UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas LNG Brownsville LLC | Docket No. CP16-116-000

(Issued November 21, 2019)

GLICK, Commissioner, *dissenting*:

1. I dissent from today's order because it violates both the Natural Gas Act[1] (NGA) and the National Environmental Policy Act[2] (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the impact that constructing and operating this liquefied natural gas (LNG) facility and associated natural gas pipeline will have on climate change, that is precisely what the Commission is doing here.

2. In today's order authorizing Texas LNG Brownsville LLC's (Texas LNG) LNG export facility (Project) pursuant to section 3 of the NGA, the Commission continues to treat climate change differently than all other environmental impacts. The Commission steadfastly refuses to assess whether the impact of the Project's greenhouse gas (GHG) emissions on climate change is significant, even though it quantifies the GHG emissions caused by the Project.[3] That refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to misleadingly state that its approval of the Project will result in environmental impacts that are generally "less-than-significant"[4] and, as a result, conclude that the Project

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[1] 15 U.S.C. §§ 717b, 717f (2018).

[2] National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

[3] *Texas LNG Brownsville LLC*, 169 FERC ¶ 61,130, at P 65 (2019) (Certificate Order); Environmental Impact Statement at Tables 4.11.1-4 – 4.11.1-6, 4.11.1-8 – 4.11.1-9, 4.11.1-11 (EIS).

[4] Certificate Order, 169 FERC ¶ 61,130 at P 24; EIS at ES-16. *But see* Certificate Order, 169 FERC ¶ 61,130 at P 25 (noting that the Project, in conjunction with the two other LNG facilities in the region approved today, will have significant cumulative impacts on, among other things, federally listed endangered species, including the ocelot and jaguarundi).

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satisfies the NGA's public interest standards.[5] Claiming that a project's environmental impacts are generally less-than-significant while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

3. In addition, the Commission's public interest analysis also does not adequately weigh or wrestle with the Project's adverse impacts.[6] Collectively, the three LNG export projects[7] approved for the Brownsville Ship Channel will have a significant adverse impact on a number of endangered species, including the ocelot. Moreover, all three projects are located in Cameron County, Texas—a region of the country where roughly a third of the population is below the poverty line and a substantial portion is made up of minority groups.[8] I fully appreciate that the jobs and economic stimulus that a facility like the Project can provide may be especially important in a community facing economic challenges. But we cannot lose sight of the cumulative environmental toll on regions, like Cameron County, from the development of new industrial facilities. Although today's order recites these impacts, I believe that reasoned decisionmaking requires the Commission to affirmatively consider those impacts and explain how it nevertheless reached its public interest determination. After all, surely considering the public interest requires us to do more than merely recite the significant adverse impacts and proceed to approve the Project.

I. The Commission's Public Interest Determinations Are Not the Product of Reasoned Decisionmaking

4. The NGA's regulation of LNG import and export facilities "implicate[s] a tangled web of regulatory processes" split between the U.S. Department of Energy (DOE) and the Commission.[9] The NGA establishes a general presumption favoring the import and

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[5] Certificate Order, 169 FERC ¶ 61,130 at PP 20, 84.

[6] *See* EIS at 4-104.

[7] In addition to Texas LNG, the Commission today is also approving the Rio Grande LNG facility, *Rio Grande LNG, LLC*, 169 FERC ¶ 61,131 (2019), and the Annova LNG facility, *Annova LNG Common Infrastructure, LLC*, 169 FERC ¶ 61,132 (2019).

[8] EIS at 4-157 (noting that the poverty rate in Cameron County is 34.8 percent); *id.* 4-156 (noting that four out of the five tracts of land studied were made up of more than 50 percent minority populations).

[9] *Sierra Club v. FERC*, 827 F.3d 36, 40 (D.C. Cir. 2016) (*Freeport*).

