

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Eastern Transmission, LP

Docket No. CP19-512-000

ORDER ISSUING CERTIFICATE

(Issued June 18, 2020)

1. On September 26, 2019, Texas Eastern Transmission, LP (Texas Eastern) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission regulations² requesting authorization to construct and operate its Cameron Extension Project located in Beauregard, Cameron, and Jefferson Davis Parishes, Louisiana. The project is designed to provide 750,000 dekatherms per day (Dth/d) of firm transportation service from points on Texas Eastern's system to a proposed interconnection with the authorized TransCameron Pipeline, LLC (TransCameron) to supply an authorized liquified natural gas (LNG) terminal in Cameron Parish, Louisiana. Texas Eastern also seeks approval to establish and charge initial incremental recourse reservation and usage charges under its existing Rate Schedule FT-1 and an incremental fuel percentage for the new firm service.

2. As discussed below, we grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Texas Eastern, a limited partnership organized under the State of Delaware, 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. Texas Eastern's pipeline system extends from Texas, Louisiana and offshore Gulf of Mexico area, through the states of Mississippi, Arkansas, Missouri, Tennessee, Illinois, Indiana, Kentucky, Ohio,

¹ 15 U.S.C § 717f(c) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6).

Pennsylvania, and New Jersey to its principal terminus in the New York City metropolitan area.

4. Texas Eastern states that the project is designed to reverse natural gas flow on a portion of its Line 41⁴ to provide an additional 750,000 Dth/d of firm transportation service to the authorized Venture Global Calcasieu Pass, LLC's (Venture Calcasieu Pass) LNG Export Terminal⁵ in Cameron Parish, Louisiana via TransCameron's pipeline. Specifically, Texas Eastern proposes to construct and operate the following facilities in Louisiana:

- the East Calcasieu Compressor Station, comprising a single 30,000 ISO-rated horsepower natural gas-driven turbine compressor unit and related appurtenances in Calcasieu Parish;
- 0.2-mile-long, 30-inch-diameter interconnecting pipeline extending from Texas Eastern's Line 41 at milepost 49.43 to a new interconnect with TransCameron in Cameron Parish, and a delivery Metering and Regulation (M&R) station and related facilities at the new interconnect with TransCameron in Cameron Parish;
- a receipt M&R station and related facilities at a new interconnect with Momentum Midstream, LLC's to-be-constructed natural gas gathering pipeline (Momentum Midstream) in Beauregard Parish;
- a bi-directional M&R station and related facilities at a new interconnect with Trunkline Gas Company, LLC (Trunkline) in Jefferson Davis Parish; and
- installation of other related auxiliary facilities and appurtenances.

5. As part of the project, Texas Eastern also proposes to perform the following activities related to its existing facilities in Louisiana:

- install equipment, including filter separator and regulator, at the existing Gillis Compressor Station, located on Line 41 at milepost 0.02 in Beauregard Parish to maintain gas quality and accommodate the reverse flow of natural gas; and

⁴ Texas Eastern's Line 41 is a mainline supply lateral that extends from its major mainline in southern Louisiana to offshore Gulf of Mexico.

⁵ *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144 (2019).

- modify pipeline inspection tool launcher and receiver facilities at three existing sites, including installation of bypass facilities at two of those sites along Texas Eastern's Line 41, in Cameron, Beauregard, and Jefferson Davis Parishes.

6. Texas Eastern held a binding open season from November 27 to December 14, 2018. As a result of the open season, Texas Eastern entered into a 20-year binding precedent agreement with Venture Calcasieu Pass for 100% of the service to be made available by the project.

7. Texas Eastern estimates the project will cost \$149 million. The company proposes to establish initial incremental recourse reservation and usage charges for firm transportation service using the capacity provided by the project facilities under its existing Rate Schedule FT-1 and an incremental fuel retainage percentage that will apply to service provided by the project facilities. Venture Calcasieu Pass has elected to pay a negotiated reservation charge.

