

170 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulfstream Natural Gas System, L.L.C.

Docket No. CP19-475-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued March 19, 2020)

1. On June 3, 2019, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to abandon, construct, and/or operate certain natural gas facilities for its Phase VI Expansion Project (Expansion Project) in Mobile County, Alabama, and Manatee County, Florida. The project is designed to provide 78,000 dekatherms per day (Dth/d) of firm transportation service to Tampa Electric Company (Tampa Electric) from existing receipt points in Mississippi and Alabama to an existing delivery point in Manatee County, Florida. For the reasons discussed below, we will grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

2. Gulfstream is a natural gas company, as defined by section 2(6) of the NGA,³ engaged in the transportation of natural gas in interstate commerce. It is a limited liability company organized and existing under Delaware law.⁴ Gulfstream's system extends from Alabama and Mississippi across the Gulf of Mexico to markets in Florida.

¹ 15 U.S.C. §§ 717f(b) and (c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6).

⁴ Gulfstream's members are: (i) Spectra Energy Partners, LP (50%), an indirect, wholly-owned subsidiary of Enbridge Inc., a federally chartered Canadian publicly traded corporation; and (ii) Williams Partners Operating LLC (50%), an indirect, wholly-owned subsidiary of The Williams Companies, Inc.

3. Gulfstream proposes to: (1) replace approximately four miles of 36-inch-diameter pipeline in Alabama with thicker-walled pipeline; (2) install additional compression facilities and uprate the maximum allowable operating pressure (MAOP) on part of its system; and (3) construct metering and auxiliary facilities and appurtenances.

Specifically, Gulfstream proposes to conduct the following activities in Alabama and Florida:

- (i) install one 16,000 horsepower (HP) gas-fired turbine driven compressor unit and related appurtenances at Gulfstream's existing Compressor Station 410 in Mobile County, Alabama;
- (ii) uprate the maximum allowable operating pressure (MAOP) of the approximately 55-mile, 36-inch-diameter segment of pipeline from MP 3.9 in Mobile County, Alabama, to MP 59.0 in offshore federal waters in the Gulf of Mexico from 2,180 pounds per square inch gauge (psig) to 2,296 psig (beyond MP 59.0, the MAOP will remain at the current 2,180 psig);
- (iii) abandon in place approximately four miles of 36-inch-diameter onshore pipeline in Mobile County, Alabama, between MP 0.0 and MP 3.9, by cutting and capping each end and filling the line segment with grout;
- (iv) construct and operate approximately four miles of thicker-walled 36-inch-diameter pipeline onshore in Mobile County, Alabama, between MP 0.0 and MP 3.9, to accommodate an increase in the MAOP from 2,180 psig to 2,296 psig. This will offset and replace the approximately four-mile segment of pipeline to be abandoned as described in (iii) above;
- (v) construct metering equipment at Gulfstream's existing Compressor Station 420, located in Manatee County, Florida, to manage the gas flow associated with the higher MAOP described above; and
- (vi) construct other related auxiliary facilities and appurtenances.

Gulfstream estimates that the project will cost approximately \$161,957,344.

4. On May 15, 2018, Gulfstream executed a precedent agreement with Tampa Electric for 78,000 Dth/d of firm transportation service using the capacity to be created by the expansion project, for a primary term of 25 years. Tampa Electric intends to use the capacity to transport natural gas to be used as fuel at Tampa Electric's Big Bend Power Station in Hillsborough County, Florida, which facility is undergoing a modernization project that will include retiring Unit 2 and repowering Unit 1 into a

natural gas-fired two-on-one combined-cycle generating power plant.⁵ Gulfstream held an open season from August 22 to September 5, 2018, and a reverse open season from February 18, 2019 to March 1, 2019 to solicit turnback capacity from existing shippers. Gulfstream requests approval of its proposal on or before June 1, 2020, so it can obtain the Pipeline Hazardous Materials Safety Administration permit required to increase the MAOP on the existing 55-mile segment and commence construction of the new facilities by November 1, 2021, to meet the scheduled in-service date of December 1, 2022.

5. Gulfstream proposes incremental recourse rates under its Rate Schedule FTS for firm service using the expansion capacity.⁶ Gulfstream proposes to provide any interruptible service using the expansion capacity at its generally applicable rate under existing Rate Schedule IT, and to apply its generally applicable system fuel retention rates using the expansion capacity.

II. Notice, Interventions, and Comments

6. Notice of Gulfstream's application was published in the *Federal Register* on June 21, 2019.⁷ Tampa Electric Company and Peoples Gas System, a division of Tampa Electric Company, and Florida Power & Light Company filed timely, unopposed motions to intervene.⁸ Joel Schambeau filed comments, which were addressed in the Environmental Assessment (EA).

III. Discussion

7. Because Gulfstream's proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction, operation and abandonment of the facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.⁹

⁵ Environmental Assessment at 1 and n.1.

⁶ Tampa Electric, however, has agreed to a negotiated rate for its firm service.

⁷ 84 Fed. Reg. 29,191.

⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214 (2019).

⁹ 15 U.S.C. §§ 717f(b), (c) and (e).

A. Certificate Policy Statement

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

9. 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 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 route of 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.

10. As noted above, 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. We have determined that generally where a pipeline proposes to charge incremental rates for new construction that are higher than the pipelines existing maximum system rates for comparable service, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹¹ As is discussed below, that is the case here. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

¹⁰ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹¹ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

11. We find that the proposed project will have no adverse effect on service to Gulfstream's existing customers; the proposed expansion facilities are designed to provide incremental service to meet the needs of the project shipper, without degradation of service to Gulfstream's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers; the proposed project is not designed to bypass an existing pipeline or provide service that is already being provided by an existing pipeline, and no other pipelines or their captive customers have filed adverse comments regarding Gulfstream's proposal.

12. We also find that Gulfstream has routed and designed the proposed project to have minimal adverse impact on landowners and communities. While the construction activities will temporarily affect 50 acres of land, Gulfstream will permanently maintain only approximately 1.5 acres of land for operation of the project facilities. Proposed new pipeline construction is limited to approximately four miles of pipeline, all of which will be co-located with existing road and/or utility rights-of-way. Moreover, the new compressor unit, and other metering and related facilities and appurtenances are located at Gulfstream's existing compressor stations.

13. The proposed project will enable Gulfstream to provide 78,000 Dth/d of firm transportation service for Tampa Electric. Accordingly, we find that Gulfstream has demonstrated a need for the Expansion Project and the project's benefits will outweigh any adverse economic effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.¹²

B. Abandonment

14. Section 7(b) of the NGA allows an interstate pipeline company to abandon jurisdictional facilities or services only if the abandonment is permitted by the present or future public convenience or necessity.¹³ The applicant has the burden of providing evidence to show that the abandonment is permitted under this standard.¹⁴ The continuity and stability of existing service are the primary considerations in assessing whether the

¹² See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

¹³ 15 U.S.C. § 717f(b).

¹⁴ *Columbia Gas Transmission, LLC*, 156 FERC ¶ 61,125, at P 10 (2016).

public convenience or necessity permit the abandonment.¹⁵ If the Commission finds that an applicant's proposed abandonment will not jeopardize continuity of existing gas transportation services, it will defer to the applicant's business judgment.¹⁶

15. Gulfstream proposes to abandon in place approximately four miles of onshore pipeline which will be replaced by thicker walled pipeline. Thus no services will be impacted by the abandonment. The abandonment and replacement of the pipeline segment are integral components of a project we are finding to be in the public convenience and necessity. Accordingly, we find that the public convenience or necessity permit Columbia's abandonment of those facilities.

C. Rates

Initial Recourse Rates

16. Gulfstream's existing rate structure and operational and contractual design take into account the service flexibility desired by its largely electric power generator shippers.¹⁷ Similar to the rates of a storage field, its rate design is based on the Equitable,¹⁸ which assigns fixed costs equally between the "Deliverability" and "Capacity" components, but is slightly modified to allow multiple firm transportation service offerings to meet electric power generation facilities' varying hourly needs.¹⁹ The maximum hourly quantity (MHQ) allowed in a given hour is capped at 4.2%, 5.0%, 6.0%, 7.0%, or 8.0% of the maximum daily quantity (MDQ).

17. Gulfstream proposes incremental rates under Rate Schedule FTS at its six percent MHQ rate level. Gulfstream revised its originally proposed incremental recourse rates to

¹⁵ *El Paso Natural Gas Co.*, 148 FERC ¶ 61,226, at P 11 (2014).

¹⁶ *See, e.g., id.; Transwestern Pipeline Co., LLC*, 140 FERC ¶ 61,147, at P 13 (2012) (citing *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001)).

¹⁷ *See Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119, at 61,464 (2000).

¹⁸ *Equitable Gas Company*, 36 FERC ¶ 61,147, at 61,367 (1986).

¹⁹ *Gulfstream Natural Gas System, L.L.C.*, 119 FERC ¶ 61,250, at P 12 (2007); *see also Gulfstream Natural Gas System, L.L.C.*, 105 FERC ¶ 61,052, at 61,314, n.23 (2003) (describing the modifications to the Equitable method to calculate the rates for its hourly firm transportation services).

reflect an updated cost of service.²⁰ Gulfstream calculated an incremental daily deliverability reservation charge using a six percent MHQ of \$0.5790 per Dth, an incremental daily capacity reservation charge of \$0.4021 per Dth, a Usage-1 charge of \$0.0029 per Dth, and a Usage-2 charge at \$0.9839 per Dth, based on a \$22,974,923 revised estimated first-year cost of service and 28,470,000 Dth of annual reservation billing determinants.²¹ Gulfstream states that the first-year cost of service reflects the 1.67% system depreciation rate and 9.80% overall rate of return²² that underlie its most recent cost of service approved by the Commission in Docket No. CP00-6-014.²³

18. The Commission has generally approved higher returns on equity (ROEs) for greenfield projects to reflect those projects' higher risks.²⁴ When establishing incremental rates for expansions of existing pipeline systems, however, the Commission's general policy is to use the rate of return components approved in the pipeline's last NGA section 4 rate proceeding.²⁵

19. Gulfstream has not filed an NGA section 4 rate case since it went into service in 2002. The overall rate of return underlying its most recently approved cost of service in Docket No. CP00-6-014 reflected use of a 14% ROE, found to be appropriate for a greenfield project. However, the Commission has previously found that it is not appropriate to use the ROE underlying the overall rate of return approved in a pipeline's initial certificate authorizations when determining the cost of service for incremental expansions like the one proposed here, because it would not adequately reflect the lower

²⁰ In its August 7, 2019 response to the Commission's July 18, 2019 data request, Gulfstream provided revised Exhibits K and P and proposed new rates due to a revision to the Allowance for Funds Used During Construction (AFUDC) from \$9,584,981 to \$16,957,448.

²¹ August 7, 2019 data response, Exhibit P, Schedule 2.

²² Reflecting an eight percent cost of debt and 14% rate of return on equity.

²³ Gulfstream *Natural Gas System, L.L.C.*, 119 FERC ¶ 61,250, at P 14 n.12 (2007).

²⁴ See, e.g., *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053, at P 59 (2018).

²⁵ See, e.g., *Transcontinental Gas Pipe Line Co.*, 161 FERC ¶ 61,250, at P 17 (2017); *Transcontinental Gas Pipe Line Co.*, 158 FERC ¶ 61,125, at P 38 (2017), *order on reh'g*, 161 FERC ¶ 61,250 (2017).

risks associated with expanding an existing pipeline system.²⁶ Accordingly, where, as in this case, the proposed project is an expansion of an existing pipeline system, and the pipeline company does not have an ROE established in an NGA section 4 rate case, our policy is to use the most recent ROE approved by the Commission in a litigated NGA section 4 rate case.²⁷ The last applicable litigated ROE is 10.55%, as approved in *El Paso Natural Gas Co.*²⁸ Therefore, we will require Gulfstream to revise its proposed incremental recourse rates using an adjusted overall rate of return reflecting this revised ROE.

20. We have reviewed Gulfstream's proposed cost of service, cost allocation, and rate design used to develop the incremental rates and find that, except for the ROE as discussed above, they are generally consistent with current Commission policy. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.²⁹ Because the proposed incremental daily reservation charges for service with a six percent MHQ, revised to reflect the appropriate ROE, appear to be higher than Gulfstream's existing \$0.4155 per Dth system-wide daily deliverability reservation charge and \$0.2886 per Dth capacity reservation charge,³⁰ we will approve Gulfstream's use of incremental reservation charges. We note that Gulfstream's proposed \$0.0029 Usage-1 charge is lower than its existing \$0.0055 per Dth system-wide Usage-1 charge.³¹ The Commission has previously allowed incremental usage charges to be below the system-wide charge if the project's overall rate

²⁶ See *Rockies Express Pipeline LLC*, 168 FERC ¶ 61,180, at P 52 (2019); *Cheniere Corpus Christi Pipeline, LP*, 169 FERC ¶ 61,135, at P 35 (2019); *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212, at P 20 (2012).

²⁷ See *Rockies Express Pipeline LLC*, 168 FERC ¶ 61,180, at PP 51-52 (stating that the proposed pipeline has more in common with incremental expansions constructed by existing pipelines than with greenfield pipeline projects); *Cheniere Corpus Christi Pipeline, LP*, 169 FERC ¶ 61,135 at PP 34-35 (same); *Alliance Pipeline L.P.*, 140 FERC ¶ 61,212 at PP 18-20 (same).

²⁸ 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, 154 FERC ¶ 61,120 (2016).

²⁹ Certificate Policy Statement, 88 FERC at 61,745.

³⁰ Gulfstream Natural Gas System, L.L.C., FERC NGA Gas Tariff, Gulfstream Database 1, [1., Statement of Transportation Rates, 0.0.0.](#)

³¹ *Id.*

(reservation plus usage) is greater than the system rate.³² In this instance, the proposed 100% load factor rate, which is comprised of the reservation charges plus usage charges, when revised to reflect the appropriate ROE, appears to be higher than Gulfstream's \$0.7096 per Dth system-wide rate. Therefore, we will permit Gulfstream to charge the lower Usage-1 charge as part of the overall incremental rates

Fuel

21. Gulfstream proposes to use its currently effective system fuel retainage rate. In a September 10, 2019 response to a staff data request, Gulfstream submitted a fuel study that shows that its system fuel retainage at 100% load factor is projected to decrease by 0.01% as a result of the approximately 600,000 Dth of additional fuel usage and 28,000,000 Dth of additional throughput associated with the project.³³ We find that Gulfstream has demonstrated that charging its current fuel percentage will not result in existing shippers subsidizing the project; accordingly, we will approve Gulfstream's request to use its currently effective fuel retention percentage.

Reporting Incremental Costs

22. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers. Therefore, Gulfstream must keep separate books and accounting of costs and revenues attributable to the project as required by section 154.309 of the Commission's regulations.³⁴ The books should be maintained with applicable cross-references as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G,

³² See *Texas Eastern Transmission, LP*, 161 FERC ¶ 61,226, at P 13 (2017) (allowing the proposed usage charges of \$0.0045, \$0.0042, and \$0.000 per Dth for proposed projects when the generally-applicable minimum usage charges for comparable movement was \$0.0453 and \$0.0279 per Dth).

³³ Response to August 29, 2019 Data Request.

³⁴ 18 C.F.R. § 154.309 (2019).

I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁵

Negotiated Rates

23. Gulfstream proposes to provide service to Tampa Electric under negotiated rate transportation agreements. Gulfstream must file either the negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement³⁶ and the Commission's negotiated rate policies.³⁷ Gulfstream must file the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.³⁸

D. Environmental Analysis

24. On July 25, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Phase VI Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register,³⁹ 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. We received one

³⁵ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

³⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *aff'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

³⁷ *Natural Gas Pipelines 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, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

³⁸ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

³⁹ 84 Fed. Reg. 37,269.

response to the NOI. The Choctaw Nation of Oklahoma indicated that Mobile County lies in the Choctaw Nation's area of historic interest and requested a copy of the EA once it was complete, which our staff provided.

25. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an EA for Gulfstream'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, alternatives, and the comments of Joel Schambeau filed in response to the Notice of Application. The EA was issued and placed into the public record on January 16, 2020.

Updated Greenhouse Gas Analysis

26. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operation of the project to be 74,847 metric tons per year of carbon dioxide equivalent (CO₂e),⁴⁰ and that the maximum potential downstream GHG emissions associated with the end-use of the transported gas is 1.509 million metric tons per year.⁴¹ To provide context to the EA's GHG estimate, 5.743 billion metric tons of CO₂e were emitted at a national level in 2017 (inclusive of CO₂e sources and sinks).⁴² The operational and downstream emissions of the project could potentially increase CO₂e emissions based on

⁴⁰ EA at 48 (Table 10).

⁴¹ EA at 63 (Table 15). This figure does not reflect reductions in GHG emissions that would result from the Big Bend Modernization Project. Tampa Electric determined that the "Modernization Project would result in a substantial net reduction in emissions in most cases, including a net decrease in greenhouse gas emissions of over two million tons per year." *See In re: Tamp Electric Co. Big Bend Unit 1 Modernization Project Power Plant Siting Application*, Final Order on Certification at 18, State of Florida Siting Board DOAH Case No. 18-2124EPP, http://publicfiles.dep.state.fl.us/siting/Outgoing/Web/Big_Bend/Final_Orders/2019_7_29_TECO_FO_18-0198_Modernization_Certification.pdf).

⁴² U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2017* at ES6-8 (Table ES-2) (2019), <https://www.epa.gov/sites/production/files/2019-04/documents/us-ghg-inventory-2019-main-text.pdf> (accessed November 2019).

the 2017 levels by 0.03% at the national level.⁴³ Currently, there are no national targets to use as a benchmark for comparison.⁴⁴

27. GHG emissions, such as those emitted from the operation of the project, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Southeast region of the United States.⁴⁵ However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.⁴⁶ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.⁴⁷ That situation has not changed.

28. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Gulfstream'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.

⁴³ This calculation does not consider potential reductions in GHG emissions that may result from the Big Bend Modernization Project as discussed *supra* at footnote 41. We also note that this calculation does not include the total estimated construction-related emissions of 12,724 tons per year of CO₂e, as such emissions are temporary and would occur only during construction of the project. See EA at 47.

⁴⁴ The national emissions reduction targets expressed in the EPA's Clean Power Plan were repealed, *Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emissions Guidelines Implementing Regulations*, 84 Fed. Reg. 32,520, 32,522-32 (July 8, 2019), and the targets in the Paris Climate Accord are pending withdrawal.

⁴⁵ See e.g., *Eagle LNG Partners Jacksonville, LLC*, Final Environmental Impact Statement for Jacksonville Project, Docket No. CP17-41-000, at 4-195 (April 2019) (detailing the environmental impacts attributed to climate change in the Southeast region from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

⁴⁶ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

⁴⁷ *Id.*

29. Based on our Certificate Policy Statement determination and our environmental analysis, we find under section 7 of the NGA that the public convenience and necessity requires approval of Gulfstream's Expansion Project, subject to the conditions in this order.

30. 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.

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.⁴⁸

32. The Commission on its own motion received and made a 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 Gulfstream authorizing it to construct and operate the Expansion Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

⁴⁸ 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).

(B) Gulfstream is granted permission and approval to abandon the pipeline segment, as more fully described in this order and the application. Gulfstream shall notify the Commission of the date of the abandonment of facilities within 10 days.

(C) The certificate issued in ordering paragraph (A) is conditioned on Gulfstream's:

- (1) completion of construction of the proposed facilities and making them available for service within three years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the appendix to this order; and
- (4) making a filing affirming that the parties have executed firm service agreements for volumes and service terms equivalent to those in the precedent agreement before commencing construction.

(D) Gulfstream's proposal to charge incremental recourse rates for firm transportation under Rate Schedule FTS and its existing system-wide fuel retainage rate as initial recourse rates is approved, as conditioned above.

(E) Gulfstream shall file actual tariff records with the initial incremental recourse rates no more than 60 days, and no less than 30 days, prior to the date the project facilities go into service.

(F) Gulfstream shall keep separate books and accounts of costs attributable to the proposed Expansion Project services.

(G) Gulfstream 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 Gulfstream. Gulfstream 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.

Commissioner McNamee is concurring with a separate Statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Environmental Conditions

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

1. Gulfstream 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. Gulfstream 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 abandonment activities and 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 abandonment, construction and operation activities.

3. **Prior to any construction**, Gulfstream 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**, Gulfstream 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.

Gulfstream'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. Gulfstream'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. Gulfstream 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**, Gulfstream shall file an Implementation Plan with the

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

- a. how Gulfstream 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 Gulfstream 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 Gulfstream 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 Gulfstream's organizations having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Gulfstream 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. Gulfstream 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, Gulfstream shall file updated status reports with the Secretary on a **monthly** 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 Gulfstream'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 Gulfstream from other federal, state, or local permitting agencies concerning instances of noncompliance, and Gulfstream's response.
9. Gulfstream must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, Gulfstream must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Gulfstream 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**, Gulfstream 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 Gulfstream 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. Gulfstream shall **not begin** construction activities **until**:
 - a. FERC staff receives comments from the United States Fish and Wildlife Service (USFWS) regarding the proposed action; and
 - b. FERC staff completes formal Endangered Species Act consultation with the USFWS, if required.

13. **Prior to construction**, Gulfstream shall file with the Secretary documentation of concurrence from the Florida Department of Environment Protection and Alabama Department of Environmental Management that the Project is consistent with the states' Coastal Zone Management Act provisions.

14. Gulfstream shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized unit at Compressor Station 410 in service. If a full horsepower load condition noise survey is not possible, Gulfstream 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 Compressor Station 410 under interim or full horsepower load conditions exceeds a day-night equivalent sound level (L_{dn}) of 55 A-weighted decibels (dBA) at any nearby noise sensitive areas (NSAs), Gulfstream should file a report on what changes are needed and shall install extra noise controls to comply with the level **within 1 year** of the in-service date. Gulfstream shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after installation of additional noise controls.

15. Gulfstream shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized meter station at Compressor Station 420 in-service. If a full

horsepower load condition noise survey is not possible, Gulfstream 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 the meter station, including Compressor Station 420, at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Gulfstream shall file a report on what changes are needed and install additional noise controls to meet that level within **1 year of the in-service date**. Gulfstream shall confirm compliance with the L_{dn} of 55 dBA 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

Gulfstream Natural Gas System, L.L.C.

Docket No. CP19-475-000

(Issued March 19, 2020)

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 once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order authorizing Gulfstream Natural Gas System, L.L.C. (Gulfstream)'s proposed Phase VI Expansion Project (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions from the Project's construction and operation,³ as well as the indirect GHG emissions from the downstream consumption of natural gas.⁴ The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"⁵ and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity.⁶ Claiming that a project

¹ 15 U.S.C. § 717f (2018).

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

³ Phase VI Expansion Project Environmental Assessment at Tables 9–10 (EA).

⁴ *Id.* at Table 15.

⁵ *Gulfstream Natural Gas System, L.L.C.*, 170 FERC ¶ 61,199, at P 28 (2020) (Certificate Order); EA at 69.

⁶ Certificate Order, 170 FERC ¶ 61,199 at P 29.

has no significant environmental 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 recognizes this relationship, finding, as it must, that "GHG emissions, such as those emitted from the operation of the project, will contribute incrementally to climate change."⁷ In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project's contribution to climate change, 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.⁸

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 the environment and public safety, which includes the facility's impact on climate change.⁹ That is now

⁷ *Id.* P 27.

⁸ 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. 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)).

⁹ *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the

clearly established D.C. Circuit precedent.¹⁰ The Commission, however, insists that it need not consider whether the Project’s contribution to climate change is significant because, simply put, it “cannot.”¹¹ However, the most troubling part of the Commission’s rationale is what comes next. Based on this alleged inability to assess significance, the Commission concludes that the Project will not significantly affect the quality of the human environment.¹² Think about that. The Commission is saying out of one side of its mouth that it need not assess the significance of the Project’s impact on climate change while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant. That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the “hard look” that the law demands.¹³

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”).

¹⁰ *See Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019), *reh’g en banc granted, judgment vacated*, 2019 WL 6605464 (D.C. Cir. Dec. 5, 2019); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019); *Sabal Trail*, 867 F.3d at 1371-72.

¹¹ *See* Certificate Order, 170 FERC ¶ 61,199 at P 27 nn.46-47 (citing *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70); *see Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 at P 67 (finding that without a “standard methodology” to “determine how a project’s contribution to [GHG] emissions would translate into physical effects on the environment. . . the Commission cannot make a finding whether a particular quantity of [GHG] emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change”).

¹² Certificate Order, 170 FERC ¶ 61,199 at P 28 (stating that “approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment”); EA at 69.

¹³*E.g., Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (“[A]gencies cannot overlook a single environmental consequence if it is even “arguably significant.”); *see 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)); *see also Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that agency action is “arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence

5. It also means that the volume of emissions caused by the Project does not play a meaningful role in the Commission's public interest determination, no matter how many times the Commission assures us otherwise. Using the approach in today's order, the Commission will always be able to 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 is similarly flawed. In order 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 Today's order quantifies the GHG emissions caused by the Project's operation and construction as well as the GHG emissions caused by the downstream consumption of natural gas at Tampa Electric Company's Big Bend Power Station.¹⁵ Although quantifying the Project's GHG emissions is a necessary step toward meeting the Commission's NEPA obligations, simply reporting the volume of emissions is insufficient.¹⁶

before the agency").

¹⁴ *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 51 (D.D.C. 2019) (explaining that the agency was required to "provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute" to the "impacts of climate change in the state, the region, and across the country").

¹⁵ Certificate Order, 170 FERC ¶ 61,199 at P 26; EA at 62-63 Table 15 ("Total annual emissions of GHG were estimated for the end-use combustion based on the total capacity from the proposed Project (e.g., 78,000 Dth/d).").

¹⁶ 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"); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land*

7. In *Sabal Trail*, the court explained that the Commission was required “to include a discussion of the ‘significance’ of” the indirect effects of the Project, including its GHG emissions.¹⁷ That makes sense. Identifying and evaluating the consequences that the Project’s GHG emissions may have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed.¹⁸ But neither today’s order nor the accompanying EA provide even attempt to assess the significance of the Project’s GHG emissions or how they contribute to climate change. It is hard to see how hiding the ball by refusing to assess the significance of the Project’s climate impacts is consistent with either of those purposes.

8. In addition, under NEPA, a finding of significance informs the Commission’s inquiry into potential ways of mitigating environmental impacts.¹⁹ An environmental review document must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.²⁰ “Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures

Mgmt., 387 F.3d 989, 995 (9th Cir. 2004) (“A calculation of the total number of acres to be harvested in the watershed is a necessary component . . . , but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres.”).

¹⁷ *Sabal Trail*, 867 F.3d at 1374.

¹⁸ See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA’s purposes 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”); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (“The idea behind NEPA is that if the agency’s eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.”).

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

²⁰ *Robertson*, 490 U.S. at 351

necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.²¹

9. Instead, the Commission continues to insist that it need not assess the significance of the Project’s GHG emissions because it lacks a “standard methodology” to “determine how a project’s contribution to [GHG] emissions would translate into physical effects on the environment.”²² But that does not excuse the Commission’s failure to evaluate these emissions. As an initial matter, the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. The Commission has several tools to assess the harm from the Project’s contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from 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 harms from climate change in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.²³

²¹ *Id.* at 352. The discussion of mitigation is especially critical under today’s circumstances where the Commission prepared an EA instead of an Environmental Impact Statement to satisfy its NEPA obligations. The EA relies on the fact that certain environmental impacts will be mitigated in order to ultimately find that the Project “would not . . . significantly affect[] the quality of the human environment.” EA at 69. Absent these mitigation requirements, the Project’s environmental impacts would require the Commission to develop an Environmental Impact Statement—a much more extensive undertaking. *See Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (“If *any* ‘significant’ environmental impacts might result from the proposed agency action then an [Environmental Impact Statement] must be prepared *before* the action is taken.”).

²² *See supra* note 11.

²³ *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).

10. Regardless of tools or methodologies available, the Commission also can use its expertise to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a significant effect on issues as diverse as "soils,"²⁴ "groundwater resources,"²⁵ and "wetland resources"²⁶ Notwithstanding the lack of any standard or "universally accepted methodology" to assess these impacts, the Commission managed to use its judgment to conduct a qualitative review, and assess the significance of the Project's effect on those considerations. The Commission's refusal to, at the very least, exercise similar qualitative judgment to assess the significance of GHG emissions here is arbitrary and capricious.²⁷

11. That refusal is even more mystifying because NEPA "does not dictate particular decisional outcomes."²⁸ NEPA "merely prohibits uninformed—rather than unwise—agency action."²⁹ In other words, 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.

12. Even if the Commission were to determine that a project's GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project is not in the public interest or required by the public convenience and necessity. Instead, the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that, when a project may

²⁴ EA at 18-19.

²⁵ *Id.* at 20-21.

²⁶ *Id.* at 25-30.

²⁷ After all, the standard the Commission typically uses for evaluating significance is whether the adverse impact would result in a substantial adverse change in the physical environment. *See e.g.* Adelfia Gateway Project Environmental Assessment, Docket No. CP18-46-000 at 33 (Jan 1, 2019). Surely that standard is open to some subjective interpretation by each Commissioner. What today's order does not explain is why it is appropriate to exercise subjective interpretation and judgment when it comes to impacts such as groundwater resources and soils, but not climate change.

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).

cause potentially significant environmental impacts, the relevant environmental impact statement must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.³⁰ The Court explained that, “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects” of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.³¹ The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA,³² which could encompass measures to mitigate a project’s GHG emissions.

13. Furthermore, the refusal to engage in any analysis regarding necessary mitigation is particularly baffling in today’s proceeding, where the record demonstrates that the downstream consumption of gas, and its indirect impacts, may actually result in a net GHG emission reduction. While the Project will cause downstream indirect GHG emissions by transporting gas to Tampa Electric’s new natural gas plant in Hillsborough County, Florida, this plant will replace two of Tampa Electric’s existing coal units.³³ Consequently, the Project’s indirect downstream emissions of 1.509 million tons of GHGs, however significant they may be, could be outweighed by a reduction in GHG emissions from the retiring coal units. Consistent with *Sabal Trail*, that is exactly the type of indirect impact—in this case, an indirect benefit—that the Commission can and should consider in evaluating whether the Project is required by the public convenience and necessity.³⁴ The Commission, however, completely ignores this potential benefit of

³⁰ *Robertson*, 490 U.S. at 351.

³¹ *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

³² 15 U.S.C. § 717f(e); Certificate Order, 170 FERC ¶ 61,199 at P 30 (“[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . .”).

³³ EA at 1 n.1.

³⁴ *Sabal Trail*, 867 F.3d at 1357 (discussing the potential for a natural gas pipeline to reduce GHG emissions from coal-fired generation and noting that “[t]he effects an EIS is required to cover ‘include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial’” (quoting 40 C.F.R. § 1508.8)).

the Project. That refusal to even analyze the climate change benefits of a proposed pipeline only underscores the extent to which the Commission continues to write climate change out of its section 7 analysis, notwithstanding the courts' repeated instructions to the contrary.

* * *

14. Today's order is not the product of reasoned decisionmaking. Its analysis of the Project's contribution to climate change is shoddy and its conclusion that the Project will not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges that the Project will contribute to climate change, but refuses to consider whether that contribution might be significant before proclaiming that the Project will have no significant environmental impacts. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the Project's consequences for climate change does not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gulfstream Natural Gas System, L.L.C.

Docket No. CP19-475-000

(Issued March 19, 2019)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Gulfstream Natural Gas System, L.L.C. (Gulfstream) a certificate to construct and operate its proposed Phase VI Expansion Project (Project) to provide 78,000 dekatherms per day of firm transportation service to Tampa Electric Company's Big Bend Power Station in Hillsborough County, Florida.¹

2. I fully support the order as it complies with the Commission's statutory responsibilities under the Natural Gas Act (NGA) and the National Environmental Policy Act. The order determines that the Project is in the public convenience and necessity, finding that the Project will not adversely affect Gulfstream's existing customers or competitor pipelines and their captive customers, and that Gulfstream had taken appropriate steps to minimize adverse impacts on landowners.² The order also finds that the Project will not significantly affect the quality of the human environment.³ Further, the Commission quantified and considered greenhouse gases (GHG) directly emitted by the construction and operation of the Project and by the operation of the Big Bend Power Station,⁴ consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*.⁵

3. As discussed in the order, the Commission quantified an upper bound estimate of the GHG emissions that could be combusted at the Big Bend Power Station.⁶ Furthermore, as discussed in the order, the Commission considered whether the GHG emissions were significant, but concluded that it has no suitable means by which to

¹ 170 FERC ¶ 61,199 (2020).