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export of LNG unless there is an affirmative finding that the import or export "will not be consistent with the public interest."[10] Section 3 of the NGA provides for two independent public interest determinations: One regarding the import or export of LNG itself and one regarding the facilities used for that import or export. DOE determines whether the import or export of LNG is consistent with the public interest, with transactions among free trade countries legislatively deemed to be "consistent with the public interest."[11] The Commission evaluates whether "an application for the siting, construction, expansion, or operation of an LNG terminal" is itself consistent with the public interest.[12] Pursuant to that authority, the Commission must approve a proposed LNG facility unless the record shows that the facility would be inconsistent with the public interest.[13]

5. As part of that determination, the Commission examines a proposed facility's impact on the environment and public safety. A facility's impact on climate change is

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[10] 15 U.S.C. § 717b(a); *see EarthReports, Inc. v. FERC*, 828 F.3d 949, 953 (D.C. Cir. 2016) (citing *W. Va. Pub. Servs. Comm'n v. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982) ("NGA [section] 3, unlike [section] 7, 'sets out a general presumption favoring such authorization.'")). Under section 7 of the NGA, the Commission approves a proposed pipeline if it is shown to be consistent with the public interest, while under section 3, the Commission approves a proposed LNG import or export facility unless it is shown to be inconsistent with the public interest. *Compare* 15 U.S.C. §717b(a) *with* 15 U.S.C. §717f(a), (e).

[11] 15 U.S.C. § 717b(c). The courts have explained that, because the authority to authorize the LNG exports rests with DOE, NEPA does not require the Commission to consider the upstream or downstream GHG emissions that may be indirect effects of the export itself when determining whether the related LNG export facility satisfies section 3 of the NGA. *See Freeport*, 827 F.3d at 46-47; *see also Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (*Sabal Trail*) (discussing *Freeport*). Nevertheless, NEPA requires that the Commission consider the direct GHG emissions associated with a proposed LNG export facility. *See Freeport*, 827 F.3d at 41, 46.

[12] 15 U.S.C. § 717b(e). In 1977, Congress transferred the regulatory functions of NGA section 3 to DOE. DOE, however, subsequently delegated to the Commission authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal, while retaining the authority to determine whether the import or export of LNG to non-free trade countries is in the public interest. *See EarthReports*, 828 F.3d at 952-53.

[13] *See Freeport*, 827 F.3d at 40-41.

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one of the environmental impacts that must be part of a public interest determination under the NGA.[14] Nevertheless, the Commission maintains that it need not consider whether the Project's contribution to climate change is significant in this order because it lacks a means to do so—or at least so it claims.[15] However, the most troubling part of the Commission's rationale is what comes next. Based on this alleged inability to assess the significance of the Project's impact on climate change, the Commission concludes that the Project's environmental impacts would generally be reduced to "less-than-significant" levels.[16] Think about that. The Commission is saying out of one side of its mouth that it cannot assess the significance of the Project's impact on climate change[17] while, out of the other side of its mouth, assuring us that its environmental impacts are generally not significant.[18] That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the "hard look" that the law demands.[19]

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[14] *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *see also Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

[15] Certificate Order, 169 FERC ¶ 61,130 at P 66; EIS at 4-344.

[16] Certificate Order, 169 FERC ¶ 61,130 at P 24.

[17] *Id.* P 66; EIS at 4-344 ("[W]e are unable to determine the significance of the Project's contribution to climate change.")."

[18] Certificate Order, 169 FERC ¶ 61,130 at P 24 (stating that, with few exceptions and not considering cumulative impacts, the Project's impacts would be "reduced to less-than-significant levels").

[19] *See, e.g.*, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (explaining that agencies cannot overlook a single environmental consequence if it is even "arguably significant"); *see also Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) ("Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." (internal quotation marks omitted)); *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (explaining that agency action is "arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency").

