

170 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company, LLC

Docket No. CP19-474-000

ORDER ISSUING CERTIFICATE

(Issued March 19, 2020)

1. On May 31, 2019, Florida Gas Transmission Company, LLC (Florida Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to construct and operate approximately 21 miles of 30-inch-diameter pipeline looping and auxiliary facilities in Clay, Columbia, Orange, Putnam and Union Counties, Florida (Putnam Expansion Project), to provide firm transportation service for Seminole Electric Cooperative, Inc. (Seminole Electric).

2. As discussed below, the Commission will grant the requested authorization, subject to the conditions described herein.

I. Background and Proposal

3. Florida Gas, a Delaware limited liability company,³ is a natural gas company as defined in section 2(6) of the NGA engaged in the transportation of natural gas in interstate commerce.⁴ Florida Gas's transmission system consists of a 5,300-mile-long pipeline system that extends from Texas through Louisiana, Mississippi, and Alabama, and terminates in Florida. The system is divided into two areas: the Market Area, which

¹ 15 U.S.C. § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ Florida Gas is a direct, wholly-owned subsidiary of Citrus, LLC, a holding company jointly owned by El Paso Citrus Holdings, Inc. and CrossCountry Citrus, LLC. El Paso Citrus Holdings is an indirect, wholly-owned subsidiary of Kinder Morgan, Inc. CrossCountry Citrus, LLC, is a direct, wholly-owned subsidiary of several direct, wholly-owned subsidiaries of Energy Transfer Partners, L.P.

⁴ 15 U.S.C. § 717a(6).

includes the portion of the pipeline system located within Florida; and the Western Division, which encompasses the remainder of the system in Texas, Louisiana, Mississippi, and Alabama. Within the Market Area are the West Leg and the East Leg, with each leg serving the respective coast of Florida.

4. Florida Gas proposes to construct and operate the following facilities within the Market Area: (i) approximately 13.7 miles of 30-inch-diameter pipeline loop (West Loop) from approximately Mile Post (MP) 521.3 in Columbia County to approximately MP 535.0 in Union County, paralleling Florida Gas's existing 30-inch- and 24-inch-diameter mainlines; (ii) approximately 7.0 miles of 30-inch-diameter pipeline loop (East Loop) from approximately MP 574.8 in Clay County to approximately MP 581.8 in Putnam County, paralleling Florida Gas's existing 26-inch- and 24-inch-diameter mainlines; (iii) relocation of two pig receiver stations,⁵ one from Columbia County to Union County and the other from Clay County to Putnam County,⁶ and (iv) modifications at existing Compressor Station 18 in Orange County, Florida, to allow for one unit at the station to have bi-directional gas flow capability into the existing mainline.⁷

5. The Putnam Expansion Project will enable Florida Gas to provide 169,000 dekatherms per day (Dth/d)⁸ of firm transportation service for Seminole Electric to the new Florida Gas/SeaCoast Gas Transmission, LLC (SeaCoast) delivery point in Putnam County.⁹ On April 5, 2018, Florida Gas entered into a precedent agreement with

⁵ A pig is a device used to clean or inspect a pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from a pipeline.

⁶ Specifically, Florida Gas will relocate two existing pig receivers on the existing 30-inch-diameter mainline loop; one from approximately MP 521.3 (Mainline valve (MLV) 15-3X1) in Columbia County to approximately MP 535.0 in Union County, and the other from approximately MP 574.8 (MLV 16-10BR) in Clay County to approximately MP 581.8 in Putnam County.

⁷ Modifications at the station will include the installation of automated valves to allow Florida Gas to operate the valves remotely. There will be no new compressor units installed, and no increase or decrease in compression at the existing compressor units. No project related activities will take place outside the existing fenced area of Compressor Station 18.

⁸ Florida Gas expressed the transportation service associated with the Putnam Expansion Project in both million British thermal units per day (MMBtu) and dekatherms (Dth). For consistency, this order will use dekatherms, as 1 MMBtu is equivalent to 1 Dth.

