

169 FERC ¶ 61,020
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sendero Carlsbad Gateway, LLC

Docket No. CP18-538-000

ORDER ISSUING CERTIFICATES AND GRANTING WAIVERS

(Issued October 10, 2019)

1. On August 9, 2018, Sendero Carlsbad Gateway, LLC (Gateway) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and section 157 of the Commission's regulations² for authorization to construct and operate a 23.28-mile-long, 24-inch-diameter interstate natural gas pipeline (Gateway Project) to transport residue gas³ from processing plants owned by its affiliate in Eddy County, New Mexico, to an interconnection with White Water Midstream, LLC's Agua Blanca intrastate pipeline system in Culberson County, Texas. As contemplated, Gateway will own all of the gas transported on the pipeline and, therefore, requests waiver of certain regulatory obligations otherwise applicable to interstate pipelines, including the provision of open-access transportation service. Finally, Gateway requests a blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations.⁴
2. For the reasons discussed in this order, we will grant Gateway's requested authorizations, subject to conditions.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2019).

³ Residue gas is the gas remaining after production gas has been processed and heavy gaseous hydrocarbons, collectively referred to as natural gas liquids (NGL), have been extracted.

⁴ 18 C.F.R. pt. 157, subpt. F (2019).

I. Background

3. Gateway is a limited liability company organized under the laws of Delaware.⁵ Gateway will become a natural gas company as defined by section (2)(6) of the NGA⁶ subject to the Commission's jurisdiction upon commencement of operations. Gateway was formed to own and operate the Gateway Project and is a wholly-owned subsidiary of Sendero Midstream Holdings, LLC (Sendero Holdings). Sendero Holdings is a wholly-owned subsidiary of Sendero Midstream Partners, LP.

4. Sendero Carlsbad Midstream, LLC (Midstream), also a wholly-owned subsidiary of Sendero Holdings, owns and operates non-jurisdictional gas gathering and processing facilities in Eddy County, New Mexico. Midstream's facilities serve producers in the Northern Delaware Basin of the Permian Basin.⁷ Midstream's gas gathering system consists of approximately 70 miles of 8- to 12-inch-diameter gas pipelines. Midstream purchases and takes title to liquids-rich gas from producers upon entry into its gathering system and moves the gas to its existing 130 million standard cubic feet per day (MMscf/d) cryogenic processing plant (Carlsbad Plant) in Eddy County. Residue gas then leaves the Carlsbad Plant through a 2-mile-long non-jurisdictional pipeline to interconnections with the interstate pipeline systems of El Paso Natural Gas Company, LLC (El Paso) and Transwestern Pipeline Company, LLC (Transwestern).⁸ In response to increasing gas production in the region, Midstream is in the process of building a second cryogenic gas processing plant in Eddy County and expects to commence operations of that plant in July 2019. Gateway states that the additional processing capacity, as well as expected downstream capacity constraints on El Paso and Transwestern, necessitate an additional transportation outlet.⁹

⁵ Gateway August 9, 2018 Application (Application) at 3.

⁶ 15 U.S.C. § 717a(6) (2012).

⁷ Application at 4.

⁸ The Commission has consistently held that residue gas pipelines of not more than five miles in length extending from processing plants are considered to be incidental extensions of the plants and upstream gathering systems and, accordingly, perform primarily a non-jurisdictional function. *Amerada Hess Corp.*, 67 FERC ¶ 61,254 (1994); *Superior Offshore Pipeline Co.*, 67 FERC ¶ 61,253 (1994); *Quicksilver Resources, Inc.*, 124 FERC ¶ 61,017, at P 13 (2008); *Regency Field Services LLC*, 153 FERC ¶ 61,054, at P 8 (2015).

⁹ Application at 6.

II. Proposal

A. Proposed Facilities

5. In order to provide additional transportation capacity away from Midstream's processing facilities, Gateway proposes to construct and operate a 23.28-mile-long, 24-inch-diameter interstate natural gas pipeline having a capacity of 400 MMscf/d extending from Midstream's gas processing facilities to an interconnection with the Agua Blanca intrastate pipeline system in Culberson County, Texas.¹⁰ As proposed, the pipeline will be collocated for the most part with existing pipeline and utility rights-of-way and roads. In addition, Gateway also proposes the following ancillary facilities:

- A meter station with pig launcher and mainline block valve at the start of the pipeline in Eddy County, New Mexico.
- A mainline block valve at milepost 15 in Eddy County, New Mexico.
- A pig receiver and mainline block valve at the pipeline's terminus in Culberson County, Texas.

Gateway estimates the project facilities will cost approximately \$45 million.¹¹

B. Request for Waiver of Regulatory Requirements

6. Gateway is not requesting a Part 284 blanket transportation certificate because it proposes to use the pipeline solely to transport gas purchased by Gateway from its affiliate Midstream at the tailgate of the Carlsbad Plants and has no plans to provide transportation service on its pipeline for third parties. Thus, Gateway requests that the Commission waive its "open-access" requirements and confirm that the regulatory requirements under Part 284, which are limited to open-access transporters, are

¹⁰ From the interconnection, Agua Blanca will transport the gas, pursuant to section 311 of the Natural Gas Policy Act of 1978, 15 U.S.C. § 3431(a)(2) (2012), and Part 284, Subpart C of the Commission's regulations, 18 C.F.R. pt. 284, subpt. C (2019), to the Waha Hub in Pecos County, Texas, where there are interconnections with several interstate pipelines which can transport gas to markets in the Southwest, Midcontinent, Texas Gulf Coast, and Mexico. Agua Blanca, LLC has filed with the Commission in Docket No. PR18-81-000 a Statement of Operating Conditions and Section 311 rate for these transactions. *See* Agua Blanca, LLC, Statement of Operating Conditions, Docket No. PR18-81-000 (filed Aug. 30, 2018).

¹¹ Application at 8.

inapplicable to its limited operations. In addition, Gateway requests waiver of the rate schedule and tariff filing obligations required under Part 154 of the Commission's regulations, and the accounting and reporting obligations required under Parts 158, 201 (including the Uniform System of Accounts), 225, and 250 of the Commission's regulations.¹² Gateway asserts that the Commission or its staff has consistently granted such waivers where a residue pipeline from a processing plant is only transporting its own natural gas.¹³

C. Request for Blanket Certificate

7. Gateway requests a blanket certificate of public convenience and necessity pursuant to Part 157, Subpart F of the Commission regulations authorizing certain future facility construction, operation, and abandonment.¹⁴

III. Notice, Interventions, and Comments

8. Notice of Gateway's application was published in the *Federal Register* on August 28, 2018, with interventions, comments, and protests due by September 12, 2018.¹⁵ No interventions, comments, or protests were filed.

IV. Discussion

9. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of

¹² Gateway does not request waiver of its obligation to file pages 1 and 520 of Form 2-A, the Annual Report for Non-major Natural Gas Companies.

¹³ Application at 11 (citing *Hiland Partners Holding, LLC*, 153 FERC ¶ 62,062 (2015) (*Hiland*); *Regency Field Services LLC*, 150 FERC ¶ 62,187 (2015) (*Regency*); *DCP Midstream, LP*, 145 FERC ¶ 62,229 (2013); *DCP Midstream, LP*, 138 FERC ¶ 62,080 (2012); *Whiting Oil and Gas Corp.*, 126 FERC ¶ 62,119 (2009) (*Whiting*); *Western Gas Resources, Inc.*, 119 FERC ¶ 61,308 (2007); *Western Gas Resources, Inc.*, 85 FERC ¶ 61,087 (1998); *Continental Natural Gas, Inc.*, 83 FERC ¶ 61,065 (1998) (*Continental*)).

¹⁴ 18 C.F.R. pt. 157, subpt. F (2019).

¹⁵ 83 Fed. Reg. 43,865 (Aug. 28, 2018).

the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁶

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.¹⁷ 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.

11. 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.

12. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Gateway Project will not rely on subsidies by existing customers as Gateway has no existing customers. Therefore, the no-subsidy threshold requirement is met. Similarly, the Gateway Project will not degrade service to existing customers as Gateway has no existing customers. In addition, there will not be any adverse impacts to existing pipelines in the market and their captive customers as the purpose of project is to

¹⁶ 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

¹⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

provide new transportation capacity for residue gas from Midstream's existing and expanded gas processing facilities currently unavailable from existing pipelines.

13. We also find that the Gateway Project will have minimal impacts on landowners and the surrounding communities. Over 19 miles of the 23.28-mile pipeline will parallel existing rights-of-way. Gateway states it plans to negotiate all necessary easements for the Gateway Project and anticipates acquiring few if any easements through the use of eminent domain. No property owners protested the application.

14. The Gateway Project will provide necessary transportation capacity for residue gas from Midstream's existing and expanded processing operations.¹⁸ Based on these benefits, 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 Gateway's proposal, subject to the conditions discussed in this order.

B. Request for Waiver of Regulatory Requirements

15. As discussed above, Gateway does not propose to provide open-access transportation services on its proposed facilities and thus requests waiver of certain regulatory obligations otherwise applicable to interstate pipeline owners and operators.

16. Because Gateway does not intend to transport third-party gas and the entire capacity of the pipeline will be dedicated to moving gas that Gateway has purchased from Midstream at the tailgates of its Carlsbad Plants, we find that, consistent with Commission precedent,¹⁹ it is not necessary to subject Gateway to all of the regulatory requirements applicable to conventional natural gas pipeline companies. Accordingly, we grant Gateway's request for waiver of the Commission's regulatory requirements under Part 284 applicable to open-access transporters until such time as Gateway receives a *bona fide* request for firm transportation service on its pipeline.²⁰ Within 30 days of

¹⁸ Application at 6–7, 9.

¹⁹ *Atlas Pipeline Mid-Continent WestTex, LLC*, 140 FERC ¶ 62,238 (2012), *order on reh'g*, 143 FERC ¶ 61,043 (2013) (*Atlas*); *see also Coronado Midstream LLC*, 166 FERC ¶ 62,072 (2019) (*Coronado*); *Hiland*, 153 FERC ¶ 62,062; *Regency*, 150 FERC ¶ 62,187; *Cimarron River Pipeline, LLC*, 149 FERC ¶ 62,028 (2014) (*Cimarron*); *Continental*, 83 FERC ¶ 61,065.

²⁰ *See Coronado*, 166 FERC ¶ 62,072; *Blue Mountain Midstream LLC*, 162 FERC ¶ 62,157 (2018); *Hiland*, 153 FERC ¶ 62,062; *Cimarron, LP*, 149 FERC ¶ 62,028; *DCP Midstream, LP*, 145 FERC ¶ 62,229; *Atlas*, 140 FERC ¶ 62,238; *DCP Midstream, LP*,

receiving such a request, Gateway shall apply for a Part 284 blanket transportation certificate and provide a pro forma tariff for Commission review. Until Gateway receives such a request, we will not require compliance with the rate schedule and tariff filing requirements under Part 154 of the Commission's regulations,²¹ and the accounting and reporting requirements under Parts 158, 201 (including the Uniform System of Accounts), 225, 250, and 260 of the Commission's regulations, including the Commission's Form No. 2-A filing requirement, except with regard to filing Pages 1 and 520 of those forms.²² The Commission uses Form 2-A to determine whether a natural gas pipeline company's annual throughput level of jurisdictional gas exceeds the 200,000 dekatherm threshold for assessing annual charges.²³ However, following a *bona fide* service request, Gateway must comply with the regulatory filing and reporting obligations waived herein.

C. Request for Blanket Certificate

17. Gateway requests a Part 157, Subpart F blanket certificate. The Part 157 blanket certificate gives an interstate pipeline NGA section 7 authority to automatically, or after prior notice, perform a restricted number of routine activities related to the construction, acquisition, abandonment, replacement, and operation of existing pipeline facilities provided the activities comply with constraints on costs and environmental impacts.²⁴ Because the Commission has previously determined through a rulemaking that these blanket-certificate-eligible activities are in the public convenience and necessity,²⁵ it is the Commission's practice to grant new natural gas companies a Part 157 blanket

138 FERC ¶ 62,080; *Whiting*, 126 FERC ¶ 62,119; *Western Gas Resources, Inc., Inc.*, 119 FERC ¶ 61,308; *Western Gas Resources, Inc.*, 85 FERC ¶ 61,087; *Continental*, 83 FERC ¶ 61,065.

²¹ 18 C.F.R. pt. 154 (2019).

²² *Id.* pt. 260, § 260.2, FERC Form No. 2-A, *Annual Report for Non-Major Natural Gas Companies* (2018).

²³ *See id.*; *Ohio River System*, 164 FERC ¶ 61,119, at PP 6-9 (2018) (explaining when a company is required to file Form 2-A).

²⁴ 18 C.F.R. § 177.203 (2019).

²⁵ *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, FERC Stats. & Regs. ¶ 31,231, at P 9 (2006) (cross-referenced at 117 FERC ¶ 61,074), *order on reh'g*, Order No. 686-A, 119 FERC ¶ 61,303, *order on reh'g*, Order No. 686-B, 120 FERC ¶ 61,249 (2007).

certificate if requested.²⁶ Accordingly, we will issue Gateway a blanket construction certificate under Part 157, Subpart F of the Commission's regulations.

V. Environmental Analysis

18. On August 29, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Gateway Project, and Request for Comments on Environmental Issues* (NOI).²⁷ The NOI was published in the *Federal Register*²⁸ and mailed to interested parties including affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The comment period closed on September 28, 2018. We received comments in response to the NOI from: U.S. Department of Agriculture; Texas Commission on Environmental Quality; Texas Parks & Wildlife Department; New Mexico Department of Game and Fish; New Mexico State Historic Preservation Office (SHPO); and Quapaw Nation. The primary issues raised during the scoping process included concerns for appropriate best management practices for construction and restoration; special status species; surface water; and impacts on vegetation and wildlife.

19. To satisfy the requirements of the National Environmental Policy Act of 1969,²⁹ Commission staff prepared an Environmental Assessment (EA) for Gateway's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA addresses all substantive comments received in response to the NOI. On January 11, 2019, Commission staff issued the EA and placed it into the public record.

20. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Gateway's application and supplements, and in compliance with the

²⁶ *C.f. Rover Pipeline LLC*, 161 FERC ¶ 61,244, at P 13 (2017) (denying a request for a blanket certificate where the company's actions had eroded the Commission's confidence it would comply with all the requirements of the blanket certificate program, including the environmental requirements).

²⁷ NOI at 1.

²⁸ 83 Fed. Reg. 45,231 (Sept. 6, 2018).

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

environmental conditions in the appendix to this order,³⁰ 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. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. 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 avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

21. 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.³¹

22. 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 Gateway, authorizing it to construct and operate the proposed Gateway Project, as described and

³⁰ On February 28, 2019, Gateway filed the New Mexico SHPO's comments on the revised Class III Cultural Resources Survey report. Therefore, environmental recommendation 13.a.(2) in the EA has been satisfied and is not included in the corresponding condition in the appendix to this order.

³¹ 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).

conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) A blanket construction certificate is issued to Gateway under Subpart F of Part 157 of the Commission's regulations.

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

(1) Gateway's completing the authorized 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) Gateway's compliance with all applicable Commission regulations, 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; and

(3) Gateway's adherence to the environmental conditions listed in the appendix to this order.

(D) Gateway's request for waivers is granted for Parts 154, 158, 201, 225, 250, Part 284, Subpart G, 284.4, 284.7, 284.8, 284.9, 284.10, 284.12, 284.13, and Part 260 of the Commission's reporting requirements with the exception of Page 1 and Page 520 of FERC Form No. 2-A, conditioned upon the requirement that Gateway apply for blanket transportation authority under Part 284 of the Commission's regulations within 30 days of Gateway's receipt of any *bona fide* request to provide transportation service from a third party.

(E) Gateway 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 Gateway. Gateway shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

(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. Sendero Carlsbad Gateway, LLC (Gateway) 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. Gateway 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 (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.

3. **Prior to any construction**, Gateway shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will 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**, Gateway shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all 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.

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

5. Gateway 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, 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 OEP **before construction in or near that area.**

This requirement does not apply to extra workspace 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 resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Gateway shall file an Implementation Plan with the Secretary for review

and written approval by the Director of OEP. Gateway must file revisions to the plan as schedules change. The plan shall identify:

- a. how Gateway will 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 Gateway will 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, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Gateway will 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 Gateway's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Gateway will 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. Gateway shall employ at least one EI. The EI 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, Gateway 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 will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Gateway'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 Gateway from other federal, state, or local permitting agencies concerning instances of noncompliance, and Gateway's response.
9. Gateway must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Gateway must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Gateway must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Gateway 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 will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Gateway has complied with or will 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. **With its Implementation Plan**, Gateway shall file with the Secretary, for review and written approval by the Director of OEP, a complete set of revised horizontal directional drill profile and plan drawings, including all geotechnical analyses and detailed mapping of cleared areas, mud pits, and pipe assembly areas.
13. **Gateway shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Gateway files with the Secretary:
 - (1) the Texas State Historic Preservation Office's comments on the revised final Phase I Cultural Resources Survey report; and
 - (2) any further studies and/or avoidance/treatment plan(s), as required; and comments on the studies and/or plans from the appropriate SHPO;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Gateway in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CUI//PRIV- DO NOT RELEASE.**"

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Sendero Carlsbad Gateway, LLC

Docket No. CP18-538-000

(Issued October 10, 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 again refuses 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 project. Yet that is precisely what the Commission is doing here.

2. Today's order authorizes Sendero Carlsbad Gateway, LLC (Gateway) to construct and operate the Gateway Project (Project), a 23-mile pipeline that will transport residue gas from a processing plant owned by a Gateway affiliate to a downstream interconnection point in order to access regional markets.³ However, in so doing, the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. In today's decision, the Commission refuses to consider whether the Project's contribution to climate change would be significant, even though it quantifies the direct GHG emissions from the Project's construction and operation. Moreover, the Commission fails to consider the Project's contribution to climate change from downstream GHG emissions. The refusal to assess the significance of the Project's direct and indirect contribution to the harm caused by climate change is what allows the Commission to misleadingly state that approval of the Project "would not constitute a major action significantly affecting the quality of the human environment"⁴ and, as a result, conclude that the Project satisfies the NGA's public interest standard.⁵ Claiming that a project has no significant environmental

¹ 15 U.S.C. § 717f (2018).

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

³ *Sendero Carlsbad Gateway*, 169 FERC ¶ 61,020 (2019) (Certificate Order).

⁴ *Id.* P 20; Environmental Assessment at 56 (EA).

⁵ Certificate Order, 169 FERC ¶ 61,020 at P 14.

impacts 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.

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, released in large quantities through the production, transportation, and the consumption of fossil fuels, including natural gas. The Commission's environmental documents routinely recognize this fact, acknowledging 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 and required by the public convenience and necessity under the NGA.⁷

4. Today's order falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on climate

⁶ Environmental Assessment, CP18-102-000, at 78 (2018).

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 [final environmental impact statement] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (providing that 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").

change.⁸ Nevertheless, the Commission insists that it need not consider whether the Project's contribution to climate change is significant because it lacks a "generally accepted" means to do so, or so it claims.⁹ Although that conclusion is dubious in its own right,¹⁰ the most troubling part of the Commission's rationale is what comes next. The Commission uses the purported inability to evaluate the significance of the impact from climate change as a basis to wholly exclude that impact from its public interest determination. Based on its alleged inability to assess the significance of the Project's impact on climate change, the Commission concludes that the Project will have no significant environmental impact.¹¹ 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 change¹² while, out of the other side of its mouth, assuring us that all

⁸ See *Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (explaining that, "in the pipeline certification context the Commission *does* have statutory authority to act" on a project's environmental consequences, including GHG emissions, and that the Commission, therefore, has a duty to consider the reasonably foreseeable GHG emissions); see also *Atl. Ref. Co.*, 360 U.S. at 391 (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

⁹ EA at 52 (stating that "[t]here is no generally accepted significance criteria for GHG emissions. In addition, we cannot determine the Project's incremental physical impacts on the environment caused by GHG emissions. Therefore, we cannot determine whether the Project's contribution to climate change would be significant.").

¹⁰ The Commission relies on its refusal to consider the Social Cost of Carbon, which I have criticized at length in previous statements. See *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019) (Glick, Comm'r, dissenting in part, at PP 12-14); *Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (2019) (Glick, Comm'r, dissenting in part, at PP 8-13); *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part, at P 6 & n.11); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

¹¹ EA at 56 ("[W]e have determined that if Gateway constructs and operates the proposed facilities in accordance with its application and supplements, and the staff's recommended mitigation measures below, approval of the Project would not constitute a major action significantly affecting the quality of the human environment. We recommend that the Commission Order contain a finding of no significant impact.").

¹² *Id.* at 52 ("[W]e cannot determine whether the Project's contribution to climate change would be significant.").

environmental impacts are not significant.¹³ That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the “hard look” that the law demands.¹⁴

5. The consequences of the Commission’s approach extends beyond any single proceeding. This approach means that the volume of GHG emissions caused by a project does 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. So long as that is the case, a project’s impact on climate change 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.

II. The Commission’s NEPA Analysis of the Project’s Contribution to Climate Change Is Deficient

6. The Commission’s NEPA analysis of the Project’s impact on climate change is similarly flawed. NEPA requires the Commission to examine the reasonably foreseeable upstream and downstream emissions that will result from an interstate pipeline. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has now multiple times instructed the Commission that the GHG emissions caused by the reasonably foreseeable combustion of natural gas transported through a pipeline is an indirect effect.¹⁵ Yet today’s order fails to consider any of the Project’s indirect impacts, instead

¹³ *Id.* at 56.

¹⁴ *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.”).

¹⁵ *See Birkhead*, 925 F.3d at 518-19; *Sabal Trail*, 867 F.3d at 1371-72.

reporting only the GHG emissions from the Project's construction and operation.¹⁶ In particular, neither today's order nor the EA considers whether there are any indirect GHG emissions caused by the Project, which will create the capacity to transport up to 400 million standard cubic feet per day of natural gas.¹⁷ Indeed, today's order makes no effort whatsoever to identify the downstream GHG emissions that are indirect impacts caused by the Project.

7. The failure to consider those impacts reflects a continuation of the Commission's discredited attempt to narrowly cabin the D.C. Circuit's decision in *Sabal Trail* to its facts. In *Sabal Trail*, the court held that the Commission must identify and consider the reasonably foreseeable downstream GHG emissions as part of its NEPA analysis of the indirect effects of an interstate natural gas pipeline.¹⁸ Shortly after that decision, the Commission took the position that it was required to consider the downstream emissions from a natural gas pipeline *only* under the exact facts presented in *Sabal Trail*—*i.e.*, where the pipeline was transporting natural gas for combustion at a natural gas power plant.¹⁹ In *Birckhead*, the D.C. Circuit rejected that argument, again admonishing the Commission that it must examine the specific facts of the case before it and that it cannot categorically ignore a pipeline's downstream emissions just because it does not fit neatly within the facts of *Sabal Trail*.