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6. It also means that the Project's impact on climate change does not play a meaningful role in the Commission's public interest determination, no matter how often the Commission assures us that it does. Using the approach in today's order, the Commission will always conclude that a project will not have a significant environmental impact irrespective of that project's actual GHG emissions or those emissions' impact on climate change. If the Commission's conclusion will not change no matter how many GHG emissions a project causes, those emissions cannot, as a logical matter, play a meaningful role in the Commission's public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

7. The failure to meaningfully consider the Project's GHG emissions is all-the-more indefensible given the volume of GHG emissions at issue in this proceeding. The Project will directly release over 600,000 tons of GHG emissions per year, plus an untold several million more that go undocumented in the Commission's environmental analysis.[20] The Commission acknowledges that "GHGs emissions due to human activity are the primary cause of increased levels of atmospheric GHG since the industrial age,"[21] a result that the Commission has previously (although notably not in the environmental analysis accompanying today's order) acknowledged will "threaten the public health and welfare of current and future generations through climate change."[22] In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project's contribution to climate change when determining whether the Project is consistent with the public interest—a task that it entirely fails to accomplish in today's order.

8. In addition, the cumulative effects of the Project along with the Rio Grande LNG and Annova LNG facilities will have a significant adverse effect on the environment, notably endangered species, including the ocelot, the jaguarundi, and the aplomado

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[20] *See infra* PP 11-14. In particular, the Commission refuses to consider the GHG emissions caused by the Project's electricity consumption even though it poses—and uses—models for calculating and quantifying those emissions and those emissions represent the Project's principal contribution to climate change.

[21] EIS at 4-164.

[22] Environmental Assessment, Docket No. CP18-512-000 (Mar. 29, 2019); *see also id.* at 235 ("Construction and operation of the Project would increase the atmospheric concentration of GHGs in combination with past and future emissions from all other sources and contribute incrementally to future climate change impacts.").

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falcon.[23] Although the Commission reports those impacts in its EIS[24] and mentions them briefly in today's order,[25] it is far from clear whether and how they factor into the Commission's public interest analysis. Given the extent of those adverse impacts on endangered species—which appear to be more extensive than those caused by other energy infrastructure projects that the Commission has approved under NGA section 3 and section 7 in recent years[26]—reasoned decisionmaking requires the Commission to do more than simply recite the potential harm to endangered species and then proceed to make a public interest determination without any further discussion.

9. The Project's impact on these species is particularly concerning since the Fish and Wildlife Service (FWS) rejected the conclusion in Commission Staff's original biological assessment that the endangered ocelot and aplomado falcon would not be adversely affected by the project.[27] Although Commission staff has resubmitted its biological assessment, FWS has yet to weigh in on the resubmitted assessment. Given that FWS has already once disagreed with the agency on the Project's implications for those species, I am concerned that we are putting the cart before the horse in making a public interest determination without the benefit of hearing from the experts about the Project's impact on endangered species.

10. Finally, the Project will be located in Cameron County, Texas—a county in which roughly a third of the population is below the poverty line and a substantial portion is

[23] EIS at 4-317 (ocelot and jaguarundi); *id.* at 4-318 (aplomado falcon).

[24] EIS at 4-315 – 4-317, 4-317 – 4-318, 5-364 – 5-365.

[25] Certificate Order, 169 FERC ¶ 61,130 at PP 48, 73, 75.

[26] For example, the Commission's EIS notes that "even incremental habitat loss could be significant" for the ocelot, of which there are only a few dozen remaining in the United States. EIS at App. C-131. There is no question that the cumulative effect of the three LNG projects will be to significantly contribute to the loss of ocelot habitat, which is the primary threat to ocelot survival, EIS 4-315.

[27] EIS 4-81. The Commission appears to suggest that FWS improperly considered the cumulative impact of the three proximately located LNG facilities (Texas LNG, Annova LNG, and Rio Grande LNG). *Id.* For my part, I hardly see a problem in taking a holistic approach that considers how three large LNG export facilities in a single county will effect these endangered species. Indeed, the bigger problem would seem to be if the Commission ignored the collective that those projects would have on endangered species.

