

168 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Natural Gas Pipeline Company of America LLC

Docket No. CP18-487-000

ORDER ISSUING CERTIFICATE

(Issued September 30, 2019)

1. On May 18, 2018, Natural Gas Pipeline Company of America LLC (Natural) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct and operate a compressor station and appurtenant facilities in Cameron Parish, Louisiana (Sabine Pass Compression Project). For the reasons discussed in this order, we will grant Natural's requested authorization, subject to conditions.

I. Background and Proposal

Natural is a limited liability company organized under the laws of Delaware,³ and is a natural gas company as defined by section (2)(6) of the NGA⁴ subject to the Commission's jurisdiction. Natural's transmission system comprises the Amarillo and Gulf Coast mainlines and the Amarillo and Gulf Coast interconnection (A/G Line).⁵ The Amarillo Line extends from Texas, New Mexico, and Oklahoma, through Kansas, Nebraska, Iowa, and Illinois, to terminating points in and near the Chicago metropolitan area. The Gulf Coast Line extends from Louisiana and the offshore Gulf of Mexico, through Texas, Arkansas, Missouri, and Illinois, to terminating points also in and near the Chicago metropolitan area. The A/G Line connects the Amarillo and Gulf Coast mainlines and extends from Oklahoma to Texas. Natural serves customers along its

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2019).

³ Natural May 24, 2018 Application (Application) at 6.

⁴ 15 U.S.C. § 717a(6).

⁵ Application at 6–7.

entire transmission system, as well as in Indiana and Wisconsin. Natural also owns and operates underground natural gas storage facilities in Texas, Oklahoma, Iowa, and Illinois.

2. The Sabine Pass Compression Project is designed to provide an additional 400,000 dekatherms (Dth) per day of firm transportation service for an existing shipper, Sabine Pass Liquefaction, LLC (Sabine Pass), to its existing liquefied natural gas (LNG) facility located near Sabine Pass (Sabine Pass LNG Terminal) in Cameron Parish, Louisiana. Natural states that the transportation service will use existing capacity on Natural's Louisiana Line, consisting of Line Nos. 1 and 2, which was posted on Natural's interactive website as available unsubscribed capacity.⁶ Sabine Pass elected to contract for the capacity at a minimum pressure of 1,050 pounds per square inch gauge (psig). In order to meet the minimum pressure required for deliveries to the Sabine Pass LNG Terminal, Natural requests authority to construct and operate compression and appurtenant facilities in Cameron Parish, Louisiana.⁷ In addition, Natural states that the project will allow Natural to facilitate deliveries of natural gas to the LNG terminal under Sabine Pass's existing firm transportation service agreements at the same minimum delivery pressure of 1,050 psig.

3. Specifically, Natural proposes to construct and operate the following facilities:

- a new compressor station with a 22,490-horsepower natural gas-fired Solar Titan 130 turbine compressor unit and auxiliary facilities to be situated on a new elevated 43,200 square-foot onshore platform along Natural's existing Louisiana Line Nos. 1 and 2, adjacent to the Sabine Pass LNG Terminal; and
- a new tie-in facility to be situated adjacent to Natural's existing tap, which will include four 30-inch taps connecting the Sabine Pass Compression Project to Natural's existing Louisiana Line Nos. 1 and 2 and a 36-inch tap on Natural's existing lateral pipeline to the Sabine Pass LNG Terminal (with suction interconnect lines and auxiliary facilities).

⁶ *Id.* at 8.

⁷ *Id.* at 1, 8–9.

4. Natural executed a precedent agreement with Sabine Pass for 400,000 Dth per day of firm transportation service for a primary term of ten years. Sabine Pass has elected to pay negotiated rates for firm transportation service on the project.⁸

5. Natural estimates the Sabine Pass Compression Project will cost approximately \$61 million.⁹ Natural proposes to charge its existing system recourse rate under Rate Schedule FTS (Firm Transportation Service) as the initial maximum recourse reservation and usage charges for firm transportation service on the project.¹⁰

II. Notice, Interventions, and Comments

6. Notice of Natural's application was published in the *Federal Register* on June 6, 2018, with interventions, comments, and protests due by June 21, 2018.¹¹ Illinois Gas Company, NJR Energy Services Company, and Sabine Pass filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹²

7. The State of Louisiana Department of Wildlife and Fisheries filed comments addressing environmental issues, including erosion/sediment measures, temporary and permanent pipeline rights-of-way, and the maintenance of Natural's proposed culverts. These issues are addressed in the Environmental Assessment (EA) discussed below.