8. In addition, *Birckhead* criticized the Commission's "less-than-dogged efforts to obtain the information it says it would need to determine that downstream greenhouse-gas emissions qualify as a reasonably foreseeable indirect effect of the Project."²⁰ The court explained that NEPA "requires the Commission to at least *attempt* to obtain the information necessary to fulfill its statutory responsibilities"²¹ and that a failure to do so falls short of its responsibility under NEPA to make its "best efforts to find out all that it reasonably can."²² The court suggested that a repetition of the Commission's failure to

¹⁶ EA at 39-40, Tables 7 & 8.

¹⁷ Certificate Order, 169 FERC ¶ 61,020 at P 5.

¹⁸ *Sabal Trail*, 867 F.3d at 1371-72.

¹⁹ *Birckhead*, 925 F.3d at 518-19 (rejecting the "Commission[']s conten[tion] [that *Sabal Trail*] . . . is narrowly limited to the facts of that case" (internal quotation marks omitted)).

²⁰ *Id.* at 520.

²¹ *Id.*

²² *Id.* (quoting *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1136 (9th Cir.

seriously consider downstream emissions—including making its best efforts to gather what information is needed to perform that inquiry—would be “unreasonabl[e]” and a sufficient basis to grant a petition for review.²³

9. Nevertheless, in today’s order, the Commission neither attempts to assess the downstream GHG impacts of the Project nor asks the applicant to provide any details about end use, which it consistently claims is necessary to consider downstream GHG emissions. In so doing, it is again “excus[ing] itself from making any effort to develop the record in the first place.”²⁴ That is exactly the result it was so roundly criticized for in *Birckhead*.

10. The Commission’s failure to seriously consider GHG emissions is all-the-more glaring because the Project’s stated purpose is to interconnect with the Agua Blanca pipeline and ultimately deliver increased supplies of natural gas to the southwest, midcontinent, and Texas gulf coast.²⁵ According to the U.S. Energy Information Administration, more than 97 percent of the natural gas consumed in the United States is combusted.²⁶ Given that fact and the stated purpose of the Project, it is no great leap to assume that the vast majority, if not all, of the natural gas transported through the Project will be combusted. Using that information, the Commission could have easily engaged in a little “reasonable forecasting” aided by “educated assumptions”—which is precisely what NEPA requires—in order to develop an estimate or a range of estimates of the likely emissions caused by the Project.²⁷ But, as noted, today’s order makes no

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²³ *Id.* at 520-21.

²⁴ *Id.* at 520 (quoting *Tennessee Gas Pipeline*, 163 FERC 61,190 (2018) (Glick, Comm’r, dissenting at 2)).

²⁵ Certificate Order, 169 FERC ¶ 61,020 at P 5, n 10; *see also* Gateway August 9, 2018 Application at 9 (stating the gas transported on the Project is intended to provide “producer customers with access to new markets” and ultimately benefit “the consuming market.”).

²⁶ U.S. Energy Info. Admin., *August 2019 Monthly Energy Review* 22, 97 (2019) (reporting that, in 2018, 778 Bcf of natural gas had a non-combustion use compared to 29,956 Bcf of total consumption); *see also* Jayni Hein *et al.*, *Pipeline Approvals and Greenhouse Gas Emissions*, 23-26 (Apr. 2019) (discussing the potential to use this information to develop straightforward estimates of a project’s reasonably foreseeable downstream emissions).

²⁷ *Sabal Trail*, 867 F.3d at 1374 (quoting *Del. Riverkeeper Network v. FERC*, 753

effort—let alone the Commission’s “best efforts”—to consider the downstream impacts of the Project. I cannot join an order that countenances such a half-hearted effort to assess a project’s adverse impacts.

11. The Commission’s failure to perform any of this analysis in order to disclose and 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.”²⁸ NEPA “merely prohibits uninformed—rather than unwise—agency action.”²⁹ The Commission could find that a project contributes significantly to climate change, but that it is nevertheless in the public interest because the project’s 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.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

F.3d 1304, 1310 (D.C. Cir. 2014)); *see id.* (“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 can take the resulting estimates with the appropriate amount of salt.” (internal citations and quotation marks omitted)).

²⁸ *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

²⁹ *Id.* (quoting *Robertson*, 490 U.S. at 351).