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made up of minority groups.[28] I fully appreciate that the jobs and economic stimulus that a facility like the Project can provide may be especially important in a community facing economic challenges. But, by the same token, we cannot turn a blind eye to the incremental impact that increased pollution will have on economically disadvantaged communities, which frequently experience a disproportionate toll from the development of new industrial facilities. Especially in light of the potential cumulative impact of building three large LNG export facilities in a few-mile radius, I do not agree that we can dispose of the environmental justice concerns simply on the basis that those groups will experience conditions no worse than the surrounding county—particularly when the surrounding county presents many of the same concerns that underlie the Council on Environmental Quality's (CEQ) and U.S. Environmental Protection Agency's (EPA) environmental justice guidance.[29]

II. The Commission Fails to Satisfy Its Obligations under NEPA

11. The Commission's NEPA analysis of the Project's GHG emissions is similarly flawed. In order to evaluate the environmental consequences of the Project under NEPA, the Commission must consider the harm caused by its GHG emissions and "evaluate the 'incremental impact' that those emissions will have on climate change or the environment more generally."[30] As noted, the operation of the Project will emit more than 600,000 metric tons of GHGs annually.[31] But that drastically understates the actual GHG emissions attributable to the Project. Unlike many of the LNG facilities that the Commission has approved this year, the Project is powered with electricity from the grid

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[28] EIS at 4-157 (noting that the poverty rate in Cameron county is 34.8 percent); *id.* 4-156 (noting that four out of the five tracts of land studied were made up of more than 50 percent minority populations).

[29] EIS at 4-155 – 4-157 (discussing the guidelines provided by the CEQ and EPA to identify environmental justice communities).

[30] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 51 (D.D.C. 2019) (explaining that the agency was required to "provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute" to the "impacts of climate change in the state, the region, and across the country").

[31] Certificate Order, 169 FERC ¶ 61,130 at P 65; *see also* EIS at Tables 4.11.1-6.

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rather than onsite natural gas turbines.[32] Apparently on that basis, the Commission omits the resulting GHG emissions from its environmental analysis.

12. The GHG emissions caused by the Project's substantial electricity consumption are reasonably foreseeable effects of the Project. The Project will connect to the grid via a new transmission line that will extend from the Project to American Electric Power's Union Carbide substation.[33] That known point of interconnection makes it easy for the Commission to estimate the incremental generation likely to be dispatched to serve the Project—as well as the resulting GHG emissions—using one of many well-accepted models, such as the Environmental Protection Agency's eGrid database or Avoided Emissions and Generation Tool (AVERT). Deploying one or both of those models would have been precisely the sort of "'reasonable forecasting'" aided by "'educated assumptions'" that NEPA requires.[34]

13. But don't just take my word for it. Consider the fact that the Commission uses and relies on both of those models in similar contexts, including to calculate the air emissions in a separate order issued *today* that approves another LNG export facility that is less than 2 miles away from the Project.[35] In that order, the Commission relied on both eGrid and AVERT to calculate the "indirect emissions," including GHG emissions, caused by the Annova LNG facility's electricity consumption when assessing the reasonable alternatives to that proposed project. I see no reason why the Commission cannot use the same models to develop a reasonable estimate—which, again, is exactly what NEPA requires[36]—of the GHG emissions caused by the Project.

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[32] EIS at 1-17 – 1-18.

[33] *Id.* at 1-17.

[34] *Sabal Trail*, 867 F.3d at 1374 (quoting *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014)).

[35] Annova LNG Environmental Impact Statement, Docket No. CP16-480-000, at 3-20; *id.* at 4-104 (stating that the Annova LNG facility is 1.7 miles away from the Project site).