III. Discussion

8. Since the proposed facilities will be used to facilitate the transportation of natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the proposed facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹³

⁸ *Id.* at 13–15, 26.

⁹ *Id.* at 3, 13; *see also id.* Exhibit K.

¹⁰ *Id.* at 16–17.

¹¹ 83 Fed. Reg. 26,275 (2018).

¹² 18 C.F.R. § 385.214(c) (2019).

¹³ 15 U.S.C. §§ 717f(c) and 717f(e).

A. Certificate Policy Statement

9. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁴ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains, that, in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis, where other interests are addressed.

11. Natural's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Natural's proposal to use its existing system rates as the initial recourse rates for services utilizing the incremental capacity created by the proposed facilities because those rates exceed illustrative incremental rates calculated to recover the costs of the project. We are also granting a predetermination of rolled-in rate treatment for the costs of the project because the expected revenues from the Sabine Pass Compression Project are projected to exceed its costs. Therefore, we find that Natural's existing customers will not subsidize the Sabine Pass Compression Project and that the threshold no-subsidy requirement is met.

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

12. We find that the proposed project will have no adverse effect on service to Natural's existing customers because the proposed expansion facilities are designed to support incremental service to meet the needs of the project shipper without degradation of service to Natural's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers, and no other pipelines or their captive customers have protested Natural's proposal.

13. We also find that the Sabine Pass Compression Project is designed to minimize adverse impacts on landowners and the surrounding communities. While the project will include the construction of a new compressor station and a new tie-in facility, no additional mainline pipeline facilities will be needed to provide the proposed transportation service. In addition, Natural plans to lease the 24.28 acres of land required for the new compressor station and tie-in facility.¹⁵ No property owners have protested the application.

14. The Sabine Pass Compression Project will enable Natural to provide an additional 400,000 Dth per day of firm transportation service at the delivery pressure requested by the shipper to the Sabine Pass LNG Terminal, where the transported gas will be liquefied for export. Sabine Pass executed a precedent agreement with Natural for the full capacity of the project. Based on the benefits the project will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Natural's proposal, subject to the conditions discussed in this order.

B. Rates

1. Initial Recourse Rates

15. Natural proposes to use its existing Rate Schedule FTS¹⁶ reservation and usage charges as its initial maximum recourse rates for firm transportation and its existing Rate Schedule ITS rate as its recourse rate for interruptible transportation provided through the capacity used for the project. Natural does not request a predetermination to roll the costs of the project into its rates in its next NGA section 4 rate case.

¹⁵ Application at 21.

¹⁶ Natural's Rate Schedule FTS offers Peak rates, effective November through March, and Off-Peak rates, effective April through October.

16. Natural calculated an illustrative incremental monthly reservation charge of \$2.4312 per Dth, based on first-year fixed costs of \$11,669,689, and annual reservation billing determinants of 4,800,000 Dth. Natural calculated an incremental usage charge of \$0.0006 per Dth, based on variable costs of \$86,888 and volumes of 146,000,000 Dth. The illustrative cost of service reflects the 2.10 percent transmission depreciation rate and 14.98 percent pre-tax rate of return underlying Natural's effective rates.¹⁷

17. Because the project involves paths from multiple zones on Natural's system, Natural also calculated a weighted average maximum recourse reservation charge of \$4.7850 per Dth and usage charge of \$0.0013 per Dth using its existing maximum Rate Schedule FTS rates as applied to the primary paths designated under the shipper's precedent agreement.¹⁸ Natural states that the Commission has previously relied on this type of analysis—utilizing a weighted average system rate based on current reservation charges—for projects with shippers with multiple flow paths.¹⁹

18. The Commission has reviewed Natural's proposed cost of service and initial rates and generally finds them reasonable. Under the Commission's Certificate Policy Statement, incremental rates should be charged to recover the costs of proposed new services if the incremental rate exceeds the maximum system recourse rate.²⁰ Where the effective system recourse rate is greater than the estimated incremental cost-based recourse rate, the Commission has found it appropriate to establish the existing system rate as the initial recourse rate for the project.²¹ Because Natural's rate analysis demonstrates that its maximum Rate Schedule FTS recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges, we

¹⁷ Application, Exhibit P, Pt. II, at 5.

