



STATEMENT

Dissent in Part of Commissioner Richard Glick on Portland Natural Gas Transmission System

Date: February 21, 2019

Docket No.: CP18-506

Today's order authorizes the expansion of Portland Natural Gas Transmission System's Portland Xpress Project (Project), which will increase its natural gas pipeline capacity to serve local gas distribution markets and support growing demand in the northeast region.¹ I am dissenting in part from today's order because the Commission once again fails to adequately consider the Project's impact on climate change in finding that the application before us is consistent with the public interest. The Commission refuses to quantify, disclose, and consider how the reasonably foreseeable indirect greenhouse gas (GHG) emissions caused by the Project will contribute to climate change.² In particular, the Commission refuses to evaluate whether the Project's contribution to the harms caused by climate change is significant. As a result of those failures, today's order falls well short of our obligations under section 7 of the Natural Gas Act (NGA)³ and the National Environmental Policy Act (NEPA), leaving me no choice but to dissent in part.⁴

I have at length explained my concerns with the Commission's stubborn refusal to consider a project's potential impact on climate change in several recent proceedings⁵ and will not rehash them all here. Nevertheless, it is important to highlight the fact that the Commission continues to exclude climate change from playing any meaningful role in its decisionmaking process. In particular, the Commission here refuses to consider the indirect emissions from the Project or to make any effort to consider whether the Project's reasonably foreseeable GHG emissions are significant, as the

¹ *Portland Natural Gas Transmission System*, 166 FERC ¶ 61,134 (2019).

² The Project was offered "[i]n response to continued growing demand in the region," which includes "natural gas for space heating, industrial processes and electric generation." Portland Application at 4-5. It is thus reasonably foreseeable that a significant portion, if not all, of the natural gas transported through the Project will be combusted, resulting in GHG emissions that contribute to climate change.

³ 15 U.S.C. 717f (2012).

⁴ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852. NEPA requires the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. 40 C.F.R. § 1502.16 (a)-(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action" as well as a discussion of direct and indirect effects and their significance.). In so doing, the Commission must take a "hard look" at the environmental impacts of its decisions. See, e.g., *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). A standard that can only be understood to require the Commission to evaluate whether the pipeline's contribution to climate change causes significant harm to the environment and affected communities.

⁵ See *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting); see also *Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,221 (2018) (Glick, Comm'r, dissenting in part); *RH energytrans, LLC*, 165 FERC ¶ 61,218 (2018) (Glick, Comm'r, dissenting in part).



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law requires.⁶ The failure to conduct that analysis prevents the Commission from seriously addressing the Project's potential contribution to climate change, which is a necessary step in evaluating whether the Project is consistent with the public interest.⁷ That is a far cry from what good government and the law demand.

The Commission's failure to meaningfully consider climate change forces me into dissenting from certificate orders that I might otherwise support. Prior to issuing a section 7 certificate, the Commission must find both that the proposed project is needed, and that, on balance, its potential benefits outweigh its potential adverse impacts.⁸ The record here shows that the Project is needed and will provide important benefits, including satisfying growing demand for natural gas in the northeast. Although need for the Project is an important consideration, need alone is not sufficient to find that the Project is consistent with the public interest. Instead, the Commission must also determine that the Project's benefits outweigh its adverse impacts, including its GHG emissions, which the Commission cannot do without meaningfully evaluating the impacts of those emissions. I cannot join an order that countenances such an incomplete assessment of a project's adverse impacts, regardless of what I might otherwise think of that project.

For these reasons, I respectfully dissent in part.

⁶ *Sierra Club v. FERC*, 867 F.3d 1373, 1374 (D.C. Circuit 2017) (*Sabal Trail*) ("The [environmental document] . . . needed to include a discussion of the 'significance' of this indirect effect."). Council on Environmental Quality (CEQ) regulations adopt a two-step framework for determining whether an environmental impact is significant. Agencies must consider both the "context" of the proposed action and the "intensity" of the environmental consequences. 40 C.F.R. § 1508.27 ("Significantly as used in NEPA requires considerations of both context and intensity."); *id.* ("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."); *id.* ("Intensity' . . . refers to the severity of the impact, . . . [including t]he degree to which" it affects considerations including "public health or safety" and the environment.).

⁷ Section 7 of the NGA "requires the Commission to evaluate all factors bearing on the public interest," *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959), which *Sabal Trail* authoritatively held includes a proposed pipeline's contribution to the harms caused by climate change, 867 F.3d at 1373. That conclusion was essential to the Court's holding because, without it, the Court would not have supplied a basis for distinguishing cases involving NGA section 3. See *id.* at 1372-73.

⁸ See *Sabal Trail*, 867 F.3d at 1373 (explaining that section 7 of the NGA requires the Commission to balance "the public benefits [of a proposed pipeline] against the adverse effects of the project," including adverse environmental effects" (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015))).