⁹ Downstream of this delivery point, SeaCoast will construct and operate an

Seminole Electric for 169,000 Dth/d of firm transportation service, which will be provided as follows:

- 60,000 Dth/d of incremental firm transportation service provided by the looping and modification at Compressor Station 18 to allow gas to flow from an existing Florida Gas interconnection with Sabal Trail Gas System, LLC at Hunter's Creek in Orange County to the Florida Gas/SeaCoast delivery point;
- 76,000 Dth/d of unsubscribed, existing firm transportation service to be made available on Florida Gas's East Leg (previously only available on Florida Gas's West Leg); and,
- 33,000 Dth/d of existing firm service, contracted by Seminole Electric with delivery points on Florida Gas's West Leg, will now be made available to the Florida Gas/SeaCoast delivery point on the East Leg.

6. Florida Gas held an open season for the transportation capacity to be made possible by the project from April 6 through April 26, 2018. Florida Gas also solicited turnback capacity at that time. No parties submitted a request for service during the open season and no turnback capacity was offered.

7. Florida Gas estimates that the Putnam Expansion Project will cost \$102.6 million. Florida Gas proposes to charge its existing system rates under Rate Schedule FTS-3 as the initial recourse rates for project service.¹⁰ Florida Gas also requests a predetermination that it would be appropriate to roll the costs associated with the

approximately 21-mile-long nonjurisdictional pipeline to transport the gas to an existing Seminole Electric generating station near Palatka in Putnam County. At the existing generation station, Seminole Electric plans to construct and operate a new gas-fired combined-cycle generating unit, which will replace an existing coal-fired generating unit, which will be retired.

¹⁰ Florida Gas provides firm transportation service within the Western Division under Rate Schedule FTS-WD, and to and within the Market Area under several rate schedules, which include Rate Schedules FTS-1, FTS-2, and FTS-3. Florida Gas's approved rate settlement in Docket Nos. RP15-101-000, -001, and -004, rolls Rate Schedule FTS-2 into Rate Schedule FTS-1, and this rolled-in rate will recover the costs associated with various Florida Gas expansion projects through its 2008 Phase VII expansion. *See Florida Gas Transmission Co., LLC*, 153 FERC ¶ 61,279 (2015). Rate Schedule FTS-3 includes the costs of Florida Gas's Phase VIII expansion, which was placed into service in April 2011. *See Florida Gas Transmission Co., LLC*, 129 FERC ¶ 61,150 (2009).

proposed facilities into Rate Schedule FTS-3 in its next NGA section 4 rate proceeding. Seminole Electric has elected to pay a negotiated rate.

II. Notice and Interventions

8. Notice of Florida Gas's application was published in the *Federal Register* on June 18, 2019.¹¹ The notice established July 3, 2019, as the deadline for filing comments and interventions. Florida Power & Light Company, Florida Municipal Natural Gas Association,¹² Florida Cities,¹³ Seminole Electric, and Peoples Gas System filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.¹⁴

III. Discussion

9. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁵

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁶ The Certificate Policy Statement establishes criteria for

¹¹ 84 Fed. Reg. 28,298 (2019).

¹² Florida Municipal Natural Gas Association includes the following Florida Gas customers: City of Chattahoochee; City of Clearwater Gas System; Clarke-Mobile Counties Gas District, Alabama; City of Floralá; Geneva County Gas District; Lake Apopka Natural Gas District; City of Leesburg; City of Live Oak; City of Madison; Okaloosa Gas District; Southeast Alabama Gas District; and City of Sunrise.

¹³ Florida Cities includes: JEA; Orlando Utilities Commission; Lakeland Electric; the City of Tallahassee; City of Gainesville d/b/a Gainesville Regional Utilities; and Florida Gas Utility, a Florida interlocal agency whose membership presently consists of more than twenty municipally-owned electric or gas utilities, including the Florida Municipal Power Agency.

¹⁴ 18 C.F.R. § 385.214(c) (2019).

¹⁵ 15 U.S.C. § 717f(c), (e).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, corrected, 89 FERC ¶ 61,040 (1999), order on clarification,

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 pipeline 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 applicants proposing new projects is that the applicant 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, or landowners and communities affected by the route of the new pipeline. 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 complete the environmental analysis, where other interests are considered.

12. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Florida Gas proposes to charge its existing system rates under Rate Schedule FTS-3 as the initial recourse rates for the firm service associated with the Putnam Expansion Project. As discussed below, Florida Gas demonstrates that the illustrative incremental rates calculated to recover the costs associated with the project are lower than Florida Gas's existing system rates. Therefore, we find that Florida Gas's existing shippers will not subsidize the expansion project and we will accept Florida Gas's proposal to charge its existing applicable system reservation rates as the initial recourse rates for the project.

13. In addition, we find that the Putnam Expansion Project will not adversely affect Florida Gas's existing customers as the project is designed to provide the new service while maintaining existing services. Further, there will be no adverse impact on other pipelines in the region or their captive customers; the proposal is designed to meet the new incremental demand from Seminole Electric and is not designed to replace existing

90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

service on other pipelines. We note that no pipeline company or their captive customers have filed adverse comments to Florida Gas's proposal.

14. Florida Gas proposes to locate the Putnam Expansion Project primarily within existing rights-of-way and within its existing Compressor Station 18.¹⁷ Several residences would be within 50 feet of the construction work area.¹⁸ However, most of the project will be constructed within existing pipeline and roadway rights-of-way, or existing utility easements minimizing the impacts on landowners.¹⁹ The Commission finds that Florida Gas has designed the project to minimize potential impacts of the project on landowners and surrounding communities.

15. The proposed project will enable Florida Gas to provide 169,000 Dth/d of incremental firm transportation service, which is fully subscribed. Accordingly, we find that Florida Gas has demonstrated a need for the Putnam 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.²⁰

¹⁷ Environmental Assessment at 46, 64; *see also* 18 C.F.R. § 380.15(e)(1) (2019) (requiring applicants to consider the use of existing rights-of-way when locating proposed facilities).

¹⁸ Florida Gas proposes to maintain at least 25 feet between a residence and the construction work area, and where it cannot, it has developed site-specific plans. The EA encouraged landowners to provide comments on site-specific plans; no comments were filed. EA at 43-44.

¹⁹ One landowner commented that with the construction of the Putnam Expansion Project this will be the third pipeline on her property. Because the new pipeline will require an additional easement, her comments express her interest in selling the property. Judith Rhame June 24 and July 21, 2019 Comments. However, the acquisition of property rights and the value of property is outside the scope of the Commission's jurisdiction and not addressed further. *See, e.g., Rover Pipeline LLC*, 158 FERC ¶ 61,109, at P 70 (2017); *see also* EA at 43.

²⁰ *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).

B. Rates**1. Initial Recourse Rates**

16. Florida Gas proposes to use its existing reservation and usage charges under Rate Schedule FTS-3 as the initial maximum recourse rates for firm project transportation service. Based on the incremental firm transportation service made possible by the project, Commission staff calculated an illustrative daily incremental reservation charge of \$0.7658 per Dth, using an estimated first-year incremental fixed cost of service of \$16,772,110 and annual billing determinants of 21,900,000 Dth (60,000 Dth multiplied by 365 days).²¹ In addition, Commission staff calculated an illustrative usage charge of \$0.0009 per Dth, based on an estimated variable cost of service of \$18,932 and annualized throughput. The cost of service used in designing the illustrative incremental rates reflects the transmission depreciation rate of 1.70% established in Docket No. RP15-101-000²² and a rate of return of 10.73%.²³ Florida Gas's currently effective maximum daily recourse reservation charge under Rate Schedule FTS-3 for the service being provided is \$1.3299 per Dth and the maximum recourse usage charge is \$0.0023 per Dth.²⁴

17. The Commission has reviewed Florida Gas's proposed cost of service and initial rates and finds they reasonably reflect current Commission policy. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion service if the incremental rate exceeds the maximum system recourse rate.²⁵ Where the currently-effective system recourse rate is greater than the estimated incremental cost-based recourse rate, the Commission has found it appropriate to establish the existing system rate as the initial recourse rate for the

²¹ This calculation is based on the revised cost of service provided in Florida Gas's October 8, 2019 response to Commission Staff's October 2, 2019 Data Request. Further, the billing determinants of 60,000 Dth per day are used because this is the amount of new, incremental service created by the project. Application at 4. *See Tennessee Gas Pipeline Company, L.L.C.*, 165 FERC ¶ 61,217, at P 13 (2018).