II. Public Notice, Interventions, and Comments

8. Notice of Texas Eastern's application was issued on October 9, 2019, and published in the *Federal Register* on October 16, 2019.⁶ The notice established October 30, 2019, as the deadline for filing comments and interventions. NJR Energy Services Company; New Jersey Natural Gas Company; PSEG Energy Resources & Trade LLC; Municipal Defense Group; National Grid Gas Delivery Companies; Duke Energy Indiana, LLC; Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.; Piedmont Natural Gas Company, Inc.; Atmos Energy Corporation; Philadelphia Gas Works; Venture Calcasieu Pass; and Range Resources-Appalachia LLC filed timely, unopposed motions to intervene.⁷

⁶ 84 Fed. Reg. 55,311 (Oct. 16, 2019).

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1) (2019).

III. Discussion

9. Because the proposed facilities will be used to transport natural gas in interstate commerce, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁸

A. Certificate Policy Statement

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

11. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or 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.

12. Texas Eastern's proposal satisfies the threshold requirement that it financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that where a pipeline proposes to charge

⁸ 15 U.S.C. § 717f(c), (e).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

incremental rates for expansion services that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁰ Texas Eastern is proposing initial recourse rates and incremental fuel charges to recover all costs associated with the project. These proposed charges are higher than its applicable system-wide rates. Furthermore, the project capacity is fully subscribed. Accordingly, we find that the project has met the threshold no-subsidy requirement of the Certificate Policy Statement.

13. In addition, we find that the Cameron Extension Project will have no adverse effect on service to Texas Eastern's existing customers because the project is designed to provide the new service while maintaining existing service. Further, the project is not intended to replace existing transportation service on other pipelines. No pipelines or their captive customers have protested Texas Eastern's proposal. Consequently, we find that there will be no adverse impacts on existing customers and other pipelines or their captive customers.

14. We are further satisfied that Texas Eastern has taken the appropriate steps to minimize adverse impacts to landowners. Texas Eastern proposes to construct the project using previously disturbed property to the extent practicable, thereby limiting new disturbances to affected landowners. Texas Eastern states that it has or expects to obtain voluntary easements or permits as necessary from the affected landowners. Furthermore, no landowner has protested the proposal.

15. The proposed Cameron Extension Project will enable Texas Eastern to provide an additional 750,000 Dth/d of firm transportation service for Venture Calcasieu Pass, which has signed a long-term (20-year) precedent agreement for all of the project capacity. Accordingly, we find that Texas Eastern has demonstrated a need for the Cameron Extension 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 discuss the environmental impacts of the project below.¹¹

¹⁰ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 22 (2017).

¹¹ 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

16. Texas Eastern proposes to charge an initial incremental monthly firm recourse reservation charge of \$3.3850 per Dth under its existing Rate Schedule FT-1 for Zone WLA. The incremental recourse reservation charge is based on the fixed-cost portion of the first-year cost of service (\$30,469,420) and an annual project design capacity of 9,000,000 Dth. Texas Eastern proposes to charge a usage charge of \$0.0022 per Dth based on the variable-cost portion of the first-year cost of service (\$416,066) and billing determinants of 191,625,000 Dth based, on a 70% load factor. Texas Eastern's proposed charges reflect an onshore transmission depreciation rate of 2.36% and a negative salvage rate of 0.77%, as well as other cost of service factors, all as proposed in its NGA section 4 rate case filing in Docket No. RP19-343-000 (Rate Case filing). Texas Eastern states that it will use its applicable mainline system interruptible transportation rate for any interruptible service rendered on additional mainline capacity made available by the project.

17. On October 28, 2019, Texas Eastern filed an offer of settlement of its rate case in Docket No. RP19-343-000, et al., which the Commission approved on February 25, 2020.¹² The settlement establishes a depreciation rate of 1.92% for onshore transmission and an onshore negative salvage rate of 0.30%. In addition, the settlement states that after its effective date,¹³ Texas Eastern shall apply a 12.75% return on equity component in the calculation of rates for new incremental expansion projects. Consistent with the settlement, when Texas Eastern files tariff records to place its incremental rates into effect, those revised incremental rates must reflect the depreciation rates and rate of return based on the return on equity for new incremental expansion projects agreed to in the settlement.

18. 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.¹⁴ In its February 19, 2020 response to staff's data request, Texas Eastern calculated a revised monthly incremental recourse reservation charge of \$3.046 per Dth, based on the cost-of-service components in the

¹² *Texas Eastern Transmission, LP*, 170 FERC ¶ 61,152 (2020) (Order Approving Uncontested Rate Settlement).

¹³ Article II Section 3.2 of the settlement provides that the Settlement becomes effective retroactively to June 1, 2019.

¹⁴ Certificate Policy Statement, 88 FERC at 61,746.

Settlement.¹⁵ The revised incremental daily recourse reservation charge of \$0.1001 per Dth is higher than Texas Eastern's settlement system rate of \$0.0948 per Dth, while the incremental usage charge of \$0.0022 per Dth is lower than Texas Eastern's filed settlement rate of \$0.0116 per Dth.¹⁶ The Commission has previously allowed incremental usage charges below the system rate when the project's overall rate (reservation plus usage) is greater than the system rate.¹⁷ However, here, Texas Eastern's overall incremental daily rate of \$0.1023 per Dth¹⁸ is lower than Texas Eastern's stated overall system daily rate of \$0.1064 per Dth for Zone WLA. Therefore, while we will approve Texas Eastern's incremental reservation charge, as modified above, we will require Texas Eastern to use its system usage charge as the recourse usage charge for project service in order to prevent any subsidization by existing shippers.

Fuel

19. Texas Eastern proposes to charge an incremental Applicable Shrinkage Adjustment (ASA) percentage of 0.6% to recover fuel use and lost and unaccounted for gas associated with providing service on the project. Texas Eastern provided a fuel study supporting the proposed ASA percentage. Texas Eastern states it will track changes in fuel use for project service on an incremental basis through its ASA mechanism set forth in section 15.6 of the General Terms and Conditions of its tariff. We approve Texas Eastern's proposal to charge an incremental ASA percentage of 0.6% for service using project capacity.

Negotiated Rates

20. Texas Eastern proposes to provide service to Venture Calcasieu Pass under a negotiated rate agreement. Texas Eastern must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the

¹⁵ See Feb. 19, 2020 Data Response; *see also id.* (noting that the incremental usage charge is not changed by the settlement).

¹⁶ Texas Eastern Transmission, LP, FERC NGA Gas Tariff, Texas Eastern Database 1, 2, Rate Schedule FT-1, 82.0.0, effective April 1, 2020.

¹⁷ See *Texas Eastern Transmission, LP*, 161 FERC ¶ 61,226 (2017).

¹⁸ \$0.1001 per Dth for the reservation charge plus \$0.0022 per Dth for the usage charge results in an overall illustrative incremental rate of \$0.1023 per Dth.

project, in accordance with the Alternative Rate Policy Statement¹⁹ and the Commission's negotiated rate policies.²⁰ Texas Eastern must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.²¹

Reporting Incremental Costs

21. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged.²² The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.²³ Therefore, Texas Eastern must keep separate books and accounting of costs and revenues attributable to the project as required by section 154.309. 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. 710.²⁴

C. Environmental Analysis

22. On November 8, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Cameron Extension Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register on November 15, 2019, and mailed to interested parties including affected

¹⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

²⁰ *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, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²¹ 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.

²² 18 C.F.R. § 154.309 (2019).

²³ *Id.*

²⁴ *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

landowners; federal, state, and local government agencies; elected officials; Native American tribes; and local libraries and newspapers.²⁵

23. In response to the NOI, the Commission received comments from the Choctaw Nation of Oklahoma and the Louisiana Department of Wildlife and Fisheries. The Choctaw Nation of Oklahoma requested a copy of the Environmental Analysis (EA) once completed, cultural resources survey, and GIS shapefiles. On December 10, 2019, Texas Eastern filed with the Commission copies of its correspondence with the Choctaw Nation of Oklahoma, which included both the cultural resources survey and the GIS shapefiles the Choctaw Nation requested in their pre-filing correspondence on September 19, 2019.²⁶ The Louisiana Department of Wildlife and Fisheries' comment stated its willingness to participate in our environmental review process to minimize to the greatest extent practicable project impacts on wetlands and other fish and wildlife resources.

24. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an EA for Texas Eastern'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, socioeconomics, cumulative impacts, and alternatives. All substantive environmental comments received in response to the NOI were addressed in the EA.²⁷ The EA was placed into the record on April 16, 2020, and is available for public viewing under the project docket number on e-library and under the Environmental Documents tab within the Commission's website. Commission staff also e-mailed instructions on how to access the EA to the Choctaw Nation of Oklahoma.

25. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operation of the project to be 127,070 tons per year of carbon dioxide equivalent (CO₂e).²⁸ 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).²⁹ The operational emissions of the project could potentially increase national

²⁵ 84 Fed. Reg. 62,519 (Nov. 15, 2019).

²⁶ See Dec. 10, 2019 Data Response at attach. G.

²⁷ EA at 4.

²⁸ EA at 63 (Tables 12, 13).

²⁹ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2017* at ES6-8 (Table ES-2) (2019),

CO₂e emissions by 0.002%, based on the 2017 levels.³⁰ Currently, there are no national targets to use as a benchmark for comparison.³¹

26. GHG emissions, such as those emitted from the project's operation, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Gulf Coast and Southeast regions of the United States.³² However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts on the environment caused by GHG emissions.³³ We have also previously concluded the Commission cannot determine whether an individual project's contribution to climate change would be significant.³⁴ That situation has not changed.

27. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Texas Eastern's application and supplements, including the 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.

<https://www.epa.gov/sites/production/files/2019-04/documents/us-ghg-inventory-2019-main-text.pdf> (accessed April, 2020).

³⁰ We note that this calculation does not include the total estimated construction-related emissions of 12,000 tons per year of CO₂e, as such emissions are temporary and would occur only during construction of the project. *See* EA at 62 (Table 11).

³¹ 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.

³² *See, e.g., Gulf South Pipeline Company, LP, Willis Lateral Project Environmental Assessment at 73, Docket No. CP18-525-000 (March 2019) (detailing the environmental impacts attributed to climate change in the Gulf Coast and Southeast region from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).*

³³ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

³⁴ *Id.*

D. Conclusion

28. 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 Texas Eastern's Cameron Expansion Project, subject to the conditions in this order.

29. 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.

30. 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.³⁵

31. At a hearing held on June 18, 2020, 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,

³⁵ 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).

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Texas Eastern to construct and operate the proposed Cameron Extension 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.

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

- (1) Texas Eastern's completion of construction of the authorized 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) Texas Eastern's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Texas Eastern's compliance with the environmental conditions listed in the appendix to this order.

(C) Texas Eastern shall file a written statement affirming that it has executed a firm contract for the capacity levels and terms of service represented in the signed precedent agreement, prior to commencing construction.

(D) Texas Eastern's proposed incremental reservation charge, as revised, and system usage charge are approved as initial recourse rates for the project.

(E) Texas Eastern's proposed incremental fuel charge for the project is approved.

(F) Texas Eastern shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

(G) Texas Eastern shall file actual tariff records setting forth the initial rates for service at least 30 days prior to the date the facilities go into service.

(H) Texas Eastern shall notify the Commission's environmental staff by telephone and/or e-mail of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies Texas Eastern. Texas Eastern 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

1. Texas Eastern Transmission, L.P. (Texas Eastern) 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. Texas Eastern 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), or the Director's designee **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**, Texas Eastern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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 project plot plans. **As soon as they are available, and before the start of construction**, Texas Eastern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of

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

Texas Eastern'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. Texas Eastern's right of eminent domain granted under the Natural Gas Act section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

Director's designee. Texas Eastern must file revisions to the plan as schedules change. The plan shall identify:

