone precursors and upheld the Commission definition of the project purpose and need in its environmental review. *Id.* at 57-58.

⁷⁸ *Id.* at 62-63.

Jersey Conservation Foundation.⁷⁹ Because we are issuing this order on remand reinstating Transco's certificate and abandonment authorization without any lapse in certificate authority, Transco's application for temporary certificate is moot.⁸⁰

II. Discussion

A. Project Need

1. Framework for Determining Project Need

25. Prior to the Commission's issuance of the Certificate Policy Statement, an applicant for a certificate of public convenience and necessity to construct a new pipeline project was required to show market support through contractual commitments for at least 25% of the capacity.⁸¹ An applicant showing 10-year firm commitments for all of its capacity and/or that revenues would exceed costs was eligible to receive a traditional certificate of public convenience and necessity.⁸² If an applicant was unable to show the required level of commitment then it could still receive a certificate, but the Commission insulated shippers by placing the pipeline company at risk for the recovery of the costs associated with an inadequate market.⁸³ The at-risk condition functioned as an appropriate substitute for a showing of market demand and placed a burden on the pipeline company if it chose to proceed with constructing the project without the requisite, executed firm contracts.⁸⁴

26. In 1999, the Commission issued the Certificate Policy Statement in response to concerns that some of its regulatory policies resulted in bias toward short-term contracts, which potentially resulted in overbuilding. To provide accurate price signals and

⁷⁹ 15 U.S.C. § 717f(c)(1)(B); Transco, Application for Temporary Certificate, Docket No. CP21-94-004 (filed Sept. 6, 2024).

⁸⁰ See *Mojave Pipeline Co.*, 58 FERC ¶ 61,017 (1992) (granting permanent authorization and dismissing request for temporary certificate authority as moot); *Williston Basin Interstate Pipeline Co.*, 38 FERC ¶ 61,133 (1987) (same).

⁸¹ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,743 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁸² *Id.*

⁸³ *Id.*; see also *Questar Pipeline Co.*, 65 FERC ¶ 61,033, at 61,385 (1993).

⁸⁴ *Questar Pipeline Co.*, 65 FERC at 61,385.

incentives for pipelines to provide optimal transportation services and construct facilities that meet future demand, but not result in overbuilding and excess capacity,⁸⁵ the Commission eliminated the requirement that an applicant present precedent agreements for any specific percentage of the new capacity as a part of its application.⁸⁶ Instead, the Certificate Policy Statement “la[id] out a flexible inquiry that allows the Commission to consider a wide variety of evidence to determine the public benefits” of a project.⁸⁷ The Commission stated that it would consider all relevant factors reflecting the need for the project including, but not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.⁸⁸ Nevertheless, the Certificate Policy Statement stressed the continued importance of precedent agreements, stating that “they would constitute significant evidence of demand for the project.”⁸⁹

27. The Commission continues to find that precedent agreements are reliable indicators of the actual demand that exists in a market.⁹⁰ Precedent agreements involve sophisticated parties engaging in negotiations for pipeline transportation services to meet individualized needs.⁹¹ As the Third Circuit explained, “[a] contract for a pipeline’s

⁸⁵ Notice of Proposed Rulemaking, Regulation of Short-term Natural Gas Transportation Services, 63 Fed. Reg. 42982, 42975, 84 FERC ¶ 61,087 (1998); Notice of Inquiry, *Regulation of Interstate Natural Gas Transportation Services*, 63 Fed. Reg. 42974, 84 FERC P 61,087 (1998).

⁸⁶ Certificate Policy Statement 88 FERC at 61,748.

⁸⁷ *City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 605 (D.C. Cir. 2019) (*Oberlin I*); *NEXUS Gas Transmission, LLC*, 172 FERC ¶ 61,199, at P 8 (2020).

⁸⁸ Certificate Policy Statement 88 FERC at 61,747; *see also Dominion Transmission, Inc.*, 113 FERC ¶ 61,065, at P 15 (2005).

⁸⁹ Certificate Policy Statement, 88 FERC at 61,748 (emphasis added). We note that only precedent agreements were specifically identified in the Certificate Policy Statement as constituting *significant* evidence of demand. *Id.* Nevertheless, this acknowledgment does not preclude the Commission from finding that other evidence outlined in the Certificate Policy Statement or otherwise may constitute significant evidence of need on a case-by-case basis. *Id.* at 61,747.

⁹⁰ *Trunkline Gas Co.*, 147 FERC ¶ 61,041, at P 20 (2014) (“The willingness of customers to sign contracts for firm service at non-discounted rates is an appropriate indicator for forecasting future demand for increased service.”).

⁹¹ For example, a “supply push” pipeline is primarily designed to transport natural gas from a production area to a market. Natural gas producers and marketers are

capacity is a useful indicator of need because it reflects a ‘business decision’ that such a need exists.”⁹² “If there were no objective market demand for the additional gas, no rational company would spend money to secure the excess capacity.”⁹³ It is the Commission’s policy to respect freely-negotiated private contracts,⁹⁴ and absent plausible evidence of self-dealing between affiliates,⁹⁵ the Commission does not look behind precedent agreements to question individual shippers’ business decisions to enter into contracts.⁹⁶

28. In addition, pipeline companies are reluctant to undertake costly projects unless they have been able to enter into precedent agreements with shippers so that they can be assured of customer and market interest.⁹⁷ Precedent agreements in the context of new

typically the main shippers on such pipelines. By contrast, a “demand pull” pipeline is primarily designed to transport natural gas from a market area to an end-use area. Natural gas marketers and entities serving end-use consumers are typically the main shippers on such pipelines.

⁹² *Twp. of Bordentown, N.J. v. FERC*, 903 F.3d 234, 262 (3d Cir. 2018) (*Twp. of Bordentown*).

⁹³ *Id.* Pipeline companies engage in open seasons to gauge demand for prospective expansion capacity, which is then solidified by entering into a precedent agreement with the prospective shipper. *Trunkline Gas Co.*, 145 FERC ¶ 61,108, at P 22 (2013) (“The use of results from open seasons to demonstrate the existence or lack of demand is standard in abandonment proceedings.”); *see, e.g., S. Star Cent. Gas Pipeline, Inc.*, 102 FERC ¶ 62,165, at 64,273 (2003) (conducting open season to identify potential market area demand for expansion if its system); *S. Nat. Gas Co.*, 85 FERC ¶ 61,134, at 61,521 (1998) (holding open season to determine whether there was sufficient demand to support an expansion).

⁹⁴ *Re Cent. Me. Power Co.*, 57 FERC ¶ 61,083, at 61,303 (1991) (acknowledging that it is Commission policy to respect freely negotiated private contracts).

⁹⁵ *Env’t Def. Fund v. FERC*, 2 F.4th 953, 975 (D.C. Cir. 2021) (*EDF*) (finding plausible evidence of self-dealing “more than enough to require the Commission to ‘look behind’ the precedent agreement in determining market need”).

⁹⁶ Certificate Policy Statement, 88 FERC at 61,744 (“the Commission gives equal weight to contracts between an applicant and its affiliates and an applicant and unrelated third parties and does not look behind the contracts to determine whether the customer commitments represent genuine growth in market demand”).

⁹⁷ *N. Nat. Gas Co.*, 119 FERC ¶ 61,072, at P 26 (2007).

pipeline construction are typically for firm transportation service, i.e. the future project's delivery of natural gas is guaranteed.⁹⁸ A pipeline generally charges a reservation or "demand" charge for reserving firm transportation capacity and a usage charge for the actual transportation of gas.⁹⁹ "Pipelines rely on firm shippers' willingness to pay monthly reservation charges, whether they use all of their reserved capacity or not, to assure recovery of most of the companies' fixed costs."¹⁰⁰ Accordingly, the level of subscription of a project's capacity is a fundamental consideration that goes into project design and financing before a company submits an application to the Commission.¹⁰¹

29. We continue to recognize that precedent agreements represent "substantial financial commitments."¹⁰² Although "[p]rojections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states,"¹⁰³ precedent agreements for long-term firm

⁹⁸ *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307 & n.1 (D.C. Cir. 2015) (*Myersville*) (citing *United Distrib. Cos. v. FERC*, 88 F.3d 1105, 1123 & n. 10 (D.C. Cir.1996) (*United Distrib. Cos.*)).

⁹⁹ *Mun. Def. Grp. v. FERC*, 170 F.3d 197, 199 & n.4 (D.C. Cir. 1999) (citing *United Distrib. Cos.*, 88 F.3d at 1129 n. 24).

¹⁰⁰ *Tex. E. Transmission, LP*, 170 FERC ¶ 61,235, at P 17 (2020).

¹⁰¹ Precedent agreements may also include collateral requirements "that apply to initial shippers that reflect the risk of the project, 'particularly the risk to the pipeline of remarketing the capacity should the initial shipper default.'" *Tex. E. Transmission, LP*, 163 FERC ¶ 61,020, at PP 17-19 (2018) (citing *Creditworthiness for Interstate Nat. Gas Pipelines*, 111 FERC ¶ 61,412, at P 17 (2005)). These and other contractual provisions, such as whether the precedent agreement is long-term or binding, reflect concrete commitments demonstrating market need.

¹⁰² *See, e.g., Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232, at P 39 (2020) ("Given the substantial financial commitment required under these agreements by project shippers, we confirm that precedent agreements are the best evidence that the service to be provided by the project is needed in the markets to be served."); *PennEast Pipeline Co.*, 164 FERC ¶ 61,098, at P 21 (2018) ("we find no reason to second guess the business decisions of these shippers given the substantial financial commitment required under executed contracts").

¹⁰³ *Tenn. Gas Pipeline Co.*, 170 FERC ¶ 61,142, at P 10 (2020); *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 37 (2019). We note that, consistent with the Certificate Policy Statement, demand growth projections and/or market studies remain

service represent actual evidence regarding demand.¹⁰⁴ In short, it is the Commission's policy that precedent agreements are the best evidence that the service to be provided by the project is needed to connect supply and demand.¹⁰⁵ Accordingly, we will continue to treat precedent agreements as persuasive evidence of market need and will not look beyond them to assess need by other means unless there is credible, contrary evidence discounting their probative value.¹⁰⁶

30. With the foregoing in mind, we find it appropriate to lay out the various burdens that we expect parties to meet when presenting evidence before the Commission.¹⁰⁷ While the applicant has the ultimate burden of proving that a proposed project is

good evidence of market need, subject to public comment and Commission review.

¹⁰⁴ *Atl. Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at P 54 (2018). The significance of precedent agreements, and the Commission's reliance on them as part of its need determination, both in whole and in part, has been frequently affirmed by the courts. *See, e.g., Food & Water Watch v. FERC*, 104 F.4th 336, 347 (D.C. Cir. 2024) (*East 300*) (citations omitted); *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 114 (D.C. Cir. 2022) (*Del. Riverkeeper*); *City of Oberlin, Ohio v. FERC*, 39 F.4th 719, 722 (D.C. Cir. 2022) (*Oberlin II*); *Sierra Club v. FERC*, 38 F.4th 220, 230 (D.C. Cir. 2022) (citations omitted); *Birckhead v. FERC*, 925 F.3d 510, 517-18 (D.C. Cir. 2019); *Oberlin I*, 937 F.3d at 605; *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (*Sabal Trail*) (citations omitted); *Myersville*, 783 F.3d at 1311; *Minisink Residents for Env't Pres. & Safety v. FERC*, 762 F.3d 97, 111 & n.10 (D.C. Cir. 2014) (*Minisink*) (quoting Certificate Policy Statement, 88 FERC at 61,748); *Twp. of Bordentown*, 903 F.3d at 262-63; *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *1 (D.C. Cir. Feb. 19, 2019) (*Appalachian Voices*).

¹⁰⁵ *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 at P 39; *See, e.g., Adelpia Gateway, LLC*, 169 FERC ¶ 61,220 at P 35, *order denying reh 'g*, 171 FERC ¶ 61,049, at P 12 (2020); *Tenn. Gas Pipeline Co.*, 169 FERC ¶ 61,230, at P 19 (2019), *order denying reh 'g*, 170 FERC ¶ 61,142 at P 10.

¹⁰⁶ *N.J. Conservation Found.*, 111 F.4th at 60.

¹⁰⁷ We note that we are not changing past practice or creating a new framework, but merely making explicit what has been implicit in the Commission's evaluation of the evidence before it. *E.g., Tex. E. Transmission Corp.*, 95 FERC ¶ 61,367, at 62,388 (2001) (“[T]he burden was on the applicant, Texas Eastern, to show that its proposed construction and expansion is required by the public convenience and necessity.”); *Lantern Petroleum Corp.*, 47 FERC ¶ 61,024, at 61,079 (1989) (“The Secretary established his prima facie case. The burden of going forward with the evidence to show the contrary rests on Lantern.”).

needed¹⁰⁸ an opponent has the burden of producing credible, contrary evidence. Unsupported assumptions,¹⁰⁹ hypotheticals with no basis in fact or experience,¹¹⁰ and bare assertions¹¹¹ are not sufficient. Under section 7(c) of the APA,¹¹² “the proponent of a rule or order has the burden of proof,” which the Supreme Court has construed as the ultimate “burden of persuasion” on an issue.¹¹³ The Commission examines the merits of individual projects on a case-by-case basis,¹¹⁴ and the project sponsor must demonstrate project need.¹¹⁵

31. We now turn to the three issues regarding project need raised in the court’s remand, specifically that the Commission: (a) erred in relying on precedent agreements without adequately responding to the argument that LDCs profit by subscribing for unneeded capacity at retail ratepayers’ expense, (b) arbitrarily discredited the NJ Agencies Study and NJCF Skipping Stone Study by failing to adequately rebut the

¹⁰⁸ *E.g.*, *Atl. Ref. Co. v. FPC*, 316 F.2d 677, 678 (D.C. Cir. 1963) (“The burden of proving the public convenience and necessity is, of course, on the natural gas company.”); *Mich. Consol. Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960) (“[T]he applicant under § 7(c) for a certificate to commence service must bear the burden of proving that that public interest will be served.”).

¹⁰⁹ *E.g.*, *Tenn. Gas Pipeline Co.*, 98 FERC ¶ 61,166, at 61,618 (2002) (declining to accept assertions where analysis was based on unsupported assumptions).

¹¹⁰ *E.g.*, *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1580 (D.C. Cir. 1992) (“We see no grounds to require [the Commission] to allocate its limited resources to full-fledged investigation of the . . . claims, which were primarily hypotheticals with no evident basis in fact or experience.”).

¹¹¹ *E.g.*, *Entergy Ark., Inc.*, 141 FERC ¶ 61,269, at P 30 (2012) (“The Commission has long held that protestors must provide more than unsubstantiated allegations in support of their positions”); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,173 at P 93 (2010).

¹¹² 5 U.S.C. § 556(d).

¹¹³ *Dir., Office of Workers’ Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 269-71, 275 (1994) (quoting 5 U.S.C. § 556(d)).

¹¹⁴ *Tex. E. Transmission, LP*, 131 FERC ¶ 61,164, at P 67 (2010).

¹¹⁵ *Atl. Coast Pipeline, LLC*, 164 FERC ¶ 61,100 at P 54.

studies' conclusions, and (c) arbitrarily discounted New Jersey's state-law mandate for LDCs to reduce natural gas use.¹¹⁶

2. Remanded Issues

a. LDC Captive Ratepayers and Profiteering

32. The D.C. Circuit found that the Commission “disregarded contradictory evidence showing a lack of market need”¹¹⁷ when it “ignore[d] the concern that an LDC’s captive ratepayers might pay for added pipeline capacity the LDC does not use to serve those customers.”¹¹⁸ The D.C. Circuit further averred that, if LDCs’ retail ratepayers assume the cost even when they do not need the capacity, LDCs have a perverse incentive “to contract for additional unneeded capacity, which they can then resell at a profit, even in a soft capacity market.”¹¹⁹ Accordingly, the D.C. Circuit directed the Commission to respond to Rate Counsel’s question as to whether precedent agreements with LDCs serving captive ratepayers are probative of market need for new capacity.¹²⁰

33. In the underlying proceeding, NJCF claimed, without evidence, that New Jersey LDCs are “self-dealing” by subscribing to capacity in excess of firm market need in order

¹¹⁶ *N.J. Conservation Found.*, 111 F.4th at 58-59.

¹¹⁷ *Id.* at 60.

¹¹⁸ *Id.* at 61.

¹¹⁹ *Id.* As noted by the court, Petitioners framed this argument as “contraven[ing] FERC’s policy against ‘subsidization from its existing customers’ for the benefit of the utilities’ own shareholders.” *Id.* at 60 (citing Pet. Br. 63-67; Rate Counsel Br. 27-29; and Certificate Policy Statement, 88 FERC at 61,746). Petitioners and Rate Counsel misapprehend the Certificate Policy Statement. The Commission’s policy against subsidization is directed at avoiding subsidies from the applicant’s existing customers, i.e., current shippers on the Commission jurisdictional interstate pipeline system. *Id.* at 50 (citing Certificate Policy Statement, 88 FERC at 61,745). The Certificate Policy Statement considers whether “the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the existing customers of the pipeline proposing the project, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline.” Certificate Policy Statement, 88 FERC at 61,745. These three interests do not include end-use customers of the project sponsor’s shippers, as jurisdiction to review LDC decision-making and contracts to serve retail rate payers lies with individual states. *See infra* P 36.

¹²⁰ *N.J. Conservation Found.*, 111 F.4th at 61 & n.9.

to use that excess capacity to make off-system sales and/or capacity releases to benefit those subscribers' shareholders, while the cost of such excess is paid for by the subscribers' ratepayers.¹²¹ This type of "self-dealing" is different than that contemplated under the Certificate Policy Statement and *Environmental Defense Fund*.¹²² Here, none of New Jersey LDC shippers are affiliated with Transco. The only REAE Project shipper that is an affiliate of Transco is Sequent Energy, which is not an LDC, but rather is a wholesale energy marketer with no ability to pass through costs to captive customers. It is subscribed to 18% of the project capacity¹²³ and is at risk for recovering the costs of the capacity contract. There are no allegations in the record nor evidence of self-dealing between Sequent Energy and Transco. Simply put, the type of affiliate abuse identified by the court as requiring the Commission to look behind precedent agreements is not present in the instant proceeding.

34. Next, we turn to the issue of whether the probative value of the New Jersey LDC precedent agreements is undermined by the allegation that there is an incentive to contract for unneeded capacity because LDCs can profit from purchasing (at their ratepayers' expense) and reselling (and retaining the revenue from) unneeded capacity. We conclude that this claim is unsupported and contradicted by requirements of the NJ BPU.

35. Specific NJ BPU requirements for New Jersey LDCs undercut the LDC's ability to engage in this type of scheme.¹²⁴ For example, in April 2023, pursuant to a stipulation signed by South Jersey Gas Company and the New Jersey Agencies, South Jersey Gas Company was required "to credit [Basic Gas Supply Service (BGSS)] customers with all

¹²¹ NJCF Rehearing Request at 25-29.

¹²² *EDF*, 2 F.4th at 975 (describing self-dealing between corporate affiliates who were parties to precedent agreement); see *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 49 (2009) (explaining that, in a different context, the Commission "will apply a higher level of scrutiny" to certain affiliate transactions "due to the absence of arms' length negotiations as a basis for the commitment, concerns that the affiliate would receive unduly preferential treatment, further concerns that a utility affiliate contract could shift costs to captive ratepayers of the affiliate and subsidize the . . . project inappropriately, and the lack of transparency that would surround the arrangement").

¹²³ Certificate Order, 182 FERC ¶ 61,006 at P 8 & n.7.

¹²⁴ Rehearing Order, 182 FERC ¶ 61,148 at P 65 n.191 (noting that "retail regulators tend to require the sharing of revenues from such off-system resales of capacity with the captive customers who paid for the underlying assets. This undercuts NJCF's assertion that profiteering on behalf of shareholders is the motive for the LDCs to contract for this capacity.").

capacity release credits or off-system sales margins (including the Company's usual 15% share) derived from the use of pipeline capacity under the contract between the Company and Adelphia Gateway, LLC for 75,000 [Dth] of firm transportation capacity that became effective September 1, 2022, and under a contract between the Company and Columbia for 75,000 [Dth] of firm transportation capacity projected to be placed in service during calendar year 2023."¹²⁵ In addition, parties in that proceeding reserved their right to challenge those contracts in future rate proceedings. According to South Jersey Gas Company, it "continued crediting all such capacity release credits or off-system sales margins (including the Company's 15% share) during the 2023-2024 BGSS year."¹²⁶ Similar mechanisms appear to be in place for NJNG,¹²⁷ PSEG,¹²⁸ and Elizabethtown Gas.¹²⁹ Based on the foregoing, NJ BPU appears to employ an 85/15 formula whereby customers of New Jersey LDCs receive 85% of the margin from the sale of off-system capacity sold by the LDC. We find that this type of mechanism, imposed by state regulators, alleviates concerns of profiteering, and we affirm our prior conclusion that Rate Counsel's claim does not undermine a finding that the New Jersey LDCs' precedent agreements reflect market need. This is particularly true if, as here, the LDCs will be subject to state prudence reviews where the cost of the contracts may be disallowed if the regulator finds that an LDC was imprudent in acquiring a certain amount of capacity.¹³⁰ Accordingly, we continue to find that precedent agreements with LDCs are probative of

¹²⁵ South Jersey Gas, NJ BPU Docket No. GR22060364, April 26, 2023 Order at 7, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2111256.

¹²⁶ South Jersey Gas, NJ BPU Docket No. GR24060370, May 31, 2024 Petition at 14, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112962.

¹²⁷ NJNG, NJ BPU Docket No. GR24060372, May 31, 2024 Petition, Attachment A at 6, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112964 (listing 85/15 margin sharing amounts from off-system sales and capacity releases).

¹²⁸ PSEG, NJ PBU Docket No. GR24060369, May 31, 2024 Petition, Exhibit 18, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112961 (explaining its capacity releases and off-system sales).

¹²⁹ Elizabethtown Gas, NJ BPU Docket No. GR24060371, May 31, 2024 Petition, Ex. P-2 15, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112963 (projecting off-system sales using 85/15 sharing mechanism for off-system sales and capacity releases).

¹³⁰ *Transwestern Pipeline Co.*, 62 FERC ¶ 61,209, at 62,511 (1993) (recognizing that "[t]he knowledge that [an LDC] may not be allowed to pass through imprudently incurred costs to their ratepayers [is] an incentive to LDCs to avoid contracting for excess capacity.").

market need for new capacity, the same as any other precedent agreement, and that the precedent agreements supporting the REAE Project are significant evidence of project need.¹³¹

36. Moreover, we reaffirm that oversight of LDC procurement decisions is outside the Commission's jurisdiction¹³² and best left to state regulators.¹³³ Absent credible evidence of self-dealing, an attempt by the Commission to look behind precedent agreements to independently review the decision-making of an LDC might infringe upon the role of state regulators in determining the prudence of expenditures by the utilities they regulate.¹³⁴ Therefore, "issues related to the utility's ability to recover costs associated with its decision to subscribe for service on the [project] involve matters to be determined by the [state regulator]; those concerns are beyond the scope of the Commission's jurisdiction."¹³⁵ Here, New Jersey has the authority to conduct a prudence review to ascertain whether an LDC's capacity purchases and attendant costs are just and

¹³¹ See, e.g., *Oberlin I*, 937 F.3d at 605–06 (finding the Commission's conclusion reasonable that precedent agreements were the best evidence of project need and upholding the Commission's policy of not looking behind precedent agreements); *Myersville*, 783 F.3d at 1311 (same).

¹³² Under NGA section 1(b), the Commission's jurisdiction does not extend to LDCs or their services. If an LDC receives gas within a state, and that gas is consumed entirely within that state, the LDC may engage in wholesale transactions exempt from the jurisdiction of the Commission pursuant to NGA section 1(c). 15 U.S.C. § 717(c); *Corning Nat. Gas Corp.*, 129 FERC ¶ 62,060, at n.2 (2009). Matters exempted by NGA section 1(c) "are declared to be matters primarily of local concern and subject to regulation by the several States." 15 U.S.C. § 717(c).

¹³³ Rehearing Order, 182 FERC ¶ 61,148 at P 28 (citations omitted); see also *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 60 (2017) (stating that state utility regulators must approve any expenditures by state-regulated utilities).

¹³⁴ *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042 at P 60; see also *Conoco Inc. v. FERC*, 90 F.3d 536, 552 (D.C. Cir. 1996) (holding that the Commission could not impose contractual conditions where it lacked jurisdiction under the NGA).

¹³⁵ *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042 at P 60; see also *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 53 (2017) ("issues related to a utility's ability to recover costs associated with its decision to subscribe for service [on a pipeline] involve matters to be determined by the relevant state utility commissions; those concerns are beyond the Commission's jurisdiction").

reasonable and whether it is appropriate to pass those costs onto customers.¹³⁶ In fact, the New Jersey LDCs have all filed petitions which include the relevant REAE Project subscribed capacity before the NJ BPU to revise their rates.¹³⁷ Based on the foregoing, we find that concerns regarding the New Jersey LDCs' contracting decisions are matters of local concern,¹³⁸ and, consistent with established policy, we need "not look behind precedent or service agreements to make judgments about the needs of individual shippers."¹³⁹

37. In addition to the existing precedent agreements, we find that the record here contains further evidence supporting a finding of public convenience and necessity.¹⁴⁰ As stated previously, the Certificate Policy Statement established a more flexible approach for evaluating projects compared to the Commission's previous requirement that

¹³⁶ N.J. Stat. § 48:2-21.

¹³⁷ NJNG, NJ BPU Docket No. GR24060372, May 31, 2024 Petition, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112964; South Jersey Gas, NJ BPU Docket No. GR24060370, May 31, 2024 Petition, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112962; PSEG, NJ BPU Docket No. GR24060369, May 31, 2024 Petition, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112961; Elizabethtown Gas, NJ BPU Docket No. GR24060371, May 31, 2024 Petition, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2112963.

¹³⁸ 15 U.S.C. § 717(b); *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 293 (1997) (stating that "Congress amended the NGA to 'leav[e] jurisdiction' over 'companies engaged in the distribution' of natural gas 'exclusively in the States, as always has been intended.'") (citation omitted); *Tenneco Gas v. FERC*, 969 F.2d 1187, 1198 (D.C. Cir. 1992) ("regulation of . . . LDCs is a state matter") (citing 15 U.S.C. § 717(b)); *see, e.g., Midwest Gas Servs., Inc. v. Ind. Gas Co.*, 317 F.3d 703, 706 & n.1 (7th Cir. 2003) ("LDCs do not fall under the authority of the [Commission] jurisdiction except for those operations that cross state lines."); *Hill v. Kan. Gas Serv. Co.*, 323 F.3d 858, 868 (10th Cir. 2003) (stating that distribution of refunds by an LDC is a matter within the purview of state and local regulatory authorities); *Bd. of Water, Light & Sinking Fund Comm'rs of City of Dalton, Ga. v. FERC*, 294 F.3d 1317, 1323 (11th Cir. 2002) ("the current regulatory framework still reserves for states the right to regulate local distribution, while permitting pipelines, pursuant to [the Commission's] jurisdiction, to engage in the interstate transport of natural gas purchased by end-users from other sources in competition with LDCs").

¹³⁹ *Oberlin I*, 937 F.3d at 606 (citing *Myersville*, 783 F.3d at 1311).

¹⁴⁰ *See NEXUS Gas Transmission, LLC*, 172 FERC ¶ 61,199 at P 24.

applicants have firm, long term service commitments for 25% of the new capacity.¹⁴¹ The Commission may, on a case-by-case basis, look to other probative evidence in the record regarding project need.

38. Under the Certificate Policy Statement, the Commission may also consider a variety of other relevant factors to demonstrate need, including market studies, a comparison of anticipated demand with the amount of capacity currently serving the market, and whether a project may offer access to new supplies, new interconnects, and competitive alternatives, and potential cost savings to customers.¹⁴² As discussed in the Certificate Order, the Rehearing Order, and further discussed herein, there is market study evidence that the project will provide more reliable service on peak winter days in Maryland, Pennsylvania, and New Jersey and will increase supply diversity.¹⁴³ We continue to find this to be probative evidence of need for the REAE Project.

39. Under the Certificate Policy Statement, we apply a sliding scale, whereby “[t]he more interests adversely affected or the more adverse impact a project would have on a particular [economic] interest, the greater the showing of public benefits from the project required to balance the adverse impact.”¹⁴⁴ Here, the proposed facilities were designed to use, to the extent practicable, existing rights-of-way and areas adjacent to existing rights-of-way.¹⁴⁵ The total acreage to be disturbed for construction of the project facilities was

¹⁴¹ *Id.* (citing Certificate Policy Statement, 88 FERC at 61,743-47).

¹⁴² Certificate Policy Statement, 88 FERC at 61,747-48.

¹⁴³ Certificate Order, 182 FERC ¶ 61,006 at P 34; Rehearing Order, 182 FERC ¶ 61,148 at P 57 (finding the need for reliability when the natural gas system is strained, probative of the need for the project).

