

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP17-101-000

(Issued May 2, 2019)

LaFLEUR, Commissioner, *concurring*:

1. Today's order grants Transcontinental Gas Pipe Line Company, LLC's (Transco) request for authorization to construct and operate an expansion on Transco's system in Pennsylvania and New Jersey and its offshore pipeline system in New Jersey and New York state waters (Northeast Supply Enhancement Project).<sup>1</sup> After carefully balancing the need for the project and its environmental impacts, I find the project is in the public interest.<sup>2</sup> For the reasons discussed below, I concur.

2. The Northeast Supply Enhancement Project will provide up to 400,000 Dekatherms per day (Dth/d) of gas delivery capacity. The natural gas would serve National Grid's residential and commercial customers in New York City and Long Island.<sup>3</sup> National Grid plans to convert 8,000 customers per year from No. 2 fuel oil to

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<sup>1</sup> *Transcontinental Gas Pipe Line Company, LLC*, 167 FERC ¶ 61,110 (2019).

<sup>2</sup> *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm'r, *concurring*) (*Broad Run*) (moving beyond my disagreement with the Commission's approach to its environmental review of proposed pipeline projects, and making a case-by-case public interest determination based on all the facts in the record).

<sup>3</sup> National Grid's April 2, 2019 Filing a 1. National Grid states that two of National Grid's gas delivery companies, The Brooklyn Union Gas Company d/b/a/ National Grid NY and KeySpan Gas East Corporation d/b/a National Grid LI, have entered into precedent agreements to purchase 100% of the firm transportation capacity created by the Northeast Supply Enhancement Project. National Grid distributes natural gas to nearly two million customers in Nassau and Suffolk Counties on Long Island and in the New York City boroughs of Brooklyn, Queens and Staten Island.

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natural gas as well as providing natural gas service to new development.<sup>4</sup> The project will displace approximately 900,000 barrels of oil per year.<sup>5</sup>

3. The Commission received detailed information on downstream end use from both Transco and National Grid. I appreciate companies proactively submitting specific information into the record to assist the Commission in quantifying and considering the downstream indirect impacts a proposed project. As I have repeatedly said, I believe it is reasonably foreseeable that the gas being transported will be burned and that downstream greenhouse gas (GHG) emissions will result from burning that gas.<sup>6</sup> Here, National Grid confirms that its customers, mostly residential, rely on natural gas “for critical basic needs including home heating, cooking and hot water.”<sup>7</sup> Notably, we also know that this project will displace the use of a more carbon-intensive fuel, No. 2 fuel oil, which will offset some CO<sub>2</sub> emissions from the project.<sup>8</sup> The information provided by Transco and National Grid also provides additional context to the need for the project beyond simply the precedent agreements.

4. The project’s Environmental Impact Statement (EIS) quantified the direct GHG emissions from the project’s construction and operation,<sup>9</sup> but the EIS did not quantify or consider the downstream emissions impacts. I appreciate that the Commission disclosed the information provided by Transco on downstream end use in today’s order, but it did not quantify or consider the downstream emissions. To address my concerns, I have done this analysis and considered the downstream GHG emissions as part of my public interest

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<sup>4</sup> Transco’s February 27, 2019 Filing at 1. Certificate Order, 167 FERC ¶ 61,110 at P 90.

<sup>5</sup> Transco’s February 27, 2019 Filing at 1. Certificate Order, 167 FERC ¶ 61,110 at P 90.

<sup>6</sup> See *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*). In *Mid States*, the Court concluded that the Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which the transported coal would be burned, the Court concluded the nature of the impact was clear. See also *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017).

<sup>7</sup> National Grid’s April 2, 2019 Filing at 1.

<sup>8</sup> Transco’s April 24, 2019 Filing at 2. See also Transco’s February 27, 2019 Filing at 1.

<sup>9</sup> Final EIS at 4-309 — 4-310.