¹⁸ *Id.* at 1, 2. The contract path and effective Rate Schedule FTS maximum reservation and usage charges include: South Texas to Louisiana (\$5.2000 and \$0.0018 per Dth), Texok to Louisiana (\$5.3900 and \$0.0015 per Dth), and Louisiana to Louisiana (\$3.1600 and \$0.0003 per Dth). Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff; [Part 4.0, Currently Effective Rates-Rate Schedule FTS \(Peak\), 5.0.0.](#)

¹⁹ See *Rockies Express Pipeline LLC*, 154 FERC ¶ 61,139, at P 19 (2016); *Texas Eastern Transmission, LP*, 146 FERC ¶ 61,086, at P 60 (2014); *Gulf South Pipeline Co., L.P.*, 119 FERC ¶ 61,281, at P 33 (2007).

²⁰ Certificate Policy Statement, 88 FERC at 61,746.

²¹ See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 30 (2013).

will approve Natural's request to use its existing rates under Rate Schedule FTS as the initial recourse rates for the project facilities.

2. Fuel

19. Natural proposes to use its existing tariff transportation fuel retention rates for the project. In support of its proposal, Natural provided a fuel study that computes a weighted average fuel retention percentage for the primary paths under the precedent agreement using Natural's existing fuel percentages,²² and compares it with the incremental fuel retention percentage associated with transportation of the project shippers' volumes. Natural's fuel gas study demonstrates that its weighted average tariff fuel rate of 1.00 percent (0.53 percent fuel and 0.47 percent Gas Lost and Unaccounted) is higher than the project's incremental fuel rate of 0.99 percent (0.52 percent fuel and 0.47 percent Gas Lost and Unaccounted For). Accordingly, we will approve Natural's request to use its effective fuel retention percentages for transportation on the project facilities.

3. Predetermination of Rolled-In Rates

20. Natural does not request a predetermination to roll the costs of the project into its rates in its next NGA section 4 rate case. Nevertheless, we will evaluate whether to issue a predetermination of rolled-in rate treatment consistent with longstanding Commission policy.²³

21. The Commission issues a predetermination favoring rolled-in rate treatment where it is demonstrated that rolling in the costs associated with the construction and operation of new facilities into the pipeline's existing general rate base will not result in subsidization of the project by existing customers. Generally, this means that it has been shown that the revenues generated by a project will exceed the project's cost. To make this determination, we compare the project cost to the revenues generated using actual contract volumes and either the maximum recourse rates or, if the negotiated rates are lower than the recourse rates, the actual negotiated rates.

²² Application, Exhibit P, Pt. II, at 2. The contract path and existing effective fuel percentages include: South Texas to Louisiana (0.77 percent), Texok to Louisiana (0.61 percent), and Louisiana to Louisiana (0.14 percent). Natural Gas Pipeline Company of America LLC, FERC NGA Gas Tariff, FERC Gas Tariff; [Part 4.17, Currently Effective Rates-Transportation Fuel Retention, 2.0.0.](#)

²³ *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007 at P 31 & n.41 (providing that the Certificate Policy Statement contemplates that, as a general matter, issues of future rate treatment will be addressed in advance).

22. Because Natural's negotiated rates are higher than the weighted average maximum recourse rates, we estimate its first year revenues based on the weighted average recourse rate from the expansion services to be \$23,157,800, which is greater than its estimated first year cost of service of \$11,669,690. Therefore, the Commission will issue a predetermination of rolled-in rate treatment for the costs of the Sabine Pass Compression Project in a future NGA section 4 rate case, absent any significant change.

4. Reporting Incremental Costs

23. The Commission will require Natural to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the projects in the same manner as required by section 154.309 of the Commission's regulations.²⁴ The books should be maintained with applicable cross-references and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.²⁵

5. Negotiated Rates

24. Natural proposes to provide service on the Sabine Pass Compression Project to the project shipper under a negotiated rate agreement. Natural must file either the negotiated rate agreement or a tariff record setting forth the essential elements of the agreement in accordance with the Alternative Rate Policy Statement²⁶ and the Commission's negotiated rate policies.²⁷ Natural must file the negotiated rate agreements or tariff

²⁴ 18 C.F.R. § 154.309 (2019).

²⁵ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262 (2008).

²⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC 61,291 (1996), *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

²⁷ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.²⁸

6. Request for Predetermination of Nonconforming Provisions

25. Natural states the negotiated rate agreement with Sabine Pass contains provisions addressing creditworthiness requirements for Sabine Pass that are different from the creditworthiness provisions in Natural's tariff. Natural requests a predetermination from the Commission that the nonconforming creditworthiness provisions in the negotiated rate agreement with Sabine Pass are permissible.