¹⁴⁴ Certificate Policy Statement, 88 FERC at 61,749; *NEXUS Gas Transmission, LLC*, 172 FERC ¶ 61,199 at P 26. We recognized in the Certificate Policy Statement that “in most cases it will not be possible to acquire all the necessary right-of-way by negotiation” and provided, as an example, that if an applicant had precedent agreements with multiple parties for most of the new capacity, that would be strong evidence of market demand and potential public benefits that could outweigh the inability to negotiate right-of-way agreements with some landowners and, similarly, a project to attach major new gas supplies to the interstate grid would have benefits that may outweigh the lack of some right-of-way agreements. Certificate Policy Statement, 88 FERC at 61,749.

¹⁴⁵ Certificate Order, 182 FERC ¶ 61,006 at P 37.

792.3 acres, of which Transco maintained 175.6 acres as permanent right-of-way, with the remainder allowed to revert to preconstruction use.¹⁴⁶

40. Based on the foregoing, we find that the REAE Project meets the criteria of our Certificate Policy Statement. As explained below, there is no evidence that available capacity exists on other pipelines to provide the capacity subscribed by the Transco shippers. Because Transco will charge incremental rates to recover the full cost of the expansion facilities, we find that Transco's existing shippers will not subsidize the expansion costs.¹⁴⁷ As described above and in the previous orders in this proceeding, the project will provide a reliable, flexible, and diverse supply of gas that will lead to increased price stability.¹⁴⁸ In view of the above, we conclude that the REAE project is required by the public convenience and necessity.

b. Evaluation of Market Studies

41. The D.C. Circuit directed the Commission to explain why it discredited the findings of the NJ Agencies Study and the NJCF Skipping Stone Study showing that the current capacity is sufficient to meet the New Jersey ratepayers' natural gas demands beyond 2030. Specifically, the court required the Commission to address: (i) whether NJ ratepayers' gas demand can be met with existing gas supply available by contract for off-system peaking resources, and (ii) why the NJCF Skipping Stone Study's assumption that downstream firm capacity would be fully available to the New Jersey LDCs at times of high demand is not valid.

i. Availability of Off-System Peaking Resources

42. In the underlying orders, the Commission noted that the NJ Agencies Study assumed availability of off-system peaking resources at a constant 619 MDth/d, and found that "the ability to obtain sufficient off-system delivered gas peaking resources is uncertain because it is not contracted for on a long-term firm basis" and that "circumstances, such as the potential for extreme weather events, undercut [the NJ Agencies Study's] assumption."¹⁴⁹ The D.C. Circuit found that the Commission arbitrarily discredited the NJ Agencies Study on the issue of whether ratepayers' gas demand can be met with existing gas supply over the coming years by contracts for off-

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* P 20.

¹⁴⁸ *Id.* P 34; Rehearing Order, 182 FERC ¶ 61,148 at P 57.

¹⁴⁹ Rehearing Order, 182 FERC ¶ 61,148 at P 38.

system peaking resources.¹⁵⁰ The court explained that, although the Commission found that the potential for extreme weather events could jeopardize New Jersey LDCs' access to off-system supply sources, the Commission failed to provide evidence to support its position that this potential created uncertainty in the availability of these resources or why the current supply is insufficient.¹⁵¹ The court further found that the Commission failed to acknowledge the NJ Agencies Study's explanation that NJNG's reported "decline" in projected use of off-system peaking resources¹⁵² reflects the reality "of the short-term nature of the contracts, which need to be renewed or replaced annually," and may count as zero only until they are renewed or replaced, and that the Commission failed to account for the NJ Agencies Study's contrastingly steady projected reliance on off-system peaking resources.¹⁵³

43. As a lifeline service provider to customers that include households, businesses, schools, hospitals, and government buildings, an LDC's mandate is to prudently ensure 100% reliability, especially on the coldest days of the year and even extreme natural gas demand levels on a "design day".¹⁵⁴ An LDC must plan for and secure natural gas supply despite fluctuating market prices and unpredictable demand due to factors such as weather variability and evolving energy policies. Supply arrangements must be in place prior to any given winter to allay competition for limited supplies of natural gas on high demand days during the winter. An LDC's failure to meet demand could seriously impact human welfare, essential services, electricity generation, and the economy. Given this context, we conclude that the NJ Agencies Study and the NJCF Skipping Stone Study both incorporate unacceptable risks by overestimating, respectively, the long-term

¹⁵⁰ *N.J. Conservation Found.*, 111 F.4th at 59.

¹⁵¹ *Id.* at 59-60 (citing Rehearing Order, 182 FERC ¶ 61,148 at P 65).

¹⁵² The decline is in reference to NJNG's assessment that its projected off-system peaking resource use will decline from 230.7 MDth/d in 2020/21 to 80.0 MDth/d in 2021/22, and to zero thereafter. Certificate Order, 182 FERC ¶ 61,006 at P 29; Rehearing Order, 182 FERC ¶ 61,148 at n.120.

¹⁵³ *N.J. Conservation Found.*, 111 F.4th at 60.

¹⁵⁴ NJNG, Comments, NJ BPU Docket No. GO19070846, Oct. 16, 2019, https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2108126. See, e.g., *N.J. Nat. Gas Co. v. Dir., Div. of Tax'n*, 24 N.J. Tax 59, 65 (2008) (describing NJNG's obligation to "procure a portfolio of pipeline storage and supply resources necessary to satisfy its obligation to provide safe and reliable natural gas, and maintain a supply of natural gas necessary to fulfill the anticipated needs of its customers").

reliability of off-system peaking resources and the availability of pipeline capacity not having primary delivery into New Jersey.

44. The design day demand of LDC-served customers in New Jersey and southeastern Pennsylvania currently exceeds the volume of existing firm supply from pipeline capacity with primary¹⁵⁵ firm delivery in the region and LDCs' on-system resources such as small-scale LNG storage.¹⁵⁶ To build a supply portfolio sufficient to meet design day

¹⁵⁵ Primary firm capacity has the highest scheduling priority. *Enable Gas Transmission, LLC*, 152 FERC ¶ 61,052, at P 60 (2015). Secondary firm capacity has a lower scheduling priority than primary capacity and is differentiated by whether it is in-the-path (between the primary receipt and delivery points) or out-of-the-path. *Gulf S. Pipeline Co.*, 144 FERC ¶ 61,095, at P 34 (2013). Secondary in-the-path has a higher scheduling priority than secondary out-of-the-path, but a lower priority than primary and is therefore subject to scheduling risk under high utilization conditions. *Id.*

¹⁵⁶ Transco Levitan Study at 2, 8; *see also id.* at 9, n.8 (citing Elizabethtown Gas, Petition to Review its Basic Gas Supply Service Rate, NJ BPU Docket No. GR21060876 (June 1, 2021), <https://www.elizabethtowngas.com/Elizabethtown/media/PDF/Regulatory%20Info/2021-ETG-BGSS-P-Filing.pdf>; NJNG, Petition for the Annual Review of its Basic Gas Supply Service (BGSS) and Conservation Incentive Program (CIP) Rates for F/Y 2022, NJ BPU Docket No. GR210505860 (May 28, 2021), <https://www.njng.com/regulatory/pdf/NJNG-2022-BGSS-CIP-Filing-GR21050860.pdf>; PECO, Information Submitted in Compliance with Section 1307(f) of the Public Utility Code Recovery of Purchased Gas Costs (April 30, 2021), <https://www.puc.pa.gov/pdocs/1701950.pdf>; Philadelphia Gas, Computation of Annual Purchased Gas Costs For Twelve Months Ending August 31, 2022 (February 1, 2021), https://www.pgworks.com/uploads/pdfs/GCR_2021-2022_-_Pre-Filing_Volume_2.pdf; PSEG, Motion, Supporting Testimony & Tariff Modifications, June 1, 2021, In the Matter of Public Service Electric and Gas Company's 2021/2022 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge, NJ BPU Docket No. GR21060878, <https://nj.pseg.com/aboutpseg/regulatorypage/-/media/78C8191CD540477D9230DA056F9A675B.ashx>; South Jersey Gas, Petition, Case Summary, Testimony and Schedules, In the Matter of the Petition of South Jersey Gas Company to Revise the Level of Its Basic Gas Supply Service ("BGSS") Charge and Conservation Incentive Program ("CIP") Charge for the Year Ending September 30, 2022 (June 1, 2021), https://southjerseygas.com/SJG/media/pdf/pdf-regulatory/SJG-2021-2022-BGSS_CIP-Peition-06-01-21.pdf).

demand,¹⁵⁷ the LDCs are therefore reliant on their own contracted capacity, on-system peaking sources, and third-party supply arrangements. Elizabethtown Gas and South Jersey Gas have explained that they “must contract each winter for incremental supplies of peaking gas to ensure their ability to serve peak demand and peak hour demands However, the availability of peaking supplies has “tightened considerably in the last five years and the costs of incremental peaking supplies has increased significantly.”¹⁵⁸ Simply put, the LDCs are not assured the ability to use the capacity unless and until they have entered into a new firm contract each year.

45. Moreover, robust competition among market participants requires the LDCs to compete for third-party supplies, either within the study region or with downstream shippers. Regardless of a potential LDC’s willingness to pay, the outcome of such competition cannot be inferred without parallel awareness of other market participants’ willingness to pay.¹⁵⁹ These risks have been noted in other Northeast jurisdictions.¹⁶⁰

46. Commission staff’s review of the NJ Agencies Study determined that in order for there to continue to be sufficient natural gas for New Jersey LDCs to access on a winter design day, several favorable events must happen in tandem. For the base forecast, the NJ Agencies Study’s shortfall risk assessment reflects the historical peak demand growth of 0.95% and the minimum user demand-side energy efficiency gains required by the NJ BPU Order of June 10, 2020, further reducing demand growth to 0.80% from 2020/21 to 2029/30.¹⁶¹ This compares to the New Jersey LDC’s larger demand growth projection of

¹⁵⁷ *Supra* note 25.

¹⁵⁸ Transco Levitan Study at 41, 42; *see also* Northeast Power Coordinating Council, *Northeast Gas/Electric System Study* at 5 (Jan. 2025) (during a cold snap, existing New York gas infrastructure is insufficient to meet demand for most generators and additional upstream supplies becomes scarce); *see also National Grid LNG LLC*, 165 FERC ¶ 61,031, at P 18 (2018) (supply of LNG for peaking services is limited and pricing can be volatile).

¹⁵⁹ Transco Levitan Study at 34.

¹⁶⁰ *See, e.g., Modernized Gas Planning Process: Standards for Reliance on Peaking Services and Moratorium Management*, Case 20-G-0131, July 17, 2020 16 & 17, <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BA66EE1E3-A429-4A0F-9D64-C5D0101BCF42%7D> (explaining that New York LDCs are concerned with short-term contracts and their future availability and have therefore proposed to derate these contracts to account for re-contracting reliability risks).

¹⁶¹ NJ Agencies Study at 23, 56.

portfolios. This is a small margin of error given that the human safety and economic consequences of being wrong are significant.¹⁶⁶

47. The NJ Agencies Study states that generally New Jersey LDCs plan for a design day using on average 66.4 heating degree days (HDD).¹⁶⁷ The study also analyzed conditions for a 1-in-90 Design Day, which it calculated as equivalent to 71.3 HDDs. According to the NJ Agencies Study, the 1-in-90 day Design Day resulted in a natural gas shortfall in 2027/28, even including the 619 MDth/d of off-system peaking resources, with the natural gas deficit widening in subsequent years.¹⁶⁸ Emphasizing only the LDC Design Day requirements as justification for the project underestimates potential benefits, as LDC Design Day planning only addresses firm natural gas demand. Under extreme weather and outage events, everyone on the system, including firm and interruptible customers, would be affected.

48. The project will help meet interruptible demand from sources like gas-fired electric generators, which will not only maintain reliability for the interruptible customers but also alleviate systemic stress on energy systems for all customers, including firm customers. Interruptible natural gas customers complicate a pipeline's ability to ensure firm transportation because, if a large number of interruptible customers take gas during a peak demand period, it can reduce pressure within the pipeline system, potentially impacting the ability of firm customers to access their full contracted supply.

49. For example, during Winter Storm Elliot, occurring between December 21 and 26, 2022, interruptible natural gas customers and electric generators using interruptible natural gas fuel supply were curtailed and relatedly firm natural gas shippers were

¹⁶⁶ We note that about 75% of New Jersey households rely on natural gas to heat their homes. NJ Agencies Study at 9.

¹⁶⁷ NJ Agencies Study at 96. The National Weather Service defines a "degree day" as a unit of measure for recording how hot or how cold it has been over a 24-hour period. The number of degree days applied to any particular day of the week is determined by calculating the mean temperature for the day and then comparing the mean temperature to a base value of 65 degrees Fahrenheit. (The "mean" temperature is calculated by adding together the high for the day and the low for the day, and then dividing the result by 2.) If the mean temperature for the day is, say, 5 degrees higher than 65, then there have been 5 cooling degree days. On the other hand, if the weather has been cool, and the mean temperature is, say, 55 degrees, then there have 10 heating degree days (65 minus 55 equals 10). *See also* NOAA, National Weather Service (NWS), <https://www.weather.gov/ffc/degdays>.

¹⁶⁸ NJ Agencies Study at 100, Figure 45.

confronted with reliability challenges.¹⁶⁹ These circumstances occurred despite Winter Storm Elliott not qualifying as a Design Day event for the most populated regions. NYC-Central Park registered 54 HDDs on December 24, 2022, during Winter Storm Elliot.¹⁷⁰ As a comparison, Consolidated Edison Company of New York Inc.'s (Con Edison) Design Day is based on a zero-degree temperature, which equates to 65 HDDs. Thus, the temperature was 11 degrees warmer than Con Edison's Design Day. Nevertheless, on Christmas Eve morning, the five interstate natural gas pipelines serving Con Edison began experiencing drops in pressure at Con Edison's citygate due to high demand, production losses, and operational issues. Con Edison managed to supply its firm customers with gas and maintain necessary pressure, partially by curtailing its interruptible customers, as well as activating its liquefied natural gas regasification plant. Had Con Edison's citygate pressures not recovered, it was in danger of needing to cut service to all or large portions of its system. Even losing service to 130,000 customers would be considered a major outage and could have taken five to seven weeks to restore.¹⁷¹ Had it lost the majority of its system, over a million customers in New York City and nearby areas would have been unable to heat their apartments and houses, while the outside temperature was in the single digits, for potentially over a month. Moreover, a system-wide outage would likely have caused extensive property damage due to freeze-damaged water pipes within homes and buildings.¹⁷² With regard to electricity generation, on December 23 and 24, 2022, a daily average of 5,877 megawatts (MW) of generation were unavailable due to curtailments of interruptible pipeline delivery. As context, this is approximately 6.5% of the 90,500 MW of incremental coincident unplanned generation outages during the worst point of Winter Storm Elliott (meaning they all occurred at the same time). Further, an additional daily average of 14,994 MW, or 16.6% of the total 90,500 MW of unplanned generation outages, were unavailable due

¹⁶⁹ FERC and North American Electric Reliability Corporation (NERC), *Winter Storm Elliott Report: Inquiry into Bulk-Power System Operations During December 2022* 85-86 (Nov. 2023), <https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-during-december-2022> (Winter Storm Elliott Report).