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determination. Using a methodology developed by the Environmental Protection Agency (EPA) to estimate the downstream GHG emissions from the Northeast Supply Enhancement Project, and assuming as an upper-bound estimate that all the gas to be transported is eventually combusted, 400,000 Dth/d of natural gas service would result in approximately 7.74 million metric tons per year of downstream CO<sub>2</sub> emissions. This figure represents a 4.73 percent increase in GHG emissions in New York,<sup>10</sup> and a 0.13 percent increase at the national level.<sup>11</sup> However, Transco's filings provide information to offset the downstream GHG emissions estimates. Assuming the project would result in the conversion of 8,000 customers per year from heating oil to natural gas, Transco states that the gas conversion would result in the displacement of 900,000 barrels of heating oil per year, which would result in a small offset of CO<sub>2</sub> emissions.<sup>12</sup> Transco also indicated that considerably more of the gas could be considered an alternative to heating oil for certain end uses.<sup>13</sup>

5. I am encouraged that parties submitted this information in the record, particularly in light of the Commission's asserted inability to ascertain such downstream information. I hope more companies follow the lead of Transco and National Grid and provide the Commission with as much information as possible regarding downstream end use. I believe that this information will assist the Commission in meeting our National Environmental Policy Act<sup>14</sup> (NEPA) responsibilities and weighing the need for and the impact of a proposed project under the Natural Gas Act.

6. Furthermore, specific information on end uses can assist the Commission in making a significance determination. I acknowledge that the disclosure of the

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<sup>10</sup> U.S. Energy Information Administration, 2018.  
<https://www.eia.gov/environment/emissions/state/>

<sup>11</sup> U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016*, (April 2018).

<sup>12</sup> Using the same EPA methodology as above, this conversion from heating oil to natural gas would result in a reduction of approximately 109,000 metric tons per year from the full burn calculation cited above. I note that Transco provided slightly different estimates. Transco's February 27, 2019 Filing at 1 (displacing 900,000 barrels of oil reduces CO<sub>2</sub> emissions by 200,000 tons per year). I believe the Commission could and should provide guidance for certificate applicants about how to prepare these estimates in future proceedings.

<sup>13</sup> Transco's April 24, 2019 Filing at 2.

<sup>14</sup> National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

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downstream data and the context is only the first step to assist the Commission in ascribing significance to a given rate or volume of GHG emissions as part of our climate change analysis. As a second step, the NEPA requires that we analyze that information to determine whether a specific impact is, in fact, significant.<sup>15</sup> Unfortunately, to date, the Commission has not established a framework for making a significance determination. I do not believe it is beyond the capability of this Commission to determine whether a given rate or volume of GHG emissions should be considered significant. The Commission has grappled with every other identifiable and measurable environmental impact; for example, we quantify, consider, and mitigate impacts to land, water, and species, and we make determinations on whether the impacts to wetlands or mussels are significant. For reasons that I do not find persuasive, the Commission treats climate impacts differently than all other environmental impacts in our environmental review, and refuses to make such determinations regarding climate change impacts. While it might be easier to assess significance if we had national emissions reduction targets, like EPA's Clean Power Plan or the Paris Climate Accord,<sup>16</sup> to use as part of our framework, the lack of such targets does not prevent the Commission from making a significance determination in this or in any other case. In fact, the Commission makes challenging determinations on quantitative and qualitative issues in many other areas of our work.<sup>17</sup>

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<sup>15</sup> Under NEPA, when evaluating the significance of a particular impact, the Commission must consider both context and intensity. [40 C.F.R. § 1508.27\(a\)](#) (2017) (Context means "that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests and the locality."). [40 C.F.R. § 1508.27\(b\)](#) (2017) (Intensity refers to "the severity of the impact").

<sup>16</sup> The EPA's Clean Power Plan and the Paris climate account are pending repeal and withdrawal, respectively.

<sup>17</sup> Many of the core areas of the Commission's work have required the development of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, Natural Gas Act, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a method or methods to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. *See also, e.g., Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC (continued ...)

For these reasons, I respectfully concur.

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Cheryl A. LaFleur  
Commissioner

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Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System). I also note that the Commission is currently considering a broad topic – resilience – whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.