²² *Florida Gas Transmission Co., LLC*, 153 FERC ¶ 61,279 (2015).

²³ Florida Gas October 8, 2019 Response to Commission Staff October 2, 2019 Data Request

²⁴ Florida Gas Transmission Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [Rate Schedule FTS-3, Currently Effective Rates, 22.0.0](#).

²⁵ Certificate Policy Statement, 88 FERC at 61,746.

project.²⁶ Because Florida Gas's maximum Rate Schedule FTS-3 recourse reservation and usage charges are greater than the illustrative incremental reservation and usage charges, we will approve Florida Gas's request to use its existing rates under Rate Schedules FTS-3 as the initial recourse rates for the project facilities.

2. Fuel

18. Florida Gas proposes to apply its generally applicable system fuel percentage for the project. In support of its proposal, Florida Gas provided a fuel study, which demonstrates that charging the project shippers the generally applicable system fuel percentage will not result in existing shippers on the system subsidizing the project.²⁷ Accordingly, we will approve Florida Gas's proposal to charge its generally applicable system fuel percentage for service associated with the project.

3. Rolled-in Rate Determination

19. Florida Gas requests a predetermination that it may roll the costs of the project into its rates in its next NGA section 4 rate proceeding.²⁸

20. To receive a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will not result in existing customers subsidizing the expansion. In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the project's costs. To determine, in a certificate proceeding, whether it is appropriate to roll a project's costs into the pipeline's system rates in a future NGA section 4 proceeding, we compare the project's costs to the revenues generated using actual contract volumes and, either the maximum recourse rate or, if the negotiated rate is lower than the recourse rate, the actual negotiated rate.²⁹

21. Florida Gas and Seminole Electric entered into a negotiated rate agreement at a rate less than the maximum recourse rate for service under Rate Schedule FTS-3; therefore, it is appropriate to use the negotiated rate revenues under the agreement in the roll-in analysis. Florida Gas's estimated first-year negotiated rate revenue of

²⁶ See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 30 (2013).

²⁷ Application Exhibit N at 11.

²⁸ Application at 9.

²⁹ *Tennessee Gas Pipeline Co., L.L.C.*, 144 FERC ¶ 61,219, at P 22 (2013).

\$17,520,000 exceeds its estimated first-year cost of service of \$16,791,042.³⁰ Therefore, the Commission will grant a predetermination favoring rolled-in rate treatment for the costs of the project in a future general NGA section 4 rate case, absent any significant change in circumstances.

4. Reporting Incremental Costs

22. The Commission will require Florida Gas to keep separate books and accounting of costs and revenues attributable to the proposed incremental services and capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.³¹ 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, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³²

5. Negotiated Rates

23. Florida Gas proposes to provide service to Seminole Electric under negotiated rate service agreements. Florida Gas must file either the negotiated rate agreements or a tariff record setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement³³ and the Commission's negotiated rate policies.³⁴ Florida Gas must file the negotiated rate agreements or tariff records reflecting the

³⁰ Florida Gas October 8, 2019 Response to Commission Staff October 2, 2019 Data Request.

³¹ 18 C.F.R. § 154.309 (2019).

³² *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

³³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

³⁴ *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 (2006), *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

essential elements of the agreements at least 30 days, but no more than 60 days, before the proposed effective date for such rates.³⁵

C. Environmental Review

24. On July 16, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Putnam Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register 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.³⁶ We received comments in response to the NOI from the Seminole Tribe of Florida, the Florida Department of Environmental Protection, Jacqueline Bowles, and Judith Rhame.

25. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an Environmental Assessment (EA) for Florida Gas'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. All substantive comments received in response to the NOI were addressed in the EA.

26. The EA was issued for a 30-day comment period and placed into the public record on December 6, 2019.³⁷ On January 6, 2020, the Commission received two comments on the EA: the Teamsters National Pipeline Labor Management Cooperation Trust commented in support of the project and the Institute for Policy Integrity at New York University School of Law (Policy Integrity) commented that the Commission failed to analyze the environmental effects of greenhouse gas emissions associated with the project.

³⁵ 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. 18 C.F.R. § 154.112(b) (2019). *E.g.*, *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

³⁶ 84 Fed. Reg. 35,113 (July 22, 2019).

³⁷ 84 Fed. Reg. 67,940 (Dec. 12, 2019).

Updated Greenhouse Gas Analysis

27. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operation of the project to be 148 metric tons per year of carbon dioxide equivalent (CO₂e),³⁸ and that the maximum potential downstream GHG emissions associated with the end-use of the transported gas is 3.26 million metric tons per year.³⁹ 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).⁴⁰ The operational and downstream emissions could potentially increase CO₂e emissions based on the 2017 levels by 0.06% at the national level.⁴¹ Currently, there are no national targets to use as a benchmark for comparison.⁴² GHG emissions, such as the emissions from 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.⁴³

³⁸ EA at 52 (Table 14).

³⁹ EA at 52-53. This figure does not reflect reductions in GHG emissions that would result from the construction of the Seminole Combined-Cycle Facility and the removal from service of one existing coal-fired unit at the Seminole Generating Station. See State of Florida Siting Board Final Order on Certification, http://publicfiles.dep.state.fl.us/Siting/Outgoing/Web/Seminole/Final%20Orders/2018_7_27_SCCF_FO.pdf. Further, this figure includes Seminole Electric's existing 33,000 Dth/d of firm transportation capacity that will be redirected onto the project facilities and is potentially already being used for other downstream uses.

⁴⁰ 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 December 2019).

⁴¹ We note that this does not include the total estimated construction-related emissions of 26,579 metric tons of CO₂e, as such emissions are temporary and would occur only during construction of the project. EA at 51; 52-53.

⁴² 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.

⁴³ *Eagle LNG Partners Jacksonville, LLC*, Project Final Environmental Impact Statement for Jacksonville Project, Docket No. CP17-41-000, 4-195 (April 2019) (detailing the environmental impacts attributed to climate change in the Southeast region

However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.⁴⁴ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.⁴⁵ That situation has not changed.

28. Policy Integrity argues that the Commission fails to fulfill its legal obligations under NEPA by not disclosing the impacts and actual environmental effects of a project.⁴⁶ In its comments, Policy Integrity claims that “the tons of greenhouse gases emitted by a project are not the “actual environmental effects” that must be assessed under NEPA.”⁴⁷ Policy Integrity asserts that NEPA requires the Commission to analyze whether greenhouse gas emissions will have a significant effect on climate change and that the Commission should make a determination on the impacts by monetizing the social cost of greenhouse gas emissions.⁴⁸

29. The Commission has provided extensive discussion on why the Social Cost of Carbon is not appropriate in project-level NEPA review and cannot meaningfully inform the Commission's decisions on natural gas infrastructure projects under the NGA.⁴⁹ It is not appropriate for use in any project-level NEPA review for the following reasons:

from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

⁴⁴ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

⁴⁵ *Id.*

⁴⁶ Policy Integrity January 6, 2020 Comments at 2.

⁴⁷ *Id.*

⁴⁸ *Id.* at 1.

⁴⁹ *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *2 (D.C. Cir. Feb. 19, 2019) (“[The Commission] gave several reasons why it believed petitioners' preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”); *see also EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016); *Sierra Club v. FERC*, 672 F. App'x 38, (D.C. Cir. 2016); *Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt.*, 377 F. Supp. 3d 1223, 1239-41 (D. Colo.

- (1) the U.S. Environmental Protection Agency (EPA) states that “no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations”⁵⁰ and consequently, significant variation in output can result;⁵¹
- (2) the tool does not measure the actual incremental impacts of a project on the environment; and
- (3) there are no established criteria identifying the monetized values that are to be considered significant for NEPA reviews.

Updated Environmental Conditions

30. After issuance of the EA, Florida Gas filed a revised Horizontal Directional Drill (HDD) Contingency Plan removing, as recommended in the EA, two unapproved HDD fluid additives: Lubra-Star Plus and DMD Clay Star HDD.⁵² Thus, environmental recommendation 12 from the EA—requiring Florida Gas to file a revised HDD Contingency Plan removing these additives—is no longer necessary and is omitted from the environmental conditions of this order.