¹⁷⁰ NOAA, NWS, <https://www.weather.gov/wrh/Climate?wfo=okx> (select "NY-Central Park Area" and "Daily data for a month" then add the date, December 24, 2022 and select "go").

¹⁷¹ Unlike restoring electricity after an outage, restoring residential natural gas service requires the utility crews to access every impacted home or business to shut off all gas appliances. After gas flow on the distribution system is restored, utility crews must also re-light each gas appliance in every affected home and business and conduct safety checks before they can restore service to each end-user.

¹⁷² Winter Storm Elliott Report at 85-86.

to market issues, firm pipeline delivery curtailments, gas delivery pressure issues, market price restrictions, failure of firm supply obligations, and pipeline transportation scheduling constraints. All of these conditions are reflective of strained energy supplies and natural gas infrastructure limitations.¹⁷³

50. Winter Storm Elliot illustrates the potential for severe consequences due to natural gas infrastructure limitations and energy supply strained by a lack of sufficient access to non-firm capacity. Based on the forgoing, we find that the New Jersey LDCs' continued access to off-system supply sources is uncertain and, thus, we find that it would not be reasonable for us to rely on the findings of the NJ Agencies Study because it accepts more risk than we believe is reasonable or prudent based on its reliance on projections showing total off-system peaking resources available at a constant 619 MDth/d.¹⁷⁴

ii. Availability of Downstream Firm Capacity

51. In the Rehearing Order, the Commission discounted the NJCF Skipping Stone Study because the study incorrectly assumes that firm capacity held by downstream customers would be available to New Jersey LDCs during a time of high demand in New Jersey.¹⁷⁵ The D.C. Circuit found the Commission's rejection of that study arbitrary because there was no record evidence of the downstream capacity being unavailable in the decades that New Jersey LDCs have relied on it.¹⁷⁶

¹⁷³ *Id.* at 5 & 85.

¹⁷⁴ As stated in the Rehearing Order, the Commission's findings in no way preclude New Jersey from reviewing the prudence of any purchase agreement by a New Jersey LDC, consistent with the state's jurisdiction. Rehearing Order, 182 FERC ¶ 61,148 at PP 28, 71. *See also Mountain Valley Pipeline, LLC*, 185 FERC ¶ 61,208, at n.56 (2023); *United Gas Pipe Line Co.*, 42 FERC ¶ 61,197 (1988) (citing *Ky W. Va. Gas Co. v. Pa. Pub. Util. Comm'n*, 837 F.2d 600 (3d Cir. 1988) ("A state rate setting agency is not prevented from determining the prudence of a regulated company's purchasing practices before permitting a passthrough to consumers of the cost of gas."); *Transwestern Pipeline Co.*, 59 FERC ¶ 61,068, at 61,280 (1992) ("In-state allocation of stranded costs is inappropriate for resolution here since it is within the state's jurisdiction to establish local distribution company rates."). Nor does the Commission's analysis of the NJ Agencies Study preclude the use of the study by New Jersey to support its own determinations related to matters within its jurisdiction. Rehearing Order, 182 FERC ¶ 61,148 at P 24.

¹⁷⁵ *Id.* P 45.

¹⁷⁶ *N.J. Conservation Found.*, 111 F.4th at 60.

52. The primary objection to the REAE Project outlined in the NJCF Skipping Stone Study is its assertion that there is a large quantity of interstate pipeline capacity through New Jersey that is and will continue to be available to the New Jersey LDCs, which the study concludes obviates the need for new capacity.¹⁷⁷ For several reasons, the Commission finds this argument, and the evidence proffered, not credible and insufficient to outweigh the significant evidence of need demonstrated by long-term, binding precedent agreements signed by the New Jersey LDCs and other regional customers.

53. The NJCF Skipping Stone Study identifies existing capacity that has not been used to date as “stranded.”¹⁷⁸ The Study presumes that this “stranded” capacity will remain available indefinitely,¹⁷⁹ and that the New Jersey LDCs will have easy and unfettered access to all of the capacity in the region.¹⁸⁰ The Commission does not dispute that the New Jersey LDCs have used capacity released or managed by third parties in the past. However, the NJCF Skipping Stone Study’s implication that there is a significant amount of permanently stranded capacity in sufficient quantities for the New Jersey LDCs to rely on for system planning over the next decade is unsupported. First, the Commission has been unable to confirm the large unutilized capacity claimed in the NJCF Skipping Stone Study. Assertions or claims based on unverifiable source data must be rejected.¹⁸¹ Second, any unused capacity that may exist cannot be relied upon with certainty to remain available during the New Jersey LDC’s calculated 2028-29 and 2032-33 design days because the capacity is owned by other parties, and the study’s calculation of available and “stranded” capacity is based on past usage, not the capacity owners’ projected demand levels in 2028-29 or 2032-33.¹⁸² Accordingly, we find that the

¹⁷⁷ NJCF Skipping Stone Study at 6-15.

¹⁷⁸ *Id.* at 18-19.

¹⁷⁹ *Id.*

¹⁸⁰ The NJCF Skipping Stone Study never specifies capacity that could be bought, contracted, or held by the New Jersey LDCs, but rather describes that its calculations are “cumulative firm delivery capacity available throughout New Jersey.” *Id.* at 12. Again, this ignores the current owners of the capacity, their plans for it, or whether they have any intention or desire to make it available to the New Jersey LDCS in peak demand scenarios.

¹⁸¹ *San Diego Gas & Elec. Co.*, 116 FERC ¶ 61,167, at P 76 (2006) (“we find that, because [the] claim is based on unverifiable source data, it is deficient and, therefore, rejected”); *see also Tenn. Gas Pipeline Co.*, 98 FERC at 61,618 (declining to accept assertions where analysis was based on unsupported assumptions).

¹⁸² NJCF Skipping Stone Study at 16-19.

“stranded” capacity that the NJCF Skipping Stone Study identified cannot reasonably be relied on for the New Jersey LDCs’ future, critical reliability planning.

54. Separately, the NJCF Skipping Stone Study argued that large volumes of non-New Jersey LDC capacity contracts which pass through New Jersey (i.e., “stranded” capacity) should be counted as available to the New Jersey LDCs, even if the primary delivery point is not in New Jersey.¹⁸³ This is not an appropriate assumption during times of system constraint. The LDCs cannot rely on having access to this capacity during a cold-weather event with high demand because customers having primary contractual rights to this pipeline capacity might well need to use the capacity and therefore it would be unavailable for purchase by the New Jersey LDCs.

55. Assuming this “stranded” capacity exists as the NJCF Skipping Stone Study claims, the New Jersey LDCs could have already purchased it themselves from Con Edison, as discussed below, or any other pipeline that traverses New Jersey to downstream markets. If it was possible, and the available “stranded” capacity was, as the NJCF Skipping Stone Study implies, indistinguishable from the capacity offered by the REAE Project, then the New Jersey LDCs could have procured capacity without the delay and uncertainty of signing precedent agreements on yet-to-be-constructed capacity. But, as illustrated earlier, not all capacity is equal in value or usefulness. If the “stranded” capacity is not available for purchase or very-long-term release, it is not a true substitute for new capacity in meeting the New Jersey LDCs design day needs as the NJCF Skipping Stone Study asserts. The same is true regarding delivery points¹⁸⁴ and pricing.¹⁸⁵

56. The NJCF Skipping Stone Study maintains that, by its calculation of New Jersey’s pipeline capacity, the “then-existing capacity far exceeded New Jersey LDCs’ estimated design day requirements of 2032-33.”¹⁸⁶ The Commission does not dispute that the total capacity into the region may exceed the design day forecasts of some regional LDCs. The New Jersey LDCs, however, are not the only consumers of natural gas in the region and, thus, it is immaterial whether remaining capacity is larger than their forecasted

¹⁸³ For further discussion regarding “stranded” capacity, *see supra* P 53.

¹⁸⁴ If the “stranded” capacity is distinguishable from REAE Project capacity in delivery locations, priority, or service, it is not a true substitute for new capacity in meeting the New Jersey LDCs design day needs.

¹⁸⁵ If the “stranded” capacity is potentially available for purchase or long-term release but at a higher price than the expansion capacity, then it is also not a true substitute.

¹⁸⁶ NJCF Skipping Stone Study at 3.

demands on their systems alone. Rather the critical question is whether the New Jersey LDCs will have reliable access to the necessary capacity in a design day scenario.¹⁸⁷

57. Key to an LDC's regional-level assessment of pipeline capacity availability, such as the one presented in the NJCF Skipping Stone Study, is the fact that natural gas peak demand is not a local phenomenon, because weather is not a local phenomenon. When the New Jersey LDCs plan for a design day, it cannot be presumed that the weather and demand in neighboring areas is normal. When cold weather impacts the Northeast, it frequently does so as a distributed event causing low temperatures and high energy demand across the region.¹⁸⁸ The NJCF Skipping Stone Study's premise, analyzed below, that because capacity has not been used it will never be used, is flawed. As noted above, New Jersey LDCs have a commitment to serve, and relying, for a peak day, on capacity that they do not own and are not entitled to draw from, to meet long term planning needs, is an unreasonable assumption on which to base a study of the LDCs' future gas needs.

58. The NJCF Skipping Stone Study presumes that, although Con Edison holds 774,750 Dth of capacity under contract from Texas Eastern Transmission Company (TETCO), Con Edison will never, not even on a peak design day, need more than the maximum it flowed over an eight-year period, leaving 309,221 Dth "stranded" indefinitely and available for New Jersey LDCs to use.¹⁸⁹ Notwithstanding the fact that an eight-year historic peak is not the same as Con Edison's own design day standard for expected withdrawals on TETCO, this assumption, applied over a 10-, 20-, or 30-year planning horizon presumes that Con Edison's load, and thus need for the TETCO supply, remains static (e.g., experiences no customer growth), and/or that it does not sell the

¹⁸⁷ See *supra* note 25. We note that a design day scenario is a level of demand beyond historic averages or short-term expectations.

¹⁸⁸ See *e.g. supra* at PP 49-50 (describing impact of Winter Storm Elliott). Con Edison stated that during Winter Storm Elliott in 2022, it had access to all of its capacity on Transco's system. Con Edison did not release any capacity to any shipper during the storm; rather it used all of its capacity. Although Con Edison contracted for sufficient capacity to serve all of its customers on a peak day, Con Edison faced severe reliability challenges when rapid temperature drops impacted upstream facilities and resulted in lower pressures at Con Edison's city gate stations. Con Edison, Comment, Docket No. CP21-94-004, at 2 (filed Oct. 8, 2024). Con Edison stated that it "faced reliability-threatening low pressures at its Citygate on all the interstate natural gas pipelines that it relies upon" and maintained its natural gas local distribution system pressure by using its own liquified natural gas facility." *Id.* (citing Winter Storm Elliott Report at 12).

¹⁸⁹ NJCF Skipping Stone Study at 9.

309,221 Dth of “stranded” capacity to another party within the region, potentially removing the opportunity for New Jersey LDCs to purchase it on an interruptible basis during peak periods. Moreover, due to Transco’s system configuration, delivery points in southern New Jersey, where much of the REAE Project’s capacity is deliverable, are not in the path for capacity with primary delivery to downstate New York. Hence, even if this capacity were not scheduled to support deliveries to downstate New York on a given day, it might not be deliverable to New Jersey and/or southeastern Pennsylvania due to infrastructure limitations.¹⁹⁰

59. In fact, the NJCF Skipping Stone Study itself assumes that infrastructure developments to allow contracted natural gas to move to new locations are possible in its assertion that vast quantities of capacity sold for delivery onto Algonquin Gas Transmission, LLC’s (Algonquin) system could be available to New Jersey after unspecified “enhancements” to Algonquin’s or Transco’s systems.¹⁹¹ The NJCF Skipping Stone Study specifies neither the estimated cost of these enhancements nor who would pay for them. We find that the NJCF Skipping Stone Study’s reliance on future system enhancements artificially inflates the existing volume of usable stranded capacity and undermines the study’s finding that the New Jersey LDCs have adequate capacity absent the REAE Project.

60. Natural gas demand is cyclical, weather-driven, and rising across the country. Electric generation is a major source of this demand growth, and PJM Interconnection (PJM) (the Regional Transmission Organization to which New Jersey belongs) is no exception.¹⁹² As noted above, the weather events that drive peak demand days and projections of design days are not often localized to a single LDC’s footprint. Capacity and supply during those events are guarded, and scarcity in a high demand scenario supports high prices. The NJCF Skipping Stone Study includes non-LDC demand in its peak day demand curve, including for power generation, but assumes such sources of demand will not exist on a design day, allowing the LDCs to readily procure their capacity rather than having to compete for increasingly scarce capacity.¹⁹³

¹⁹⁰ Transco Levitan Study at 19.

¹⁹¹ NJCF Skipping Stone Study at 8.

¹⁹² PJM Oct. 7, 2024 Comment at 2 (“Natural gas is the primary fuel for electric generation in the PJM [r]egion.”). The PJM’s region includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

¹⁹³ NJCF Skipping Stone Study at 16-17 (“the Chart 1 deliveries represent all load demands in New Jersey, not just Firm LDC demands, which demands are much less than the total of all loads served by pipelines in New Jersey. The demands that are in addition

61. The NJCF Skipping Stone Study attempts to demonstrate the high cost of new capacity through rough estimates based on its own calculations of how much non-New Jersey contracted capacity was used in one winter.¹⁹⁴ The study, however, ignores the design day calculations of the New Jersey LDCs in favor of a statewide approach, arguing simply that large volumes of pipeline capacity pass through New Jersey and should be counted as available to the New Jersey LDCs. This method ignores ownership of the capacity rights in the region, ignores the type of demand represented, and assumes that all capacity holders are balancing their holdings to ensure all demands are met with perfect foresight. In the real world, in such peak demand scenarios, uncertainty and an increased motivation to hold onto capacity, especially among LDCs with a duty to serve, will result in operating margins and withheld capacity above the precise peak level of demand. An LDC without its own firm capacity rights on a very high demand day, such as during a severe winter storm, may find itself without the pipeline capacity, or with increasingly limited purchase options, necessary to deliver gas supply.¹⁹⁵ Furthermore, the NJCF Skipping Stone Study calculation assigns a per-dekatherm cost to the additional reliability gained from the new capacity as a use charge, rather than considering the avoided cost of forced outages that the design day estimates seek to avert.

62. Forecasting the future is, by its very nature, an effort to capture uncertainty.¹⁹⁶ Neither the New Jersey LDCs nor any regulating agency can guarantee whether currently

to the firm demands of New Jersey LDCs are comprised of interruptible loads, such as those of most power generators”).

¹⁹⁴ NJCF Skipping Stone Study at 17-18 (stating “imagine that the cost of year-round pipeline capacity was \$0.60 per Dth per day for each of 365 days a year. Finally, imagine that over those 5 days, you used a total of 1.835 Bcf of gas through that capacity. The annual cost of that capacity would be \$116,507,909.”).

¹⁹⁵ One unit of natural gas on an interruptible basis, as an off-system peaking resource, or available on a secondary basis is not the same as a unit of natural gas contracted for on a guaranteed, firm basis. See *Duke Energy Trading & Mktg., L.L.C. v. FERC*, 315 F.3d 377, 378 (D.C. Cir. 2003) (“Firm capacity is purchased on a monthly basis and cannot be interrupted or curtailed except in limited circumstances. Interruptible capacity can be interrupted when necessary to provide service to higher priority customers, such as firm customers. Interruptible capacity is bid for as needed, rather than purchased monthly.”).

¹⁹⁶ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 130 (2011) (“predicting future market conditions is necessarily uncertain”); see also *Tenn. Gas Pipeline Co.*, 170 FERC ¶ 61,142 at P 10 (“Projections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal

contracted for, but rarely utilized, capacity in New Jersey or the region will be available in the future. Thus, we find the NJCF Skipping Stone Study’s assertion that the New Jersey LDCs will have uninterrupted access to “stranded” capacity in their region that they do not own, or have any primary claim to, for the purposes of planning for the worst-case scenario to be unsupported and unreasonable. The NJCF Skipping Stone Study’s reliance on this “stranded” capacity is a flawed foundational pillar, which undermines the study’s conclusions. The Commission weighs the evidence before us when determining market need and the public convenience and necessity.¹⁹⁷ As we stated above, when the proponent establishes a prima facie case supported by credible evidence, the opponent has the burden of producing credible evidence to rebut, defeat, or otherwise outweigh the evidence supporting a claim.¹⁹⁸ On balance, we find the NJCF Skipping Stone Study unpersuasive because it provides no evidentiary support for its assumption that this “stranded” capacity will be available in sufficient quantities for the New Jersey LDCs to rely on for system planning. The Commission cannot rely on or accept analyses based on unsupported assumptions.¹⁹⁹ Thus, the Commission finds that the NJCF Skipping Stone Study fails to provide credible, contrary evidence sufficient to overcome the existence of long-term, binding precedent agreements for 100% of the project’s capacity.

63. In addition to the foregoing, the Commission has specific concerns with the oversimplification of assumptions, relative to pipeline operations and scheduling, behind the quantities of “stranded” and “in path merchant” capacities used in the NJCF Skipping Stone Study, making its assumptions overly optimistic. The availability of at least 1,627,869 Dth/d of the NJCF Skipping Stone Study’s “stranded” and “in path merchant” capacity—equal to twice the size of the REAE Project capacity—is uncertain when analyzed in more detail.²⁰⁰

64. For example, the study states that 808,005 Dth/d of “stranded capacity” on Tennessee Gas Pipeline Company, L.L.C.’s (Tennessee) system is available to northwestern New Jersey because Tennessee’s deliveries onto Algonquin’s system are

government and individual states.”).

¹⁹⁷ See *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 377 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976) (“Because analysis of the relevant documents ‘requires a high level of technical expertise,’ [courts] defer to ‘the informed discretion of the responsible federal agencies.’”).

¹⁹⁸ Opinion 549, 156 FERC ¶ 61,031 at P 59.

¹⁹⁹ See *Tenn. Gas Pipeline Co.*, 98 FERC at 61,618.

²⁰⁰ NJCF Skipping Stone Study at 12.

greater than the ability of Algonquin to take away the gas. The NJCF Skipping Stone Study states that Algonquin can only take 181,129 Dth/d of deliveries from Tennessee while Tennessee's deliveries into Algonquin total 989,134 Dth/d.²⁰¹ Review of Algonquin's operational capacity as well as the TETCO lease capacity at the Mahwah point in Bergen County, New Jersey, and the Ramapo point in Rockland, New York, undermines the study's conclusion. Nominations for takeaway capacity are the sum of scheduled nominations at each Algonquin meter plus the TETCO meters associated with the leased capacity. Operationally available capacity reflects the aggregate calculations and is thus significantly larger than the design capacity to which the NJCF Skipping Stone Study refers. Capacity for Tennessee deliveries at the Algonquin location totals 991,350 Dth/d and matches closely to the 989,134 Dth/d of Tennessee deliveries into Algonquin cited by the NJCF Skipping Stone Study. This larger aggregate capacity allows for all of Tennessee capacity to be scheduled for delivery locations, including the Con Edison-Manhattan city gate.²⁰² The 808,005 Dth/d of Tennessee capacity is not stranded, and on a winter design day it is likely that little of this capacity would be available to New Jersey LDCs. Rather, most, if not all, would be scheduled into downstate New York. Marketers with primary delivery points in downstream markets respond to market prices that rationalize the highest and best use of such capacity rights. In relation to pricing points in New Jersey, southeastern Pennsylvania, and Maryland, the value of delivered natural gas in downstate New York frequently supports deliveries to Transco's New York Facilities System serving Con Edison and National Grid in both New York City and Long Island, rather than deliveries to the states upstream. Transco Zone 6 New York prices are usually at or above Transco Zone 6 Non-NY prices, frequently by a large margin.²⁰³

65. The NJCF Skipping Stone Study also alleges that there is 893,591 Dth/d of "stranded capacity" on TETCO's system available to New Jersey LDCs, claiming that 584,370 Dth/d cannot be taken by Algonquin and 309,221 Dth/d cannot be taken by Con Edison.²⁰⁴ The NJCF Skipping Stone Study derives its conclusion regarding Algonquin by summing the TETCO delivery capacity to the Hanover and Lambertville, New Jersey locations, which the NJCF Skipping Stone Study reports totals 1,602,761 Dth/d, and comparing this number to the summation of receipt capacity on Algonquin of 1,018,391 Dth/d. This summing of Lambertville and Hanover volumes is inappropriate as the

²⁰¹ *Id.* at 7-8.

²⁰² Totals are from the Algonquin, TETCO, and Tennessee Operationally Available Capacity informational postings.

²⁰³ Transco Levitan Study at 20.

²⁰⁴ NJCF Skipping Stone Study at 6.

Hanover delivery location is downstream of the Lambertville delivery and thus the same volume flows through Lambertville and Hanover and is not additive. Commission staff reviewed TETCO's informational postings and subtracting the duplicative volume leaves delivery volumes of 1,171,501 Dth/d at the Lambertville and Hanover locations. This compares to the receipt capacity on Algonquin as listed on its informational postings of 1,050,454 Dth/d, resulting in a potential net stranded volume from TETCO to Algonquin of only 121,407 Dth/d, significantly less than the NJCF Skipping Stone Study's value of 584,370 Dth/d.²⁰⁵

66. As to the availability of the additional 309,221 Dth/d that the NJCF Skipping Stone Study says cannot be taken by Con Edison, the study has not considered the differences between point capacity and mainline capacity. Point capacity on a pipeline is the capacity of a specific location on the pipeline, as opposed to the capacity along the pipeline or the mainline. The availability of capacity at a specific point does not guarantee available mainline capacity. The NJCF Skipping Stone Study refers to point capacity that may theoretically be available to New Jersey. This capacity is located on the eastern side of TETCO's Market Zone "3", which covers most of eastern Pennsylvania, Maryland, Delaware, New Jersey, and parts of New York. This segment of the pipeline extends west to Appalachian gas supply basins and allows for the transportation of natural gas from western Pennsylvania and West Virginia to market areas in New Jersey, New York, and Ohio. TETCO has no additional firm capacity flowing east on this pipeline segment, and the segment can be highly utilized. During Winter Storm Elliot, which was a significant winter storm but generally warmer than a design day event, the regional utilization of the meter capacity was approximately 85% on December 22 and 23.²⁰⁶ This indicates that, while relatively modest stranded point capacity on TETCO may at times be available to New Jersey LDCs, actually sourcing natural gas supplies to flow west to east to New Jersey may be challenging during severe weather and high demand.

67. Last, the NJCF Skipping Stone Study references historical peak demand as opposed to design day firm demand, but historical data does not provide insight into reliability. For example, the NJCF Skipping Stone Study referred to a load duration curve for total New Jersey gas demand between 2018 and 2019²⁰⁷ in an effort to

²⁰⁵ Totals are from the Algonquin, TETCO, and Tennessee Operationally Available Capacity informational postings. The delivery volume from TETCO to Algonquin of 1,171,501 Dth/d derived from the informational postings is similar to the Transco Levitan Study's calculation of 1,160 MDth/d deliverable to Algonquin Gas Transmission from TETCO, at 26.

²⁰⁶ TETCO Informational Postings Operationally Available Capacity.

²⁰⁷ NJCF Skipping Stone Study at 3, 16, 18-19. We note that, although the NJCF

demonstrate that there is a large amount of idle capacity even in the coldest recent winter. This may be true under normal conditions, but LDCs are required by their state regulators to plan for design day firm demand, not just recent historical peak demand. Because historical peaks in firm demand are generally lower than design day firm demand, comparing an actual historical load duration curve with total pipeline capacity will make it appear that there is a large amount of unused capacity. The problem is that much of that capacity would not be available on a design day, as cold weather in the Northeast would likely impact all LDCs in New Jersey as well as in New York and New England, as it did during the 2014 Polar Vortex.²⁰⁸

68. Based on the foregoing, we find the NJCF Skipping Stone Study unreliable because its assumptions that firm capacity that is held by downstream customers would nevertheless be available to New Jersey LDCs are unsupported and in error. The study's assumptions ignore that if the downstream firm capacity customers exercise their rights to the capacity during a time of high demand in New Jersey, the capacity will not be available for use by the New Jersey LDCs.

c. Application of State Law to Need Determination

69. The D.C. Circuit found that the Commission arbitrarily misconstrued New Jersey's energy efficiency laws as unenforceable, emphasizing that "New Jersey law requires specific annual natural gas-use reductions."²⁰⁹ The court determined that, due to this error, the Commission arbitrarily discounted the effect of New Jersey's energy laws in assessing market demand for the REAE Project.²¹⁰

70. On May 23, 2018, New Jersey passed the New Jersey Clean Energy Act of 2018 (NJ Act) which requires utilities, including the New Jersey LDC shippers, to adopt energy efficiency programs and peak demand reduction programs.²¹¹ Each natural gas public utility is required to achieve annual reductions in the use of natural gas of 0.75% of the average annual usage from the prior three years within five years of implementation of its gas energy efficiency program.²¹² The NJ Act directs the NJ BPU

Skipping Stone Study references load duration curves during the 2018-19 through 2021-22 winters, it specifically relies on the 2018-19 winter, which had the highest demand.

²⁰⁸ NJ Agencies Study at 89-90.

²⁰⁹ *N.J. Conservation Found.*, 111 F.4th at 61, n.10.

²¹⁰ *Id.* at 62.

²¹¹ N.J.S.A. 48:3-87.9, et al.

²¹² N.J.S.A. 48:3-87.9(a). Additionally, the NJ Act requires electric public utilities

to approve plans from these gas utilities that comply with the requirements of the NJ Act and with quantitative performance indicators adopted and reviewed every three years by the NJ BPU.²¹³ The energy efficiency and peak demand reduction programs are to be submitted to the NJ BPU on a triennium (once every three years) basis.²¹⁴ The NJ BPU decided that peak demand reduction programs would not be mandatory for the initial “Triennium 1” phase that began July 1, 2021, instead allowing the LDCs to file such programs “as desired.”²¹⁵ NJ BPU delayed the beginning of Triennium 2 until January 1, 2025.²¹⁶

71. The most recent LDC plans submitted in preparation for the Triennium 2 phase primarily focus on actions related to how the LDCs intend on interfacing with their customers to promote energy efficiency, including metrics like a general marketing plan, budget, and incentivization or rebate tools.²¹⁷ The filings include some utility-led

to achieve annual reductions in the use of electricity of two percent of the average annual usage in the prior three years within five years of implementation of its electric energy efficiency program.

²¹³ N.J.S.A. 48:3-87.9(d)(1).

²¹⁴ NJ BPU, Docket Nos. QO19010040, QO19060748, and QO17091004, June 10, 2020 Order 9, 34, 37, https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1221939.

²¹⁵ *Id.* at 57. NJ BPU explained its decision to not to require peak demand reduction programs as core offerings during the Triennium 1 phase because of the “dramatic shift in responsibilities and roles that will occur” under the NJ Act and that “while some utilities have a long history of administering [energy efficiency] programs in the state, others will have to invest more significant amounts of resources to meet even the new minimum requirements.” *Id.* Therefore, the NJ BPU allowed utilities to file such programs as desired for the initial three-year plans but noted that future filings likely would have “more stringent requirements” and that “utilities should absolutely integrate” such programs “wherever possible and file any such programs deemed feasible.” *Id.*

²¹⁶ NJ BPU, Docket No. QO23030150, Oct. 25, 2023 Order 7, https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1319204.

²¹⁷ *See e.g.*, NJ BPU, Docket No. QO23120874, Oct. 30, 2024 Order, https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1362726 (discussing the PSEG energy efficiency program filing); NJ BPU, Docket No. QO23120869, Oct. 30, 2024 Order, https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1362684 (discussing the Elizabethtown Gas energy efficiency program filing); NJ BPU, Docket

programs for building decarbonization and demand response, but the specifics of such programs are still being developed.²¹⁸ The LDCs' plans do not include any organizational strategies for achieving the mandated level of reduction in natural gas usage should the energy efficiency measures adopted by their customers prove insufficient, such as imposing a moratorium on new natural gas hook-ups or retiring issue-prone distribution infrastructure. We find that, to date, nothing in the plans appear to obviate the New Jersey LDCs' stated need for the REAE firm transportation capacity to ensure reliable service on a peak design day.

72. Even assuming that the New Jersey LDCs achieve the NJ Act's goal of yearly 0.75% reductions of the average annual use of natural gas, this outcome is not inconsistent with the REAE project, which is designed to diversify, enhance, and secure access to natural gas supply, providing overall reliability and diversification of energy infrastructure in the Northeast by easing locational constraints caused by limited pipeline takeaway capacity.²¹⁹ Here, the REAE Project capacity will allow its LDC customers to lower their costs by purchasing lower-priced Marcellus Shale gas at Leidy instead of typically higher-priced peaking contracts or spot market purchases deliverable to the city gate.²²⁰ The project will also help meet interruptible demand from sources like natural

No. QO23120868, Oct. 30, 2024 Order,
https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1362701
(discussing the NJNG energy efficiency program filing); NJ BPU, Docket No. QO23120870, Oct. 30, 2024 Order,
https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1362702
(discussing the South Jersey Gas energy efficiency program filing).

²¹⁸ For example, PSEG states that their demand response program “may have” different offerings “designed to take full advantage of the advanced metering infrastructure” and to prepare the LDCs “for a future of increasing numbers of ‘smart’ energy equipment.” Additionally, the LDC will “strive to integrate [demand response] marketing as much as possible into efficiency programs.” *See* NJ BPU, Docket No. QO23120874, Oct. 30, 2024 Order attach. 1, Page 46 of 113,
https://publicaccess.bpu.state.nj.us/DocumentHandler.ashx?document_id=1362726.

²¹⁹ Certificate Order, 182 FERC ¶ 61,006 at P 6.

²²⁰ The average spot natural gas price differential between Eastern Gas South (a trading hub representative of the cost of Appalachian-produced gas) and Transco Zone 6 NY (a trading hub representative of the cost of gas into the New York City market area) was \$0.30/MMBtu in 2023. *See* FERC 2023 State of the Report (March 2024), Figure 13: Average Natural Gas Spot Prices at Major Trading Hubs in 2022 and 2023 (\$/MMBtu) at 25. In addition, peaking contracts are often tied to a daily price index and may be subject to increased costs during periods of high demand. For example, in

gas generators, which will not only maintain reliability for the interruptible customers but also alleviate systemic stress on energy systems for all customers, including firm shippers.²²¹ Weather events that drive peak demand days and projections of design days are not often localized to a single LDC's footprint. Capacity and supply during those events are guarded, and scarcity in a high demand scenario supports high prices. The New Jersey LDCs subscribed for REAE transportation capacity to ensure adequate supplies on peak days.²²² We find that a project providing supply diversity and mitigating constraints during peak demand is not incompatible with the NJ Act's required reduction in average annual use. Based on the foregoing, having further assessed and weighed the impacts of New Jersey's clean energy laws, we find both that the REAE project is not inconsistent with their requirements, nor do they undermine the need for the project demonstrated by the precedent agreements.

d. Conclusion Finding Market Need for REAE Project

73. REAE Project capacity will allow its LDC customers to lower their costs by purchasing lower-priced Marcellus Shale gas at Leidy instead of typically higher-priced peaking contracts or spot market purchases deliverable to the city gate. As NJNG has explained, REAE capacity "eliminates peak day shortfalls projected over the next ten years and provides access to attractive supply basin pricing."²²³ Indeed, Congress's primary purpose in enacting the NGA was to encourage "the orderly development of plentiful supplies of . . . natural gas at reasonable prices."²²⁴ Accordingly, "the public interest that the Commission must protect always includes the interest of consumers in having access to an adequate supply of gas at a reasonable price."²²⁵ Based on the

December 2022, prices for the non-New York market area rose to over \$30/MMBtu during Winter Storm Elliot. *See* FERC, Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott 54 (October 2023), <https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-during-december-2022>.

²²¹ Approximately 46% of natural gas generation owners/operators surveyed in PJM reported having firm transportation agreements in place. *See* FERC, Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott 54 (October 2023), <https://www.ferc.gov/media/winter-storm-elliott-report-inquiry-bulk-power-system-operations-during-december-2022>.

²²² *See supra* at PP 8, 17, 38, 72.

²²³ Transco Levitan Study at 42.

²²⁴ *NAACP v. FPC*, 425 U.S. 662, 670 (1976).

²²⁵ *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990); *Fla. Se.*

foregoing, we affirm our prior determination that there is a need for the REAE Project. In reaching this conclusion we affirm that by demonstrating that 100% of the project's capacity has been subscribed under precedent agreements, Transco established a rebuttable presumption that the REAE Project is needed. We have reexamined the claimed incentives for LDCs to oversubscribe capacity as a means to profit at their ratepayers' expense; countervailing record evidence, including the NJ Agencies Study and the NJCF Skipping Stone Study; and claims regarding New Jersey's state law mandating a reduction in natural gas use. For the reasons detailed above, we find that none of this evidence undermines the Commission's finding that the project is needed by the New Jersey LDC shippers to help meet their projected design day requirements such that we would discount those four project shippers' precedent agreements.

B. NEPA

74. The court found that the Commission violated NEPA by failing to adequately explain its decision not to make a significance determination regarding GHG emissions and failing to discuss possible mitigation measures.²²⁶ The court also concluded that the Commission failed to explain "how anticipated GHG emissions factored in weighing the potential adverse impact against the potential benefit of the [p]roject,"²²⁷ instructing the Commission to show how it considered the GHG emissions in its balancing required by the NGA.²²⁸

1. GHG Significance

75. Regarding the Commission's evaluation of the project's GHG emissions, the court held "[t]he Commission's decision not to make a case-specific determination about the significance of the [p]roject's anticipated GHG emissions, in light of its own stated precedent that it can do so, nor to explain why it believed it could not do so, was arbitrary and capricious."²²⁹ As discussed below, we are not obligated to make a binary

Connection, LLC, 162 FERC ¶ 61,233, at P 17 (2018); *see also FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 611 (1944) ("[T]he Commission was told by section 7(c) [of the NGA], as originally enacted, that it was 'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest.'").

²²⁶ *N.J. Conservation Found.*, 111 F.4th 42 at 54.

²²⁷ *Id.* at 62-63.

²²⁸ *Id.*

²²⁹ *Id.* at 54-56 (citing *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 (2021); *Consideration*

determination of the significance of the climate impacts based on those emissions, particularly for impacts for which the significance is unknown, and we find that the Commission has fulfilled its responsibilities under NEPA to consider reasonably foreseeable GHG emissions attributable to the project.

a. **The Commission is not required to make a significance determination when an EIS is prepared.**

76. The D.C. Circuit's recent decision in *East 300*²³⁰ and *Citizens Action Coal. of Indiana, Inc. v. FERC*²³¹ affirmed that neither NEPA, nor CEQ's NEPA-implementing regulations, nor circuit precedent require that the Commission formally label a project's downstream emissions as significant or insignificant.²³² The *East 300* court held that the

of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (2022), *changed to draft status*, *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022)).

²³⁰ 104 F.4th at 346.

²³¹ *Citizens Action Coal. of Indiana, Inc. v. FERC*, No. 23-1046, slip op. 15 (D.C. Cir. Jan. 7, 2025) (holding that *East 300* foreclosed a NEPA challenge arguing that the Commission was required to label environmental impacts as "significant" or "not significant" and that "the absence of a 'significance' label does not violate NEPA, CEQ guidance, or FERC regulations") (citing *East 300*, 104 F.4th 336).

²³² None of the issues remanded to the Commission by the court raise questions about whether the Commission's environmental review of the project's GHG emissions complies with CEQ's regulations. See *N.J. Conservation Found.*, 111 F.4th at 54-56. Rather, the court's opinion focused on whether the Commission met its NEPA obligations. *Id.* at 56. Accordingly, we only address our statutory requirements and court precedent. The Commission is aware of the November 12, 2024, decision in *Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902 (D.C. Cir. 2024), holding that the Council on Environmental Quality's (CEQ) regulations implementing NEPA are not judicially enforceable or binding. We note that section 380.1 of the Commission's regulations, 18 C.F.R. § 380.1 (2024), provides that the Commission will comply with the relevant CEQ regulations to the extent they are not inconsistent with the Commission's statutory requirements. We are continuing to review the *Marin Audubon Society* decision and may take such further action as is appropriate. We note, however, that we recently addressed how our GHG and climate change analysis comports with CEQ's regulations in our recent November 27, 2024 order. *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148, at P 85 (2024) (explaining that neither section 1502.16(a)(1) nor 1501.3(b) of CEQ's regulations directs an agency, in developing an EIS, to make a binary decision on the significance of any environmental effect).

Commission “amply discussed the ‘significance’ of . . . emissions—by estimating the amount of increased emissions, comparing them to national and statewide totals, setting forth downstream harms in qualitative terms, and even giving monetary, present-value estimates of the harms.”²³³ On review of the Certificate Order and Rehearing Order, however, the court found *East 300* inapplicable based on the court’s finding in the present proceeding that the Commission did not dispute “that it is generally obligated to make a significance determination for each category of emissions.”²³⁴ As detailed below, we disagree that we are obligated to make a significance determination for GHG emissions.

77. As the *East 300* court held, a definitive finding of significance “is immaterial where the agency simply prepares the EIS.”²³⁵ Rather, NEPA requires the Commission to discuss the environmental effect of any action “significantly” affecting the quality of the human environment.²³⁶ In this proceeding, the final EIS’s qualitative discussion of the potential adverse impacts in the project’s region from climate change,²³⁷ which are triggered by increased atmospheric concentrations of GHGs, satisfied NEPA’s requirements to discuss the significance of the impacts.²³⁸

²³³ *East 300*, 104 F.4th at 346; see also *Citizens Action Coal. v. FERC*, No. 23-1046, slip op. 15 (affirming use of this analysis); *Ala. Mun. Distribs. Grp. v. FERC*, 100 F.4th 207, 214 (D.C. Cir. 2024) (*Evangeline Pass*) (same); *Ctr. For Biological Diversity v. FERC*, 67 F.4th 1176, 1183-84 (D.C. Cir. 2023) (*Alaska LNG*) (same).

²³⁴ *N.J. Conservation Found.*, 111 F.4th at 55-56.

²³⁵ *East 300*, 104 F.4th at 346; see also 42 U.S.C. § 4336(b)(2) (2024) (“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....”).

²³⁶ 42 U.S.C. § 4332(2)(C); *Env’t Health Tr. v. FCC*, 9 F.4th 893, 900 (D.C. Cir. 2021) (explaining that agency must prepare an environmental impact statement “[i]f” the action stands to “significantly” effect the environment) (quoting 42 U.S.C. § 4332(2)(C) (cleaned up)).

²³⁷ Final EIS at 4-173 to 4-177.

²³⁸ *East 300*, 104 F.4th at 346 (affirming the Commission’s qualitative discussion of GHG emissions as satisfying NEPA); see also *Sabal Trail*, 867 F.3d at 1374 (noting that under 40 C.F.R. § 1502.16(b) (2024), the Commission’s EIS “needed to include a *discussion* of the ‘significance’” of the GHG emissions attributable to the project) (emphasis added).

78. CEQ’s January 2023 Interim Guidance on the consideration of GHGs lends further support for the position that NEPA and CEQ’s regulations do not require a binary significance determination.²³⁹ The CEQ Interim Guidance explicitly “does not establish any particular quantity of GHG emissions as ‘significantly’ affecting the quality of the human environment.”²⁴⁰ While CEQ guidance is not binding on the Commission as a general matter, this guidance underscores the fact that agencies are not obligated to make a significance determination regarding GHGs and illustrates the lack of metrics for determining significance in this context.

79. The court also noted, in *dicta*, that the *East 300* court did not address an argument that section 380.7 of the Commission’s regulations²⁴¹ “independently required FERC to make a binary significance determination for GHG emissions.”²⁴² Section 380.7 imposes no such requirement. Section 380.7 requires, in relevant part, that “[t]he staff conclusion section [of an EIS] will include summaries of . . . (a) The significant environmental impacts of the proposed action,” among other items.²⁴³ This regulation is not a general mandate that the Commission’s environmental review include a binary determination that each environmental impact is either significant or insignificant. Rather, our regulation merely specifies that, in addition to the content requirements for EISs prescribed by CEQ’s regulations, specifically 40 C.F.R. § 1502.10 (2024),²⁴⁴ that an EIS also include a conclusion section that summarizes just those environmental impacts that were identified

²³⁹ See *Marin Audubon Soc’y v. FAA*, 121 F.4th at 913 (noting that CEQ was established to provide guidance to agencies for implementing NEPA).

²⁴⁰ See CEQ, *Nat’l Env’t Pol’y Act Guidance on Consideration of Greenhouse Gas Emissions & Climate Change*, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023) (CEQ Interim Guidance).

²⁴¹ 18 C.F.R. § 380.7 (2024).

²⁴² *N.J. Conservation Found.*, 111 F.4th 42 at n.2 (citing *Healthy Gulf v. FERC*, 107 F.4th 1033, 1040, n.2 (D.C. Cir. 2024) (*Healthy Gulf*)).

²⁴³ 18 C.F.R. § 380.7(a).

²⁴⁴ As the D.C. Circuit noted, we cite and apply the version of the CEQ regulations that were in effect at the time of the Commission’s development of the EIS and issuance of the underlying orders. See *N.J. Conservation Found.*, 111 F.4th 42 at n.1. Section 1502.10 of CEQ’s regulations sets a standard format for EISs that requires a: cover; summary; table of contents; purpose and need for action; alternatives; affected environment and environmental consequences; submitted alternatives information, and analyses; and a list of preparers.

as significant.²⁴⁵ Where, as here, the significance of the impacts of reasonably foreseeable GHG emissions on climate change is unknown,²⁴⁶ the summary required by section 380.7 would not include those impacts in the EIS's conclusion section.

80. The court also stated that the Commission failed to explain why it could not make a significance determination when it had done so in *Northern Natural Gas Co. (Northern Natural)*,²⁴⁷ concluding that the Commission had not advanced the same argument as it did in *East 300*.²⁴⁸ As we recently explained,²⁴⁹ notwithstanding *Northern Natural*, it is the Commission's practice not to make a binary significance determination for GHG emissions and to instead rely on a qualitative discussion of the potential adverse effects, as upheld by the D.C. Circuit.²⁵⁰ To the extent that the Commission's previous orders in these proceedings were not clear, we confirm, consistent with the holding in *East 300* and as discussed below, that we are not required to and we are unable to determine whether GHG emissions are significant or insignificant. Further, we reaffirm our recent conclusion that the Commission's significance determination in *Northern Natural* does not represent Commission policy or practice and, for the reasons discussed below, has been overruled.²⁵¹

²⁴⁵ *Citizens Action Coal. v. FERC*, No. 23-1046, slip op. 15 (rejecting argument that section 380.7 of the Commission's regulations requires a significance label).

²⁴⁶ See final EIS at 4-175.

²⁴⁷ *N.J. Conservation Found.*, 111 F.4th at 54-56 (citing *N. Nat. Gas Co.*, 174 FERC ¶ 61,189).

²⁴⁸ *Id.* (citing *East 300*, 104 F.4th at 346) (distinguishing *East 300*, where the court upheld the Commission's determination not to label downstream GHG emission as significant or insignificant because it disclosed and contextualized the emissions).

²⁴⁹ *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148 at PP 87-88.

²⁵⁰ See *supra* P 77 (citing *East 300*, 104 F.4th at 346); see also *Citizens Action Coal. v. FERC*, No. 23-1046, slip op. 15-16 (rejecting the argument that the Commission unreasonably failed to label emissions as significant or not significant when it did so in *Northern Natural*, because the Commission had sufficiently explained it did not need to attach such a label due to the fact that it thoroughly analyzed project emissions in the EIS).

²⁵¹ *Venture Glob. CP2 LNG, LLC*, 189 FERC ¶ 61,148 at P 87. The Commission may abandon prior precedent provided that the change is permitted under the relevant statutes and that we acknowledge the departure and explain that we believe the new position is better. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009)

81. In *Northern Natural*, the Commission compared the project’s reasonably foreseeable GHG emissions to the total of GHG emissions in the United States as well as to state inventories, finding that the project’s contribution to climate change would not be significant.²⁵² The Commission’s significance determination in *Northern Natural* did not provide a threshold or numerical limit or establish a methodology that the Commission could use to determine the significance of GHG emissions in future cases.²⁵³ The fact that the Commission felt itself able to determine that the particular amount of GHG emissions in that proceeding were insignificant did not imply that the Commission could likewise determine what level of GHG emissions would be significant or insignificant in any other case. In fact, the Commission in *Northern Natural* cited to the Commission’s then-pending 2021 Notice of Inquiry, which sought information on options to assess significance of the effects of GHG emissions, to bolster the idea that the Commission would have the ability to assess significance in the future.²⁵⁴

82. Since *Northern Natural* was decided, the Commission has spent several years further developing its understanding of issues surrounding GHG emissions, going as far as to issue an Interim GHG Policy Statement, which the Commission subsequently converted to draft form (draft GHG Policy Statement).²⁵⁵ Despite the record established in the draft GHG Policy Statement proceeding, without exception the Commission has concluded that it was unable to make significance determinations in cases where the issue has arisen, as explained in detail in a number of orders.²⁵⁶ For this reason, and because

(when an agency makes a change in policy, “it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates”). *See also Grace Petroleum Corp. v. FERC*, 815 F.2d 589, 591 (D.C. Cir. 1987) (recognizing the Commission’s “well-settled right” to “overrule established precedent” provided that it offers a reasoned explanation for doing so).

²⁵² *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 at PP 34-36.

²⁵³ *Id.* PP 33-36.

²⁵⁴ *Id.* PP 33, 36.

²⁵⁵ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108; *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 at P 2 (stating the Commission would not apply the draft GHG Policy Statement to pending or new projects until the Commission issued any final guidance after public comment).

²⁵⁶ *See, e.g., Transcon. Gas Pipe Line Co.*, 186 FERC ¶ 61,047, at PP 95-105 (2024), *order on reh’g*, 187 FERC ¶ 61,200 (2024), *dismissed sub nom. Sierra Club v. FERC*, No. 24-1138, 2024 WL 3764462 (D.C. Cir. 2024); *Driftwood Pipeline LLC*, 183

the basis upon which the Commission determined significance in *Northern Natural* was unsupported by any identified tool or method,²⁵⁷ we find that we cannot rely on that case as precedent for making a binary significance determination, even as a *de minimis* floor.²⁵⁸ Accordingly, as discussed herein, we will continue to consider and contextualize adverse GHG impacts on a case-by-case basis in accordance with our responsibilities under the NGA and NEPA.²⁵⁹

83. Further, the pendency of the draft GHG Policy Statement has not affected the Commission's ability to consider all evidence submitted into the record for any individual project.²⁶⁰ As explained below, neither the Commission, nor any other federal agency, has identified criteria or a scientifically accepted tool or method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions. That remains the case today. Accordingly, the Commission is acting concurrently with this order to terminate the GHG Policy Statement proceeding,²⁶¹ and we will continue to consider reasonably foreseeable GHG emissions attributable to a project and climate change impacts on a case-by-case basis.

b. The Commission cannot characterize any project's GHG emissions as significant or insignificant.

84. The court explained that “even if [the Commission] is not required to make a significance determination,” it must explain its inability to do so to avoid running afoul of

FERC ¶ 61,049, at PP 56-63 (2023), *reh'g denied*, 183 FERC ¶ 62,153 (2023); *ANR Pipeline Co.*, 179 FERC ¶ 61,122, at PP 34-44 (2022).

²⁵⁷ *N. Nat. Gas Co.*, 174 FERC ¶ 61,189 at PP 33-36.

²⁵⁸ *See supra* notes 252-254.

²⁵⁹ *See supra* PP 76-77.

²⁶⁰ The D.C. Circuit has held that the Commission is not required to apply the draft GHG Policy Statement. *See Citizens Action Coal. v. FERC*, No. 23-1046, slip op. 15 (noting that the Commission had “withdrawn” the GHG Policy Statement); *Healthy Gulf*, 107 F.4th at 1040-41 (upholding the Commission's decision not to apply the draft GHG Policy Statement); *Evangeline Pass*, 100 F.4th at 214-15 (same).

²⁶¹ *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 190 FERC ¶ 61,049 (2025) (terminating the GHG Policy Statement proceeding).

APA requirements.²⁶² We clarify that we cannot characterize any project’s GHG emissions as significant or insignificant because we are unable to identify any accepted tool or method, including use of the social cost of GHGs, that would allow us to determine what level of GHG emissions’ contribution to adverse climate change impacts is significant under NEPA.²⁶³ We note that to date, no other Federal agency, including the U.S. Environmental Protection Agency (EPA) or CEQ, has established either an accepted tool or method or a threshold for determining significance that the Commission could adopt.

85. With respect to the social cost of GHGs, the final EIS disclosed an estimate of these costs.²⁶⁴ However, consistent with the Commission’s past statements, we are currently unable to identify any criteria to determine what monetized values are significant for NEPA purposes.²⁶⁵ Therefore, we do not view calculating the social cost of GHGs as a means to determine whether any project’s GHG emissions are significant or insignificant, a conclusion that the D.C. Circuit has now upheld many times.²⁶⁶

²⁶² *N.J. Conservation Found.*, 111 F.4th at 56.

²⁶³ See, e.g., *Tenn. Gas Pipeline Co.*, 181 FERC ¶ 61,051 at P 34 (“[T]he Commission did not characterize [GHG] emissions as significant or insignificant because we currently have no methodology for doing so”), *aff’d sub nom. East 300*, 104 F.4th 336; *Tenn. Gas Pipeline Co.*, 180 FERC ¶ 61,205, at P 75 (2022) (“[W]e note that 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.”), *aff’d sub nom. Evangeline Pass*, 100 F.4th 207; CEQ Interim Guidance, 88 Fed. Reg. 1196, 1200 (“This guidance does not establish any particular quantity of GHG emissions as ‘significantly’ affecting the quality of the human environment.”).

²⁶⁴ Final EIS at 4-180. The social cost of GHGs tool converts estimates of GHG emissions into a range of dollar-denominated estimates of adverse climate change impacts; it does not, in itself, provide a tool or method for judging significance.

²⁶⁵ E.g., *Tenn. Gas Pipeline Co.*, 181 FERC ¶ 61,051 at P 37, *aff’d sub nom. East 300*, 104 F.4th 336; *Tenn. Gas Pipeline Co.*, 180 FERC ¶ 61,205 at P 75, *aff’d sub nom. Ala. Mun. Distribs. Grp. v. FERC*, 100 F.4th 207.

²⁶⁶ See, e.g., *Citizens Action Coal. v. FERC*, No. 23-1046, slip op. at 14 (noting that the court has repeatedly held that the Commission may reasonably decline to use the social cost of carbon) (citations omitted); *East 300*, 104 F.4th at 346 (“FERC need not attempt to monetize those emissions through a Social Cost of Carbon model which FERC views as unreliable for analyzing individual projects.”); *Evangeline Pass*, 100 F.4th at 214 (upholding the Commission’s decision to estimate and publicly disclose the social cost of carbon values but not to rely on the social cost of carbon tool because of pending

Rather, calculating and publishing the social cost of GHGs for reasonably foreseeable GHG emissions can be one means to fulfill NEPA's purpose of informing the public.²⁶⁷

2. GHG Mitigation

86. The court held that, with respect to reasonably foreseeable GHG emissions attributable to the REAE Project, the Commission must discuss the “extent to which adverse effects can be avoided.”²⁶⁸ The court drew from the Supreme Court's *Methow Valley* decision, which also noted a “fundamental distinction...between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other.”²⁶⁹ We discuss various mitigation measures below but note for clarity that NEPA does not specify any form of mitigation for that statute's required discussion.

litigation challenging it and because, in the Commission's words, it had “not determined which, if any, modifications were needed to render that tool useful for project-level analyses”); *Alaska LNG*, 67 F.4th at 1184 (upholding as reasonable the Commission's decision to compare the Project's direct emissions with existing Alaskan and nationwide emissions but not to apply the social cost of carbon for reasons the court had previously accepted: (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”); *EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (upholding the Commission's decision not to use the social cost of carbon tool for the same three reasons); *Del. Riverkeeper*, 45 F.4th 104 (also upholding the Commission's decision not to use the social cost of carbon); *Appalachian Voices*, 2019 WL 847199 (unpublished) (same).

²⁶⁷ See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (*Methow Valley*) (explaining that NEPA's EIS requirement “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision”); *Sabal Trail*, 867 F.3d at 1367 (“[The] environmental impact statement . . . ensures that [the] environmental consequences [of the agency's action], and the agency's consideration of them, are disclosed to the public.”).

²⁶⁸ *N.J. Conservation Found.*, 111 F.4th at 56 (quoting *Methow Valley*, 490 U.S. at 351-52).

²⁶⁹ *Methow Valley*, 490 U.S. at 352.

87. In general, we expect project sponsors to evaluate technically and economically feasible strategies to reduce or avoid GHG emissions during construction and operation of a natural gas infrastructure project.²⁷⁰ Although every project differs as to what is feasible or practicable, such mitigation strategies during construction might include using equipment that meets EPA's Tier IV emissions standards, locating contractor yards or staging areas near construction sites to reduce travel distances, restricting vehicle speed and idling time, or minimizing venting of natural gas to the atmosphere. Potential reduction strategies for project operations might include engineering and design options associated with compressor units (e.g., use of electric-driven compressor units), employing procedures to minimize gas venting during maintenance events, or monitoring and maintenance plans for pipeline mainline valves to prevent leaks. The EPA also requires compliance with its standards for the control of GHG emissions under 40 C.F.R. Part 60, Subparts OOOO, OOOOa, and OOOOb.

88. We note that some strategies, such as carbon offsets, are intended to reduce GHG emissions, but because of the inherent variability in such initiatives, any reduction cannot be estimated with any reasonable degree of certainty. Our focus is on reductions of the project's GHG emissions through physical on-site or on-project strategies resulting from the project's construction and operation as opposed to any type of carbon offsets (market or physical off-site activities, e.g. tree-planting or development of new wetlands). Although we recognize that parties in other proceedings have raised the possibility of requiring carbon offsets, we find that such measures are too unreliable—due to concerns including our inability to reliably ensure additionality, permanence, and verification—to be factored in as part of the Commission's environmental analysis and ultimate consideration at this time and based on the information that has been filed with the Commission to date.²⁷¹ With that context, we detail below the design elements and

²⁷⁰ We only discuss mitigation measures within our authority and, therefore, are not considering mitigation for indirect emissions such as LDC shipper compliance with state leak detection requirements and weatherization programs.

²⁷¹ See *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,108 at P 109 (noting that GHG emissions reduction mechanisms must achieve real, verifiable, and measurable reductions); *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting GHG Policy Statement to draft). Throughout the development of the GHG Policy Statement, the Commission solicited and received multiple rounds of comments and held a technical conference on GHG mitigation all of which has informed our determination here. See *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Reviews*, 190 FERC ¶ 61,049 at PP 2-5 (2025) (Order Terminating GHG Policy Statement) (detailing policy statement proceeding); see also, Notice of Technical Conference on Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations (Sept. 16,

construction and operational practices that Transco engaged to reduce direct GHG emissions from the REAE Project.

89. Transco stated that it implemented certain policy, engineering, and design measures to reduce GHG emissions from the project.²⁷² These include the installation of electric-motor-driven compression at the greenfield Compressor Station 201. Transco estimates that this avoided emissions associated with natural-gas-fired compression by an estimated 50,000 tons per year of carbon dioxide equivalents (tpy of CO_{2e}).²⁷³ The project involved expansion and modification of Transco's existing compression facilities, which allowed Transco to replace legacy natural-gas-fired reciprocating engines at Compressor Stations 195, 505, and 515 with modern natural-gas-fired turbine engines. Transco estimates that this resulted in reductions of about 35,600 tpy of CO_{2e}.²⁷⁴

90. In addition, at Compressor Stations 201, 505, and 515, Transco installed a Seal Gas Recovery System²⁷⁵ and a Process Gas Recovery system.²⁷⁶ Transco estimates that

2021).

²⁷² See, e.g., Transco Mar. 26, 2021 Application at Resource Report 9 at 9-33 (stating that during construction Transco will comply with state and local idling restrictions as applicable and will bring workers to work sites via vans or buses as practicable); Transco Apr. 22, 2022 Supplemental Information to the Application at Attachment 9A (noting that "Transco's planned GHG mitigation techniques" include "vent gas recovery systems [], seal gas boosting systems, reduced blowdown frequency, and leak detection and repair [] programs"); Transco Mar. 3, 2024 Request for a Variance at 4 (requesting a workspace addition to place recompression and venting equipment to "reduce the amount of natural gas in the pipeline prior to venting activities" which would reduce "the total [GHG] emissions associated with the activity"); Transco Nov. 21 and 22, 2024 Responses to Data Request on Mitigation.

²⁷³ Transco Nov. 21, 2024, Response to Data Request at 4. Transco's submitted this data response after 5:00 pm EST on November 21st it was therefore docketed in eLibrary on November 22 at 8:59 am.

²⁷⁴ *Id.*

²⁷⁵ A Seal Gas Recovery System reduces the amount of methane released through primary compressor seals during operation and the pressurized hold of the centrifugal compressors.