- a. how Texas Eastern 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 Texas Eastern 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 per facility, 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 Texas Eastern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Texas Eastern's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Texas Eastern 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. Texas Eastern 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, Texas Eastern 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 will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Texas Eastern'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 Texas Eastern from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Eastern's response.
9. Texas Eastern must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any project facilities**. To obtain such authorization, Texas Eastern must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Texas Eastern must receive written authorization from the Director of OEP, or the Director's designee, **before placing the project into service**. Such authorization will 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**, Texas Eastern 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 Texas Eastern 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. Texas Eastern shall **not begin** construction of the project **until** it files with the Secretary a copy of the determination of consistency with the Coastal Management Plan issued by the Louisiana Department of Natural Resources, Office of Coastal Management.
13. **Prior to construction activities in 2021**, Texas Eastern shall file with the Secretary a renewed Louisiana State Historic Preservation Office Categorical Exclusion Agreement for 2021.
14. Texas Eastern shall file noise surveys with the Secretary **no later than 60 days** after placing the East Calcasieu Compressor Station into service. If a full power load condition noise survey is not possible, Texas Eastern shall file an interim survey at the maximum possible power load **within 60 days** of placing the station into service and file the full power load survey **within 6 months**. If the noise from all the equipment operated at the station under interim or full power load conditions exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive area (NSA), Texas Eastern shall:
 - a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
 - b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
 - c. 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.
15. Texas Eastern shall file noise surveys with the Secretary **no later than 60 days** after placing the Momentum, Trunkline, and TransCameron M&R Stations into service. If the noise from the stations exceeds an L_{dn} of 55 dBA at any nearby NSA, Texas Eastern shall:

- a. file a report with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, on what changes are needed;
- b. install additional noise controls to meet that level **within 1 year** of the in-service date; and
- c. 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

Texas Eastern Transmission, LP

Docket No. CP19-512-000

(Issued June 18, 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 ignore 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 Texas Eastern Transmission, LP to construct a new compressor station and associated facilities (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts.³ 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.⁴ That failure forms an integral part of the Commission's decisionmaking: 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 *Texas Eastern Transmission, LP*, 171 FERC ¶ 61,227, at P 26 (2020) (Certificate Order).

⁴ Environmental Assessment at Tables 11 – 13 (EA).

⁵ Certificate Order, 171 FERC ¶ 61,227 at P 27; *see also* EA at 84.

⁶ Certificate Order, 171 FERC ¶ 61,227 at P 28.

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.

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

For the reasons discussed above, and those articulated previously,⁸ I respectfully dissent in part.

Richard Glick
Commissioner

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

⁸ See, e.g., *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,032 (2020) (Glick, Comm'r, dissenting in part); *Transcontinental Gas Pipe Line Co. LLC*, 171 FERC ¶ 61,031 (2020) (Glick, Comm'r, dissenting in part); *Columbia Gas Transmission, LLC*, 170 FERC ¶ 61,045 (2020) (Glick, Comm'r, dissenting in part).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Texas Eastern Transmission, LP

Docket No. CP19-512-000

(Issued June 18, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Texas Eastern Transmission, LP (Texas Eastern) a certificate of public convenience and necessity for authorization to construct and operate its Cameron Extension Project (Project) to provide 750,000 dekatherms per day of incremental firm transportation service to Venture Global Calcasieu Pass's liquefied natural gas export facility.¹ The Project will include the construction and operation of a new compressor station.

2. I fully support the order as it complies with the Commission's statutory responsibilities under the Natural Gas Act 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 Texas Eastern's existing customers or competitor pipelines and their captive customers, and that the Project will have minimal impacts on landowners and communities.² The order also finds that the Project will not significantly affect the quality of the human environment.³ Further, the Commission has quantified and considered the greenhouse gases (GHG) emitted by the construction and operation of the Project,⁴ consistent with the holding in *Sierra Club v. FERC (Sabal Trail)*.⁵

3. I write separately to respond to my colleague's argument that the Commission should have determined whether the GHG emissions related to the Project are "significant." In my concurrence in *Transcontinental Gas Pipe Line Company, LLC (Transco)*, I explain that the Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborate on why the Social Cost of

¹ *Texas Eastern Transmission, LP*, 171 FERC ¶ 61,227 (2020).

² *Id.* PP 12-15.

³ *Id.* P 27.

⁴ *Id.* PP 25-26; Environmental Assessment at 61-63.

⁵ 867 F.3d 1357 (D.C. Cir. 2017).

Carbon is not a useful tool for determining whether GHG emissions are significant, and explain that the Commission has no authority or reasoned basis to establish its own framework.⁶

4. For logistical reasons and administrative efficiency, I hereby incorporate my analysis in *Transco* by reference and am not reprinting the full text of my analysis here.⁷

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

Bernard L. McNamee
Commissioner

⁶ *Transco* 171 FERC ¶ 61,032 (2020) (McNamee, Comm’r, concurring at PP 63-74)

⁷ *Id.* PP 53-74.