31. The Florida State Historic Preservation Officer, after issuance of the EA, concurred with Florida Gas’s final cultural resources report, finding that the project will have no adverse effect on significant cultural properties and no adverse effect on historic properties listed, or eligible for listing on the National Register of Historic Places.⁵³ We

2019) (upholding the agency’s decision to not use the Social Cost of Carbon); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77-79 (D.D.C. 2019) (upholding the agency’s decision to not use the Social Cost of Carbon); *High Country Conservation Advocates v. U.S. Forest Serv.*, 333 F. Supp. 3d 1107, 1132 (D. Colo. 2018) (“[T]he *High Country* decision did not mandate that the Agencies apply the social cost of carbon protocol in their decisions; the court merely found arbitrary the Agencies’ failure to do so without explanation.”).

⁵⁰ See EPA, Fact Sheet: *Social Cost of Carbon* (November 2013), https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html.

⁵¹ Depending on the selected discount rate, the tool can project widely different present day cost to avoid future climate change impacts.

⁵² Florida Gas February 10, 2020 Revised HDD Contingency Plan.

⁵³ Florida Gas January 13, 2020 filing at Attachment 2 (Florida Department of State January 7, 2020 Letter).

agree. Thus, environmental recommendation 13 from the EA—requiring Florida Gas to prepare a final cultural resources report—is no longer necessary and is omitted from the environmental conditions of this order.

32. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Florida Gas’s application and supplements, 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.

D. Conclusion

33. 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 Florida Gas’s Putnam Expansion Project, subject to the conditions in this order.

34. 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.

35. 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.⁵⁴

⁵⁴ 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); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local

36. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Florida Gas authorizing the construction and operation of the Putnam Expansion Project, as more fully described herein, and in the application.

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

(1) Florida Gas's completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) Florida Gas's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Florida Gas's compliance with the environmental conditions listed in the appendix to this order; and

(4) Florida Gas filing a written statement affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements, prior to commencing construction.

(C) Florida Gas's proposal to use its existing reservation and usage charges under Rate Schedule FTS-3 as the initial maximum recourse rates for firm transportation service for the project is approved.

(D) Florida Gas's proposal to apply its generally applicable system fuel percentage for the project is approved.

(E) Florida Gas is granted a predetermination of rolled-in rate treatment for the costs of the project in a future NGA section 4 rate case, absent any significant change in circumstances.

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).

(F) Florida Gas 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 Florida Gas. Florida Gas 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

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

1. Florida Gas Transmission Company, LLC (Florida Gas) 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. Florida Gas 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**, Florida Gas 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**, Florida Gas shall file with the Secretary any revised detailed survey alignment maps/figures 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 Project figures.

Florida Gas's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Florida Gas's right of eminent domain granted under the NGA 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. Florida Gas 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/figures/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 Certificate and before construction begins**, Florida Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Florida Gas must file revisions to their plan as schedules change. The plan shall identify:
- a. how Florida Gas 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 Florida Gas 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 Florida Gas will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Florida Gas's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Florida Gas will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Florida Gas **shall** employ at least one EI for the project. 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, Florida Gas shall file updated status reports for the Project 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 Florida Gas's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period and any scheduled 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 Florida Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and Florida Gas's response.
- 9. Florida Gas must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Florida Gas must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
- 10. Florida Gas must receive written authorization from the Director of OEP **before placing the pipeline loops and modified facilities 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**, Florida Gas 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 Florida Gas 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. **Prior to construction of the West Loop of the Project**, Florida Gas shall file with the Secretary, for review and written approval by the Director of OEP, evidence of landowner concurrence with the site-specific construction plan for the property at milepost 8.77 or file a revised site-specific construction plan that maintains a 10-foot buffer between the residence and the temporary workspace.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Gas Transmission Company, LLC

Docket No. CP19-474-000

(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 Florida Gas Transmission Company's (FGT) proposed Putnam 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 has no

¹ 15 U.S.C. § 717f (2018).

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

³ Putnam Expansion Project Environmental Assessment at Tables 13-14 (EA).

⁴ *Id.* at 52-53.

⁵ *Florida Gas Transmission Company, LLC*, 170 FERC ¶ 61,200 at P 33 (2020) (Certificate Order); EA at 70.

⁶ Certificate Order, 170 FERC ¶ 61,200 at P 34.

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 that “[GHGs] occur in the atmosphere both naturally and as a result of human activities, such as the burning of fossil fuels”⁷ and that GHG emissions, including those from the Project, will “contribute incrementally to future climate change.”⁸ 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.⁹

⁷ EA at 50. It is worth noting that the Commission used to acknowledge the combustion of fossil fuels as the primary cause behind the accumulation of GHGs in the atmosphere, see, for example, Environmental Assessment, Docket No. CP18-332-000, at 11 (2018) (South Mainline Expansion Project), but, for reasons that are not explained, appear to no longer make the same conclusion in the EA.

⁸ Certificate Order, 170 FERC ¶ 61,200 at P 28.

⁹ 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

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.¹⁰ That is now clearly established D.C. Circuit precedent.¹¹ The Commission, however, insists that it cannot consider whether the Project's contribution to climate change is significant because it is "not aware of a widely accepted standard – which was established by international or federal policy, or by a recognized scientific body – to ascribe significance to a given rate or volume of greenhouse gas emissions."¹² 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.¹³ 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

indirect effects *and their significance*. (emphasis added)).

¹⁰ 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 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").

¹¹ 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.

¹² See Certificate Order, 170 FERC ¶ 61,200 at P 28 (citing *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 68 (2018)); see also *id.* at P 67 ("Without an accepted methodology, the Commission cannot make a finding whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change.").

¹³ See Certificate Order, 170 FERC ¶ 61,200 at P 33 (stating that "approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment"); EA at 70.

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.¹⁴

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.

6. Commissioner McNamee argues that the D.C. Circuit cases cited above¹⁵ were wrongly decided.¹⁶ Although that is his prerogative, it is irrelevant to the task before us. As he has explained, we are called on to apply the law and the facts, not our personal policy preferences. But surely, implicit in that statement, is a recognition that we must apply the law as it is, not as we wish it were. The D.C. Circuit has unambiguously interpreted the “public convenience and necessity” standard in section 7 of the NGA to encompass the authority to consider and, if appropriate, act upon “the direct and indirect environmental effects” of a proposed pipeline.¹⁷ As Commissioners, our job is to apply

¹⁴*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 before the agency”).

¹⁵ *Supra* notes 10-11.

¹⁶ Certificate Order, 170 FERC ¶ 61,200 (McNamee, Comm’r, concurring at P 3).

¹⁷ *E.g., Sabal Trail*, 867 F.3d at 1373.

that law, not to attack binding judicial precedent in favor of an interpretation that was, in fact, expressly rejected by the court.¹⁸

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

7. 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."¹⁹ 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 the new Seminole Electric Cooperative, Inc. (SECI) natural gas power plant.²⁰ 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.²¹

¹⁸ *Id.*; see *Birckhead*, 925 F.3d at 519 (explaining that in "the pipeline certification context the Commission does have statutory authority to act" on the reasonably foreseeable GHG emissions caused by the pipeline (citing *Sabal Trail*, 867 F.3d at 1373)).

¹⁹ *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").

²⁰ EA at 52 (explaining that the "Project's purpose is to provide 169,000 MMBtu/d of natural gas" and "would serve a new gas-fired combined-cycle generating unit" and that the "[c]ombustion of this volume of natural gas would result in 3.26 million metric tons of CO₂ per year.").

²¹ 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 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

8. 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.²² 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.²³ 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.

9. In addition, under NEPA, a finding of significance informs the Commission’s inquiry into potential ways of mitigating environmental impacts.²⁴ An environmental review document must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.²⁵ “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 necessary to ensure that the agency has taken a “hard look” at the environmental consequences of the action at issue.²⁶

acres.”).

²² *Sabal Trail*, 867 F.3d at 1374.

²³ 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.”).