26. In *Columbia*,²⁹ the Commission clarified that a material deviation is any provision in a service agreement that goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers and (2) provisions the Commission can permit without a substantial risk of undue discrimination.³⁰

27. We find that the incorporation of the nonconforming provisions described above constitutes a material deviation from Natural's *pro forma* service agreement. However, the Commission's policy with regards to creditworthiness, as provided in the Commission's 2005 Policy Statement, allows pipelines to enter into alternative credit arrangements for expansion projects.³¹ Therefore, we find that the nonconforming provisions related to creditworthiness identified by Natural are permissible.

²⁸ Pipelines are required to file any service agreement containing nonconforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2019); *see, e.g., Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

²⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*); *see also ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001).

³⁰ *Columbia*, 97 FERC at 62,002; *ANR Pipeline Co.*, 97 FERC at 62,022.

³¹ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005).

C. Environmental Analysis

28. On July 3, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Sabine Pass Compression Project, and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register* on July 11, 2018, and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.³² The comment period closed on August 2, 2018. In response to the NOI, we received comment letters from the National Marine Fisheries Service's Habitat Conservation Division and the Choctaw Nation of Oklahoma. Further, the Quapaw Tribe of Oklahoma submitted a letter indicating that the project is outside of the current area of interest for the tribe. Commission staff addressed all substantive issues raised in the EA.

29. To satisfy the requirements of the National Environmental Policy Act of 1969,³³ Commission staff prepared an EA for Natural's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, special status species, land use, recreation, visual resources, cultural resources, air quality, noise, reliability and safety, cumulative impacts, and alternatives. On March 8, 2019, Commission staff issued the EA and placed it into the public record.

30. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Natural's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Commission staff will only issue a notice to proceed with an activity when satisfied that the applicant has complied with all applicable conditions. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the

³² 83 Fed. Reg. 32,114 (2018).

³³ 42 U.S.C. §§ 4321 *et seq.* (2012); *see also* 18 C.F.R. pt. 380 (2019) (Commission's regulations implementing NEPA).

avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

31. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁴

32. The Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Natural, authorizing it to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Natural's completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Natural's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Natural's compliance with the environmental conditions listed in the appendix to this order; and

³⁴ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

- (4) Natural filing a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in its signed precedent agreement, prior to commencing construction.

- (C) Natural's proposal to use its existing system Rate Schedules FTS and ITS rates as the initial recourse rates is approved.

- (D) Natural's proposal to use its existing fuel retention percentages as the initial recourse fuel rate for the project capacity is approved.

- (E) Natural is granted a predetermination of rolled-in rate treatment for the costs of the Sabine Pass Compression Project in a future section 4 rate case, absent any significant change in circumstances.

- (F) Natural shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Natural. Natural shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Natural shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Natural must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (Director of OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the Project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from Project construction and operation activities.
3. **Prior to any construction**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Natural shall file with the Secretary any revised detailed survey maps/sheets at a scale not smaller than 1:6,000 with station positions for the facilities approved by the Order. All requests for modifications of environmental

conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Natural's exercise of eminent domain authority granted under Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Natural's right of eminent domain granted under Natural Gas Act section 7(h) does not authorize it to increase the size of its natural gas pipeline facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Natural shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area.**

This requirement does not apply to extra workspaces allowed by the Commission's *Upland Erosion Control, Revegetation and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resource mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual's landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this authorization and before construction begins**, Natural shall file an Implementation Plan with the Secretary for review and written approval by the Director of the OEP. Natural must file revisions to the plan as schedules change. The plan shall identify:

- a. how Natural would implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Natural would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instruction Natural would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Natural's organizations having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Natural would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Natural shall employ at least one EI for the Project. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Natural shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Natural's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Natural from other federal, state, or local permitting agencies concerning instances of noncompliance, and Natural's response.
9. Natural must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, Natural must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Natural must receive written authorization from the Director of OEP **before placing the Project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the areas affected by the Project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Natural shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Natural have complied with or would comply with. This statement shall also identify any areas affected