² *Id.* P 13.

³ *Id.* P 28.

⁴ *Id.* PP 26-27; Environmental Assessment at 12, 47-48.

⁵ 867 F.3d 1357 (D.C. Cir. 2017).

⁶ *Gulfstream Natural Gas System, L.L.C.*, 170 FERC ¶ 61,199 at P 26.

determine if the GHG emissions were significant.⁷ So though the Commission complies with the direction of the Court of Appeals for the D.C. Circuit, and which I concur, I write separately to further explain that the text of the NGA does not permit the Commission to act on that information (i.e., deny the application or require a pipeline to mitigate such effects) in determining whether the Project is in public convenience and necessity.⁸

4. In *Adelphia Gateway, LLC (Adelphia)*, I issued a concurrence explaining that the text of the NGA does not support denying an application based on the environmental effects related to the upstream production and downstream use of natural gas. Rather, the text of NGA sections 1 and 7 make evident that Congress enacted the NGA to provide public access to natural gas,⁹ and does not provide the Commission with the authority to regulate the environmental impacts of upstream production or downstream use of natural gas, since such authority was provided to the U.S. Environmental Protection Agency (EPA) and the States.¹⁰ Further, acting on GHG emissions related to the upstream production and downstream use of natural gas would be contrary to subsequent acts by Congress—including the National Gas Policy Act of 1978,¹¹ repeal of the Fuel Use Act of 1978,¹² the Natural Gas Wellhead Decontrol Act of 1989,¹³ and the Energy Policy Act

⁷ *Id.* P 27.

⁸ Despite my colleague’s arguments to the contrary, I state in my concurrence in *Adelphia Gateway, LLC* in which I incorporate herein that “[t]hrough the D.C. Circuit’s holding in *Sabal Trail* is binding on the Commission, it is not appropriate to expand that holding through the dicta in *Birckhead* so as to establish new authorities under the NGA and NEPA. The Commission is still bound by the NGA and NEPA as enacted by Congress, and interpreted by the U.S. Supreme Court and the D.C. Circuit. Our obligation is to read the statutes and case law in harmony.” *Adelphia*, 169 FERC ¶ 61,220 at P 12 n.29 (2019) (McNamee, Comm’r, concurring) (McNamee Adelphia Concurrence).

⁹ *Id.* PP 15-24; see also *Weaver’s Cove Energy, LLC v. Rhode Island Coastal Res. Mgmt. Council*, 589 F.3d 458, 461 (1st Cir. 2009) (“The NGA was originally passed in the 1930s to facilitate the growth of the energy-transportation industry . . .”).

¹⁰ McNamee Adelphia Concurrence at PP 25-31.

¹¹ *Id.* PP 33-35.

¹² *Id.* P 36.

¹³ *Id.* PP 37-38.

of 1992.¹⁴ In addition, the meaning of the public convenience and necessity does not support denying an application based on environmental effects that are unrelated to the construction and operation of the pipeline itself.¹⁵

5. Further, I disagree with my colleague that the Commission should have determined whether the incremental GHG emissions directly emitted by the Project are “significant” using the Social Cost of Carbon or by establishing its own framework. In my concurrence in *Adelphia*, I explain why the Social Cost of Carbon is not a useful tool to determine whether the GHG emissions are “significant” and the Commission has no authority or reasoned basis to make a determination of significance using its own expertise.¹⁶

6. I also disagree with my colleague that it is appropriate for the Commission to establish out of whole cloth a GHG emission mitigation program, particularly when Congress has introduced and failed to pass 70 legislative bills to reduce GHG emissions over the last 15 years.¹⁷ As I explain in *Adelphia*, Congress delegated the Administrator of the EPA the exclusive authority to establish standards of performance for air pollutants, including GHGs.¹⁸ For logistical reasons and administrative efficiency, I hereby incorporate my entire analysis in *Adelphia* by reference and am not reprinting the full text of my analysis here.¹⁹

For the reasons discussed above and incorporated by reference herein, I respectfully concur.

Bernard L. McNamee
Commissioner

¹⁴ *Id.* P 39.

¹⁵ *Id.* PP 41-47.

¹⁶ *Id.* PP 62-73.

¹⁷ *Id.* PP 52-61.

¹⁸ *Id.* PP 53-57.

¹⁹ *Id.* PP 15-73.