²⁴ 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.”).

²⁵ *Robertson*, 490 U.S. at 351

²⁶ *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

10. Instead, the Commission insists that it need not assess the significance of the Project's GHG emissions because it lacks an "accepted methodology" to determine "whether a particular quantity of greenhouse gas emissions poses a significant impact on the environment, whether directly or cumulatively with other sources, and how that impact would contribute to climate change."²⁷ 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.²⁸

11. 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

"would not . . . significantly affect[] the quality of the human environment." EA at 70. 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.").

²⁷ *See* Certificate Order, 170 FERC ¶ 61,200 at P 28 (citing *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128 at P 67).

²⁸ *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).

12. example, the Commission’s findings that the Project will not have a significant effect on issues of “soils”²⁹ and “surface waters.”³⁰ Notwithstanding the lack of any “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.³¹

13. That refusal is even more mystifying because NEPA “does not dictate particular decisional outcomes.”³² NEPA “merely prohibits uninformed—rather than unwise—agency action.”³³ 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.

14. Even if the Commission were to determine that a project’s downstream 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 cause potentially significant environmental impacts, the relevant environmental impact statement must “contain a detailed discussion of possible mitigation measures” to address adverse environmental impacts.³⁴ 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

²⁹ EA at 16.

³⁰ *Id.* at 21.

³¹ 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 surface resources and soils, but not climate change.

³² *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

³³ *Id.* (quoting *Robertson*, 490 U.S. at 351).

³⁴ *Robertson*, 490 U.S. at 351.

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.³⁵ 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,³⁶ which could encompass measures to mitigate a project’s GHG emissions.

15. The refusal to engage in any analysis regarding either significance or 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 SECI’s new natural gas plant, this plant will replace SECI’s existing coal plant in Putnam County, Florida. As a consequence, the Project’s indirect downstream emissions of 3.26 million tons of GHGs, however significant they may be, are likely to be far outweighed by the reduction in GHG emissions from the retiring coal plant.³⁷ 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.³⁸ The Commission, however, completely ignores this potential benefit of the Project. That refusal to even analyze the climate change *benefits* of a proposed pipeline only

³⁵ *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).

³⁶ 15 U.S.C. § 717f(e); Certificate Order, 170 FERC ¶ 61,200 at P 35 (“[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 . . .”).

³⁷ The GHG emissions at the retiring Seminole coal plant during 2018 were 7.19 million metric tons of carbon dioxide. *See* U.S. Energy Info. Admin., *Emissions by plant and region* (Oct. 22, 2019) [https://www.eia.gov/electricity/data/emissions/ \(providing data regarding plant-level GHG emissions\)](https://www.eia.gov/electricity/data/emissions/(providing%20data%20regarding%20plant-level%20GHG%20emissions)). The Commission recognizes that “[o]nce operational, the [new natural gas plant] facility is designed to offset existing emissions by removing a Seminole coal unit from service.” EA at 2.

³⁸ *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)).

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.

* * *

16. 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

Florida Gas Transmission Company, LLC

Docket No. CP19-474-000

(Issued March 19, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Florida Gas Transmission Company, LLC (Florida Gas) a certificate to construct and operate its proposed Putnam Expansion Project (Project) to provide 169,000 dekatherms per day of firm transportation service to supply natural gas to Seminole Electric Cooperative, Inc.'s (Seminole Electric) existing generating station near Palatka, 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 Florida Gas' existing customers or competitor pipelines and their captive customers, and that Florida Gas 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 Seminole Electric's existing generating 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 Seminole Electric's existing generating

¹ 170 FERC ¶ 61,200 (2020).

² *Id.* PP 12-15.

³ *Id.* P 32.

⁴ *Id.* PP 27-28.

⁵ 867 F.3d 1357 (D.C. Cir. 2017).

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 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

⁶ *Florida Gas Transmission Co. LLC*, 170 FERC ¶ 61,200 at P 27.

⁷ *Id.* P 28.

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.

of 1978,¹² the Natural Gas Wellhead Decontrol Act of 1989,¹³ and the Energy Policy Act 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

¹² *Id.* P 36.

¹³ *Id.* PP 37-38.

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.