by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. Natural shall **not begin construction** activities **until**:
 - a. Natural consults with the U.S. Fish and Wildlife Service to determine whether Project activities could affect the eastern black rail or its habitat and files copies of all correspondence with the Secretary;
 - b. FERC staff completes its conference with the U.S. Fish and Wildlife Service, if required; and
 - c. Natural has received written notification from the Director of OEP that construction may begin.
13. **Prior to construction**, Natural shall file with the Secretary a copy of the Louisiana Department of Natural Resource's Coastal Zone Management Act determination for the Project.
14. Natural shall file a noise survey with the Secretary **no later than 60 days** after placing the new Compressor Station 348 in service. If a full horsepower load condition noise survey is not possible, Natural shall file an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the Compressor Station 348 under interim or full horsepower load conditions exceeds existing noise levels at any nearby noise sensitive areas, Natural shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 6 months** of the in-service date. Natural shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Natural Gas Pipeline Company of America, LLC

Docket No. CP18-487-000

(Issued September 30, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because it violates both the Natural Gas Act¹ (NGA) and the National Environmental Policy Act² (NEPA). The Commission is again refusing to consider the consequences its actions have for climate change. Neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this gas infrastructure facility. Yet that is the unmistakable result of today's order.

2. In authorizing Natural Gas Pipeline Company's Sabine Pass Compression Project (Project) pursuant to NGA section 7 to provide increased transportation service to an existing liquefied natural gas facility (Sabine Pass LNG terminal) in Louisiana, the Commission treats 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 directly caused by the Project.³ This refusal to assess the significance of the Project's contribution to the harm caused by climate change allows the Commission to misleadingly state that "approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment",⁴ and, as a result, conclude that the Project satisfies the NGA's section 7 public interest standard.⁵ Claiming that a project would not significantly affect the quality of human environment 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.

¹ 15 U.S.C. § 717f (2012).

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

³ Environmental Assessment at 51-54 & Tables 12-13 (EA).

⁴ *Natural Gas Pipeline Company of America, LLC*, 168 FERC ¶ 61,205, at P 31 (2019) (Certificate Order); *see also* EA at 92.

⁵ Certificate Order, 168 FERC ¶ 61,205 at P 15.

I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking

3. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production, transportation, and the consumption of natural gas and other fossil fuels. The Commission has repeatedly recognized that “GHG emissions due to human activity are the primary cause of increased atmospheric concentration of GHGs since the industrial age and are the primary contributor to climate change.”⁶ In light of this undisputed relationship between anthropogenic GHG emissions and climate change, it is critical that the Commission carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest under the NGA.⁷

4. Today's order falls short of that standard. As part of its public interest determination under the NGA, the Commission must examine the proposed Project's impact on the environment and public safety, which includes the facility's impact on climate change.⁸ Yet, the record here offers scant mention of the Project's contribution

⁶ See, e.g., Environmental Assessment, CP18-102-000, at 78 (2018); see also Environmental Assessment, CP18-18-000, at 40 (2018) (recognizing that that an “increase in emissions of these gasses has been determined by the EPA to endanger public health and welfare by contributing to human-induced global climate change”).

⁷ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2018). Furthermore, NEPA requires the Commission to take a “hard look” at the environmental impacts of its decisions. See 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. See *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) (“The [FEIS] needed to include a discussion of the ‘significance’ of this indirect effect.”); 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.*) (emphasis added); 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”).

⁸ See *Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because may “deny a pipeline certificate

to climate change. The Environmental Assessment merely notes that it has already considered the impact of the Sabine Pass LNG terminal on climate change in “previous environmental reviews” and then recites the Commission standard’s claim that it cannot assess the significance of the Project’s incremental impact on climate change.⁹ However, the most troubling part of the Commission’s rationale is what comes next. Notwithstanding this alleged inability to assess significance, the Commission concludes that the Project will not significantly affect the quality of the human environment.¹⁰ 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 change¹¹ while, out of the other side of its mouth, assuring us that all environmental impacts would not be significant.¹² That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the “hard look” that the law demands.¹³

5. It also means that the Project’s impact on climate change cannot play a meaningful role in the Commission’s public interest determination, no matter how many times 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 any significant environmental impact irrespective of the 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

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”).

⁹ EA at 53.

¹⁰ Certificate Order, 168 FERC 61,205 at P 31; EA at 92.

¹¹ EA at 53.

¹² *Id.* at 92.

¹³ *See, e.g., Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (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) (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.”).

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.