[36] Moreover, to the extent that the Commission believes these models, and their underlying assumptions, may not be perfect solutions, it can still use the models, but disclose its concerns so that readers can take the results "with the appropriate grain of salt." *Sabal Trail*, 867 F.3d at 1374 ("We understand that emission estimates would be largely influenced by assumptions rather than direct parameters about the project, but some educated assumptions are inevitable in the NEPA process. And the effects of assumptions on estimates can be checked by disclosing those assumptions so that readers

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14. The Commission's failure to quantify the GHG emissions associated with the Project's considerable electricity consumption is especially unreasonable given the other sources of GHG emissions that it did quantify in the EIS. For example, the EIS reports the indirect GHG emissions resulting from boat traffic caused by the Project.[37] Indeed, it goes so far as to estimate the GHG emissions that will result from different types of boats used to serve the facility (e.g., LNG carrier v. tugboat v. pilot boat).[38] I fail to see how the Commission can reasonably refuse to use well-established models—ones that it is perfectly comfortable relying on in a similar context—to estimate the GHG emissions from electricity consumption, but then confidently ascribe likely GHG emissions levels for different types of boats.

15. In any case, although quantifying the Project's GHG emissions is a necessary step toward meeting the Commission's NEPA obligations, listing the volume of emissions alone is insufficient.[39] As an initial matter, identifying the consequences that those emissions will have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed. The Supreme Court has explained that NEPA's purpose is to "ensure[] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts" and to "guarantee[] 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."[40] It is hard to see how hiding the ball

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can take the resulting estimates with the appropriate amount of salt." (internal citations and quotation marks omitted)).

[37] Certificate Order, 169 FERC ¶ 61,130 at n.111; *see also* EIS at Tables 4.11.1-8 – 4.11.1-9.

[38] EIS at Table 4.11.1-9.

[39] *See Ctr. for Biological Diversity*, 538 F.3d at 1216 ("While the [environmental document] quantifies the expected amount of CO_2 emitted . . . , it does not evaluate the 'incremental impact' that these emissions will have on climate change or on the environment more generally . . . ."); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) ("A calculation of the total number of acres to be harvested in the watershed is a necessary component . . . , but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres.").

[40] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (citing *Robertson v. Methow Valley Citizens Coun.*, 490 U.S. 332, 349 (1989)).

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by refusing to assess the significance of the Project's climate impacts is consistent with either of those purposes.

16. In addition, under NEPA, a finding of significance informs the Commission's inquiry into potential ways of mitigating environmental impacts.[41] An environmental review document must "contain a detailed discussion of possible mitigation measures" to address adverse environmental impacts.[42] "Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects" of a project, meaning that an examination of possible mitigation measures is necessary to ensure that the agency has taken a "hard look" at the environmental consequences of the action at issue.[43]

17. The Commission responds that it need not determine whether the Project's contribution to climate change is significant because "[t]here is no universally accepted methodology" for assessing the harms caused by the Project's contribution to climate change.[44] But the lack of a single consensus methodology does not prevent the Commission from adopting *a* methodology, even if it is not universally accepted. The Commission could, for example, select one methodology to inform its reasoning while also disclosing its potential limitations or the Commission could employ multiple methodologies to identify a range of potential impacts on climate change. In refusing to assess a project's climate impacts without a perfect model for doing so, the Commission sets a standard for its climate analysis that is higher than it requires for any other environmental impact.

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[41] 40 C.F.R. § 1502.16 (2018) (NEPA requires an implementing agency to form a "scientific and analytic basis for the comparisons" of the environmental consequences of its action in its environmental review, which "shall include discussions of . . . [d]irect effects and their significance.").

[42] *Robertson*, 490 U.S. at 351.

[43] *Id.* at 352.

[44] EIS at 4-344 (stating "there is no universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to Project's incremental contribution to GHGs" and "[w]ithout either the ability to determine discrete resource impacts or an established target to compare GHG emissions against, we are unable to determine the significance of the Project's contribution to climate change"); *see also* Certificate Order, 169 FERC ¶ 61,130 at P 57 ("The Commission has also previously concluded it could not determine whether a project's contribution to climate change would be significant.").

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18. In any case, the Commission has several tools to assess the harm from the Project's contribution to climate change. For example, by measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to the harm caused by climate change, thereby facilitating the necessary "hard look" at the Project's environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a single project's climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harm in terms that are readily accessible for both agency decisionmakers and the public at large. Yet, the Commission continues to ignore the Social Cost of Carbon, relying instead on deeply flawed reasoning that I have previously critiqued at length.[45]

19. Furthermore, even without a formal tool or methodology, the Commission can consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions will have a significant impact on climate change. After all, that is precisely what the Commission does in other aspects of its environmental review, where the Commission makes several significance determinations without the tools it claims it needs to assess the significance of the Project's impact on climate change.[46] The Commission's refusal to similarly analyze the Project's impact on climate change is arbitrary and capricious.

20. And even if the Commission were to determine that the Project's GHG emissions are significant, that is not the end of the analysis. Instead, as noted above, the Commission could blunt those impacts through mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that an environmental review must "contain a detailed discussion of possible mitigation measures" to address adverse environmental impacts.[47] As noted above, "[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly

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[45] *See, e.g.*, *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

[46] *See, e.g.*, EIS at 4-14, 4-22, 4-23, 4-36 – 4-37, 4-44, 4-50, 4-55, 45-8, 4-72 (concluding there will be no significant impact on groundwater recharge, turbidity, surface water quality due to hydrostatic testing, wetlands, vegetation, wildlife, migratory bird populations, pollinator habitat, and aquatic resources due to cooling water intake, among other things).

[47] *Robertson*, 490 U.S. at 351.

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evaluate the severity of the adverse effects."[48] Consistent with this obligation, the EIS discusses mitigation measures to ensure that the Project's adverse environmental impacts (other than its GHG emissions) are reduced to less-than-significant levels.[49] And throughout today's order, the Commissions uses its conditioning authority under section 3 and section 7 of the NGA[50] to implement these mitigation measures, which support its public interest finding.[51] Once again, however, the Project's climate impacts are treated differently, as the Commission refuses to identify any potential climate mitigation measures or discuss how such measures might affect the magnitude of the Project's impact on climate change.

21. Finally, the Commission's refusal to seriously consider the significance of the impact of the Project's GHG emissions is even more mystifying because NEPA "does not dictate particular decisional outcomes."[52] NEPA "'merely prohibits uninformed—rather than unwise—agency action.'"[53] The Commission could find that a project contributes significantly to climate change, but that it is nevertheless in the public interest because its benefits outweigh its adverse impacts, including on climate change. In other words, taking the matter seriously—and rigorously examining a project's impacts on climate change—does not necessarily prevent any of my colleagues from ultimately concluding that a project satisfies the relevant public interest standard.

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[48] *Id.* at 351-52; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

[49] *See, e.g.*, Certificate Order, 169 FERC ¶ 61,130 at P 67 (discussing mitigation required by the Commission to address reliability and safety impacts from the Project); *id.* P 59 (discussing mitigation measures required to address air quality and noise); *id.* P 39 (discussing mitigation measures required to address impacts on vegetation).

[50] 15 U.S.C. § 717b(e)(3)(A); *id.* § 717f(e); Certificate Order, 169 FERC ¶ 61,130 at P 83 ("[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary.").

[51] *See* Certificate Order, 169 FERC ¶ 61,130 at P 83 (explaining that the environmental conditions ensure that the Project's environmental impacts are consistent with those anticipated by the environmental analyses, which found that the Project would not significantly affect the quality of the human environment).

[52] *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

[53] *Id.* (quoting *Robertson*, 490 U.S. at 351).

For these reasons, I respectfully dissent.

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Richard Glick
Commissioner