²⁷⁶ A Process Gas Recovery system reduces gas pressure and minimizes the potential amount of natural gas released from planned blowdowns within the compressor station.

this reduces methane emissions by an estimated 98% and 90%, respectively when compared to the emissions that would occur in the absence of each recovery system.²⁷⁷ At Compressor Stations 200, 201, 505, and 515, all new non-emergency actuators were equipped with non-natural-gas-supplied pneumatic controllers; and at Compressor Stations 505 and 515, Transco reduced the total number of existing legacy natural gas pneumatic controllers at the stations, thus reducing the potential for methane emissions. Additionally, Transco incorporated a double block system for testing the Emergency Shutdown (ESD) block valve at all project compressor stations.²⁷⁸ Transco states that use of the double block system results in an over 99% reduction in the amount of methane vented during a station's required ESD block valve testing. In addition, Transco designed its pipeline inspection gauge (pig) launchers and receivers²⁷⁹ to minimize gas releases when they are blown down during pipeline maintenance events. Transco also incorporated remotely-operated valves in its design of REAE facilities, which would reduce the time to shut the valve, which in turn would reduce the amount of methane released, to comply with U.S. Department of Transportation regulatory guidance.²⁸⁰

91. Transco states that it implemented several measures on the REAE Project to ensure compliance with EPA's standards for the control of GHG emissions under 40 C.F.R. Part 60, Subparts OOOO, OOOOa, and OOOOb, including the use of non-natural-gas-supplied pneumatic controllers and Seal Gas Recovery Systems, noted above.²⁸¹ Prior to REAE Project construction activities, Transco implemented Leak Detection and Repair (LDAR) activities at Compressor Stations 195, 200, 207, 505, and 515 to monitor the sites for fugitive emissions.

92. During construction of the project, Transco implemented measures to reduce GHG emissions, including maintaining construction equipment and using low-sulfur diesel fuel and EPA Tier IV compliant diesel equipment.²⁸² Transco also used non-gas-powered

²⁷⁷ Transco Nov. 21, 2024, Response to Data Request at 5.

²⁷⁸ *Id.*

²⁷⁹ A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes. A launcher and receiver are where pigs are inserted into or retrieved from the pipeline, respectively.

²⁸⁰ *Id.*

²⁸¹ *Id.* at 7.

²⁸² Transco Nov. 22, 2024, Response to Data Request at 1-2; *see also* Transco Mar. 26, 2021 Application at Resource Report 9 at 9-32, 9-33.

tools such as air compressors and solar-powered lighting. To minimize vehicle-based emissions, Transco enforced vehicle speed limits and idling restrictions, and used contractor yards immediately adjacent to the right-of-way and within boundaries of the constructed pipeline loops. Transco was unable to quantify emissions reductions from these measures, stating that quantification would require using arbitrary assumptions they deemed inherently inaccurate.²⁸³

93. Transco also reduced the amount of methane released during seventeen different major pipeline outages that were required during construction of the REAE Project by using a combination of in-line compression,²⁸⁴ mobile compression,²⁸⁵ transfer to low-pressure pipeline,²⁸⁶ stopples,²⁸⁷ and Process Gas Recovery²⁸⁸ to reduce these methane releases by over 90%.²⁸⁹ In addition, hot-tapping was used for five pipeline

²⁸³ Transco Nov. 22, 2024, Response to Data Request at 2.

²⁸⁴ In-line compression uses compressors installed within Transco's pipeline system to reduce the pressure of the gas before taking a pipeline out of service, minimizing the volume of gas that needs to be recompressed and/or vented to atmosphere.

²⁸⁵ Mobile compression involves portable compressors that are brought to the site and reduce the gas pressure in the pipeline segment or vessel being serviced by routing that gas to another process, drawing down to a lower pressure than possible with in-line compression.

²⁸⁶ The "transfer to low-pressure pipeline" technique involves transferring gas from a high-pressure pipeline to a lower-pressure system to reduce the volume of gas that needs to be recompressed and/or vented to atmosphere.

²⁸⁷ Stopples are devices used to isolate sections of the pipeline, allowing operators to perform maintenance on a specific section without having to depressurize the entire length of the pipeline between the nearest isolation valves.

²⁸⁸ Process Gas Recovery systems recover process gas from unit blowdowns resulting from routine starts and stops, thereby reducing emissions.

²⁸⁹ Transco Nov. 21, 2024, Response to Data Request at 1-2.

connections.²⁹⁰ Transco reports that these methods resulted in the reduction of methane releases equivalent to about 120,000 tons of CO₂e.²⁹¹

94. Transco has implemented an array of measures, policies, and physical devices, as described above, to reduce direct GHG emissions from the construction and operation of the REAE Project. The record shows that Transco planned and implemented mitigation strategies throughout all stages of the project, informing the Commission of such strategies during the application and construction phases and recently in response to data requests specific to mitigation.²⁹² Some of these strategies align with mitigation suggested by commenters.²⁹³ We find that the mitigation measures discussed above are sufficient to ensure that environmental consequences have been fairly evaluated under NEPA in this proceeding.²⁹⁴ That conclusion does not, however, mean that any particular

²⁹⁰ Hot tapping is a technique that allows a pipeline connection to be made without shutting down the system and venting gas to the atmosphere.

²⁹¹ Figures provided in Transco's November 21, 2024, Response to Data Request have been updated to use the IPCC Fifth Assessment, Global Warming Potential of 30 for Methane, to align with the EPA's GHG Reporting Rule.

²⁹² *Supra* note 281. We acknowledge that the Certificate Order erred in stating that "Transco has not indicated any mitigation for GHG emissions" Certificate Order, 182 FERC ¶ 61,006 at P 74.

²⁹³ EPA and the New Jersey Department of Environmental Protection were the only commentors that provided specific potential mitigation for the Commission to consider. *See* EPA Nov. 19, 2021 Scoping Comments at 2-3 (recommending best practices to reduce emissions during construction and operations, such as using ultra-low sulfur diesel and Tier 4 rated equipment as well as construction practices for on-road and off-road equipment); EPA Apr. 25, 2022 Comments on draft EIS at 12-13 (encourages consideration of potential GHG mitigation measures such as routing gas to a compressor or capture system for beneficial use, routing gas to a low-pressure system, or utilizing hot tapping); and EPA Sept. 6, 2022 Comments on final EIS at 2 (recommending that the Commission's authorization be "conditioned on practicable recommended mitigation to reduce the proposed action's GHG emissions"); NJ DEP Apr. 25, 2022 Comments on draft EIS at 3 (recommending Transco consider using electric turbines at new Compressor Station 201 and existing Compressor Station 505).

²⁹⁴ *N.J. Conservation Found.*, 111 F.4th at 56; *Methow Valley*, 490 U.S. at 352.

mitigation measures discussed herein must necessarily be discussed in another proceeding.²⁹⁵

3. Environmental Conclusion

95. Based on the foregoing discussion of the project’s reasonably foreseeable GHG emissions, mitigation measures, and climate change impacts, we have completed the required “hard look” and have satisfied our obligations under NEPA. We recognize that, to the extent the transported gas does not displace higher-emitting sources, the REAE Project will increase the atmospheric concentration of GHGs and will contribute cumulatively to climate change. We ultimately conclude that notwithstanding the project’s adverse impacts, as identified in the final EIS, Certificate and Rehearing Orders, and herein, the REAE Project is an environmentally acceptable action.

C. NGA Balancing of Adverse Impacts and Public Benefits

96. The D.C. Circuit found that the Commission failed to conduct a meaningful balancing under the NGA because it did not “explain[] how anticipated GHG emissions factored in weighing the potential adverse impact against the potential benefit of the Project.”²⁹⁶ The court noted that the Commission cannot “simply point[] to evidence in the record without showing its reasoning, or make a “passing reference to relevant factors.”²⁹⁷

97. Under NGA section 7, the Commission, before issuing a certificate of public convenience and necessity must determine that “construction . . . is or will be required by the present or future public convenience and necessity.”²⁹⁸ As the Supreme Court has explained,

The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority. Its function is not only to appraise the facts and to draw inferences from them but also to bring

²⁹⁵ See *supra* P 86.

²⁹⁶ *N.J. Conservation Found.*, 111 F.4th at 62-63.

²⁹⁷ *Id.* at 63 (citing *Am. Gas. Ass’n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010); *EDF*, 2 F.4th at 966, 975).

²⁹⁸ 15 U.S.C. § 717f(e); *Minisink*, 762 F.3d at 101.

to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies.²⁹⁹

98. The Supreme Court has held that Congress’s “principal purpose” in enacting the NGA was to encourage orderly development of plentiful and reasonably priced natural gas and has also recognized that Congress’ other purposes included the consideration of “conservation, environmental, and antitrust questions.”³⁰⁰ As we have previously explained, the Commission’s public interest balancing includes a wide-range of factors and must emphasize the interest of consumers to access an adequate supply of natural gas at reasonable prices and to be protected against exploitation by natural gas companies.³⁰¹ It is within this policy framework established by Congress in the NGA, and consistent with the Certificate Policy Statement, that the Commission balances the need for and benefits derived from the project against the potential adverse consequences. Those consequences include impacts on landowners as well as environmental impacts identified

²⁹⁹ *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 7 (1961).

³⁰⁰ *NAACP v. FPC*, 425 U.S. at 669-670 (noting the “principal purpose” in the NGA alongside “subsidiary purposes” like addressing conservation, environmental, and antitrust questions); *City of Clarksville, Tenn. v. FERC*, 888 F.3d 477, 479 (D.C. Cir. 2018) (same); see also *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. at 5 (finding that the Commission’s predecessor, the Federal Power Commission, properly factored air pollution impacts into its public interest determination under section 7).

³⁰¹ *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at P 56 (2018) (cleaned up) (citing *City of Clarksville v. FERC*, 888 F.3d at 479 (quoting *NAACP v. FPC*, 425 U.S. at 669-70 and *FPC v. Hope Nat. Gas Co.*, 320 U.S. at 610)); *Tejas Power Corp. v. FERC*, 908 F.2d at 1003.

in the NEPA document developed for the project.³⁰² In this case, the EIS addressed adverse impacts from reasonably foreseeable GHG emissions.³⁰³

99. Here, we find on balance that the record before us supports a determination that the benefits of the REAE Project outweigh its adverse effects. On remand we have examined the full record and find that the project, as described above, provides public benefits to customers in New Jersey, Pennsylvania, and Maryland. The REAE Project capacity allows its LDC customers to avoid peak day shortfalls projected over the next ten years and to lower their costs by purchasing lower-priced Marcellus Shale gas at Leidy instead of securing needed gas supplies through peaking contracts or spot market purchases deliverable to the city gate. Other key benefits include alleviating capacity constraints in the region and strengthening reliability by increasing supply diversity by connecting Transco's system to new supply sources on its Leidy Lines in Luzerne County, Pennsylvania.³⁰⁴ Additionally, the REAE Project capacity is already in service and, in particular, being used for power generation during winter conditions, as evident from the 2023-2024 winter where approximately 45% of the available capacity was used for power generation via either direct delivery or out of the Station 210 pool.³⁰⁵ Finally, certification of the REAE Project will not result in any substantial negative economic impacts.³⁰⁶

³⁰² See, e.g., *Alaska LNG*, 67 F.4th at 1188 (holding that the Commission makes an appropriate NGA public interest determination when it finds that a project has “substantial economic and commercial benefits” that are “not outweighed by the projected environmental impacts”); *Oberlin I*, 937 F.3d at 602 (holding that “[a]s part of the Section 7 certificating process . . . the Commission must complete an environmental review of the proposed project under the National Environmental Policy Act”); *Del. Riverkeeper*, 45 F.4th at 109, 115 (finding “the Commission’s NGA section 7 balancing of public benefits and adverse consequences reasonably accounted for potential environmental impacts” and noting that in some circumstances “[g]reenhouse gas emissions are a reasonably foreseeable effect of a pipeline project” that must be studied under NEPA); *Food & Water Watch v. FERC*, 28 F.4th 277, 282 (D.C. Cir. 2022) (recognizing the NGA section 7 certificate process incorporates environmental review under NEPA, which includes analysis of downstream GHG emissions).

³⁰³ Final EIS at 4-168 to 4-170.

³⁰⁴ Transco Application at 6; see also final EIS at 2-2.

³⁰⁵ Transco Temporary Certificate Application at 21.

³⁰⁶ See *supra* at PP 39-40; Certificate Order, 182 FERC ¶ 61,006 at P 81, Rehearing Order, 182 FERC ¶ 61,148 at P 133.

100. The Commission recognizes that the REAE Project impacts the environment and individuals living in the vicinity of the project facilities. Construction of the project was expected to impact a total of approximately 16.7 acres of wetlands and 603.1 acres of upland vegetation, and project operations are expected to impact 183.1 acres of upland vegetation.³⁰⁷ However, Commission staff determined that due to Transco's project-specific Procedures and due to the proposed mitigation measures discussed in the final EIS, significant impacts on wetlands and vegetation due to construction and operation of the project were not anticipated.³⁰⁸ Similarly, Commission staff determined that impacts associated with groundwater, visual, socioeconomics, traffic, air quality, and noise from the project would be less than significant after planned mitigation procedures like plantings to block long-term visual impacts.³⁰⁹ Additionally, the project will increase the atmospheric concentration of GHGs, which, in combination with past, current, and future emissions from all other sources globally, would contribute to climate change impacts, but the significance of this contribution cannot be determined.³¹⁰

101. Based on the above discussion, we find that there are demonstrated benefits of the REAE Project, and further, that certification of the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers. Although we recognize that the project has resulted in some adverse environmental impacts, we believe that overall, the project fulfills the NGA's core mandate of ensuring plentiful supplies of natural gas at reasonable prices without resulting in identifiable significant environmental impacts. Therefore, based on the record before us, we find that on balance the project is required by the public convenience and necessity and we reinstate the authorizations issued to Transco, as conditioned in the Certificate Order.

102. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, applicant data responses, and exhibits therein, and all comments, and upon consideration of the record,

The Commission orders:

(A) The Commission reinstates its authorizations issued to Transcontinental Gas Pipe Line Company, LLC in the Commission's order issued January 11, 2023, in 182

³⁰⁷ Final EIS at 4-37, 4-44.

³⁰⁸ *Id.* at ES-4 – ES-5, ES-11.

³⁰⁹ Certificate Order, 182 FERC ¶ 61,006 at P 66.

³¹⁰ Final EIS at 4-210.

FERC ¶ 61,006 (2023), as amended by the Commission's order on rehearing, 182 FERC ¶ 61,148 (2023).

(B) The authorization in Ordering Paragraph (A) takes effect immediately upon the issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in *New Jersey Conservation Foundation v. FERC*, No. 23-1064.

(C) The authorization in Ordering Paragraph (A) is conditioned on Transco's compliance with the environmental conditions set forth in the appendix to the Certificate Order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.