



# STATEMENT

## Concurrence of Commissioner Cheryl A. LaFleur on Portland Natural Gas Transmission System; and Maritimes & Northeast Pipeline, L.L.C.

**Date:** February 21, 2019

**Item No. C-1**  
**Docket Nos.:** CP18-506-000,  
CP18-539-000

Today's order grants Portland Natural Gas Transmission System's (Portland) request for authorization to construct and operate Phase III of the Portland XPress Project.<sup>1</sup> Phase III is designed to increase the capacity on Portland's north system by 24,473 dekatherms per day (Dth/day) and to increase the capacity on the portion of Portland's system jointly-owned with Maritimes & Northeast Pipeline, L.L.C. by 22,428 Dth/day. After carefully balancing the need for the project and its environmental impacts, I find the project is in the public interest. For the reasons discussed below, I concur.

In total, all three phases of the Portland XPress Project will provide 137,378 Dth/day of firm transportation service to eight local distribution companies (LDCs) in New England that will deliver natural gas to residential, commercial and industrial customers to meet their needs, including various end uses such as heating and process.<sup>2</sup> I believe it is reasonably foreseeable that the gas being transported and delivered to these LDCs will be burned and that downstream greenhouse gas (GHG) emissions will result from burning that gas.<sup>3</sup>

The Project's Environmental Assessment (EA) quantified the direct GHG emissions from Phase III of the Project's construction and operation,<sup>4</sup> but the EA did not quantify or consider the downstream emissions impacts.<sup>5</sup> To address my concerns about the Commission's failure to consider downstream emissions impacts in this proceeding, I have

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<sup>1</sup> *Portland Natural Gas Transmission System*, 166 FERC ¶ 61,134 (2019). *Portland Natural Gas Transmission System*, 165 FERC ¶ 62,092 (2018) (granting certificate authorization to increase capacity on the joint facilities and approving a capacity lease agreement between Portland and Maritimes for Phase II of the Portland XPress Project). *Portland Natural Gas Transmission System*, 165 FERC ¶ 61,049 (2018) (granting certificate authorization to increase capacity on the north facilities and joint facilities and amending Portland's Presidential Permit and NGA section 3 authorization for Phase 1 of the Portland XPress Project).

<sup>2</sup> Portland's July 19, 2018 Response to Commission Staff's July 13, 2018 Data Request at 3.

<sup>3</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, *See Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017) (*Sabal Trail*).

<sup>4</sup> EA at 29-30 & Tables 8 & 9.

<sup>5</sup> I have previously expressed my disagreement with the Commission's policy limiting the disclosure and consideration of downstream and upstream GHG emissions impacts in our project review. See *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*).



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considered the downstream GHG emissions as part of my public interest determination. Using a methodology developed by the Environmental Protection Agency to estimate the downstream GHG emissions from the Portland XPress Project, and assuming as an upper-bound estimate that all of the gas from Phases I, II, and III, to be transported is eventually combusted, 137,378 Dth/d of natural gas service would result in the emission of approximately 2.66 million metric tons per year of downstream CO<sub>2</sub>. However, Portland has stated that 18,000 Dth/d of this capacity is contracted to be transported across the U.S.-Canada border. Therefore, 119,378 Dth/d will be delivered into New England, which results in 2.31 million metric tons per year of downstream CO<sub>2</sub> emissions. This figure represents a 2.17 percent increase in GHG emissions regionally (Massachusetts, Maine, New Hampshire, and Rhode Island),<sup>6</sup> and 0.04 percent increase nationally.<sup>7</sup>

I acknowledge that the disclosure of a regional and national comparison data to provide context to the quantified emissions is only the first step to assist the Commission in ascribing significance to a given rate or volume of GHG emissions. However, to date, the Commission has not identified a framework for reaching a significance determination. As I have previously explained, using the Social Cost of Carbon<sup>8</sup> could enable the commission assess the significance of GHG emissions.<sup>9</sup> While the Commission has argued that monetizing climate damages through the Social Cost of Carbon does not readily lend itself to the Commission's environmental review of natural gas facilities, I am confident that, given the importance of this issue, the Commission could find a way to adapt and apply a metric such as the Social Cost of Carbon to reach a significance threshold determination. Indeed, the Commission makes challenging determinations on quantitative and qualitative issues in many other areas of our work but has simply chosen not to attempt a significance determination in this context.<sup>10</sup> While making a significance determination on

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<sup>6</sup> U.S. Energy Information Administration, 2018. <https://www.eia.gov/environment/emissions/state/>

<sup>7</sup> U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016*, (April 2018).

<sup>8</sup> [https://www.epa.gov/sites/production/files/2016-12/documents/social\\_cost\\_of\\_carbon\\_fact\\_sheet.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf)

<sup>9</sup> See, e.g., *Florida Southeast Connection*, 162 FERC ¶ 61,233 (2018) (LaFleur, Comm'r, *dissenting in part*); *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*); and *Florida Southeast Connection, LLC*, 164 FERC ¶ 61,099 (2018) (LaFleur, Comm'r, *dissenting*).

<sup>10</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 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 actively considering a broad topic -



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downstream GHG emissions could be difficult, that challenge does not relieve the Commission of its responsibility to address this issue.

Using the approach I originally articulated in *Broad Run*,<sup>11</sup> I find the Portland XPress Project to be in the public interest. For these reasons, I respectfully concur.

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resilience - whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.

<sup>11</sup> *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm'r, *concurring*) (*Broad Run*). See *RH enerytrans, LLC*, 165 FERC ¶ 61,218 (2018) (LaFleur, Comm'r, *concurring*) ("I am trying to move beyond my disagreement with the Commission's approach to its environmental review of proposed pipeline projects, and base my public interest determination on the facts in the record—even ones not discussed in our environmental documents or in the certificate order."). See also *Texas Eastern Transmission, LP*, 165 FERC ¶ 61,132 (2018) (LaFleur, Comm'r, *concurring*); and *PennEast Pipeline Company, LLC.*, 164 FERC ¶ 61,098 (2018) (LaFleur, Comm'r, *concurring in part and dissenting in part*).