II. The Commission Fails to Satisfy its Obligations under NEPA.

6. To evaluate the environmental consequences of the Project under NEPA, the Commission must consider the harm caused by the Project's GHG emissions and "evaluate the 'incremental impact' that these emissions will have on climate change or the environment more generally."¹⁴ Disclosing the volume of emissions, as the Commission does here,¹⁵ is a necessary step toward meeting the Commission's NEPA obligations. But merely listing a set of figures—without any real attempt to assess the significance of their incremental impact on the natural and human environment as a result of the Project's GHG emissions—is not enough to satisfy NEPA.¹⁶

7. The Commission's reliance on its previous finding that it cannot determine whether the Project will have significant impacts misses the point. The lack of any single "standard" methodology¹⁷ does not prevent the Commission from adopting a

¹⁴ *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008) (*Ctr. for Biological Diversity*); *see also WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 51 (D.D.C. Mar. 19, 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").

¹⁵ EA at 51-54 & Tables 12-13 (disclosing the direct GHG emissions from project construction and operations). The courts have explained that, because the authority to authorize LNG exports rests with the Department of Energy, 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 Sierra Club v. FERC*, 827 F.3d 36, 46-47 (D.C. Cir. 2016) (*Freeport*); *see also Sabal Trail*, 867 F.3d at 1373 (discussing *Freeport*). NEPA still requires, however, that the Commission consider the direct GHG emissions associated with a proposed LNG export facility. *See Freeport*, 827 F.3d at 41, 46.

¹⁶ *See, e.g., Am. Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) (NEPA requires an agency relying on a "finding of no significant impact" to "make a *convincing case*" for that finding.) (emphasis added); *id.* (the Commission's EA "will pass muster only if it undertook a 'well-considered' and 'fully-informed' analysis of the relevant issues and opposing viewpoints.") (quoting *Myersville*, 783 F.3d at 1324-25).

¹⁷ EA at 53 (referencing Environmental Assessment, CP11-72-000, at 2-99 (2011) which stated "there is no standard methodology to determine how the Project's

methodology to assess significance, even if others are available. The Commission could, for example, select one methodology to inform its reasoning while also disclosing the potential limitations of that methodology or it 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.

8. 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 environmental 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.¹⁸ The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.¹⁹

9. Furthermore, even without a formal tool or methodology, the Commission can use its expertise and discretion to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions will have a significant impact on

incremental contribution to GHGs would translate into physical effects on the global environment").

¹⁸ NEPA's purpose is to ensure that "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," *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The relevant information includes not only the volume of emissions, but also the adverse impact caused by such volumes of GHG emissions. *See Ctr. for Biological Diversity*, 538 F.3d at 1216 ("While the [environmental document] quantifies the expected amount of CO₂ emitted . . . , it does not evaluate the 'incremental impact' that these emissions will have on climate change or on the environment more generally."). The Social Cost of Carbon provides an accessible measure that puts the climate impact of a ton of GHGs in context and allows the agency and the public to consider those impacts in the decisionmaking process.

¹⁹ *See, e.g., Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

climate change. Indeed, the Commission routinely makes qualitative judgments in its consideration of other environmental impacts, even if it lacks any particular or well-defined criteria for judging the “significance” of such impacts.²⁰ The Commission’s refusal to apply similar judgment when it comes to the Project’s impact on climate change is arbitrary and capricious.

10. 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.”²¹ NEPA “merely prohibits uninformed—rather than unwise—agency action.”²² Taking the matter seriously—and rigorously examining a project’s impacts on climate change—does not necessarily prevent any commissioner from ultimately concluding that a project meets the public-interest standard.

* * *

11. Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. The decision to exclude GHG emissions from playing any role in the Commission’s public interest determination is indefensible, especially given the undisputed fact that the Project’s GHG emissions will contribute to climate change.²³ Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document

²⁰ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 at P 29 (finding that proposed project’s environmental impacts would be reduced to less-than-significant levels as a result of certain mitigation measures, notwithstanding the record evidence that the project’s construction would permanently affect nearly 240 acres).

²¹ *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

²² *Id.* (quoting *Robertson*, 490 U.S. at 351).

²³ See Environmental Assessment, Docket No. CP11-72-000, at 2-98 (2011) (“[c]ombustion of fossil fuels (coal, petroleum, and natural gas), combined with agriculture and clearing of forests is primarily responsible for the accumulation of GHG”); *id.* at 2-99 (“the emissions would increase the atmospheric concentration of GHGs, in combination with past and future emissions from all other sources, and contribute incrementally to climate change”).

and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs contributing to climate change.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner