

171 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gulf South Pipeline Company, LLC

Docket No. CP19-517-000

ORDER ISSUING CERTIFICATE

(Issued June 18, 2020)

1. On September 30, 2019, Gulf South Pipeline Company, LLC (Gulf South) filed an application under sections 7(c) and 7(e) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity to construct and operate approximately three miles of 20-inch-diameter pipeline lateral, a compressor station, a delivery meter station, and other auxiliary facilities, located in Lamar and Forrest Counties, Mississippi (Lamar County Expansion Project). The project is designed to provide up to 200,000 dekatherms per day (Dth/d) of firm transportation service to Cooperative Energy's (Cooperative) Morrow Power Station, Moselle Power Plant, and Benndale Power Plant, all located in Mississippi.
2. For the reasons discussed in this order, the Commission grants the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Gulf South, a Delaware limited partnership, 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. Gulf South's 7,200-mile pipeline system extends from south and east Texas through Louisiana, Mississippi, southern Alabama, and western Florida.
4. Gulf South proposes to construct and operate the proposed project to provide 200,000 Dth/d of firm transportation service on a new lateral to Cooperative's new

¹ 15 U.S.C. §§ 717f(c), (e) (2018).

² 18 C.F.R. pt. 157 (2019).

³ 15 U.S.C. § 717a(6).

Morrow Power Station,⁴ and to expand and enable bi-directional flow on its Index 299 system (Legacy System) to provide service to the existing Moselle Power Plant and Bennedale Power Plant. Specifically, Gulf South proposes to:

- *Legacy System*—construct and operate the new Black Creek Compressor Station on Gulf South’s existing Index 299 system consisting of two 2,500 horsepower gas-fired, reciprocating compressor units, as well as associated auxiliary buildings and facilities located in Forrest County;⁵ and
- *Lamar County Lateral*—construct and operate 3.4 miles of 20-inch-diameter pipeline lateral extending from the proposed Black Creek Compressor Station on Gulf South’s existing Index 299 system to Cooperative’s Morrow Power Station site in Lamar County; and construct and operate a new delivery meter station for the Morrow Power Station and associated auxiliary, appurtenant facilities located in Lamar County.

Gulf South estimates that the Lamar County Expansion Project will cost \$54.6 million.

5. Gulf South also requests to refunctionalize for rate purposes, from storage to transmission, the Hattiesburg 20-inch-diameter pipeline (Hattiesburg pipeline), currently designated as part of Gulf South’s Petal Storage Complex.⁶ The Hattiesburg pipeline is connected to Gulf South’s Index MS100-001 on the east and the Petal Storage Complex on the west, and it also interconnects with Index 299. Gulf South explains that the Hattiesburg pipeline has not been used to provide storage services for the past five years and that dedicating it to non-storage services will allow Gulf South to increase reliability and operational flexibility of those other services.

6. Gulf South conducted a binding open season for the Lamar County Expansion Project from May 20 through May 24, 2019. Cooperative submitted a conforming

⁴ Gulf South explains that Cooperative operates the existing Morrow coal-fired power plant in Lamar County, Mississippi, and is replacing its old coal-fired units with combined cycle gas turbines and new emissions control technology to lower emissions. Gulf South September 30, 2019 Application at 2 (Application).

⁵ Gulf South states that the construction of the Black Creek Compressor Station will increase operating pressure on its existing Index 299 system and allow for bi-directional operation, which has operated on a south-to-north flow basis. Application at 7-8.

⁶ The Petal Storage Complex is located on the Petal Salt Dome in Forrest County, Mississippi. Gulf South acquired the Petal Storage Complex in an inter-corporate merger in 2014. *Gulf South Pipeline Co., LP*, 149 FERC ¶ 61,174 (2014).

binding bid for the full capacity of the project⁷ and there were no other bids. Gulf South executed a precedent agreement with Cooperative for 200,000 Dth/d of firm transportation service for a primary term of 20 years. Gulf South states that Cooperative will execute two service agreements: (1) under existing Rate Schedule Firm Transportation Service (FTS), for firm transportation service from the Perryville Transportation Point (120,000 Dth/d) and the Petal Storage Complex (80,000 Dth/d), for delivery to the Lamar County Lateral at the Black Creek Compressor Station and to Cooperative's existing Benndale and Moselle Power Plants; and (2) under Rate Schedule Firm Lateral Service (FLS), for firm transportation service from the Lamar County Lateral to Cooperative's Morrow Power Station. Each service agreement will be for a term of 20 years at discounted rates.

7. Gulf South requests authority to establish initial incremental recourse rates under Rate Schedules FLS and Interruptible Lateral Service (ILS)⁸ for service on the new Lamar County Lateral facilities and to charge its existing system-wide rates as the initial recourse rates for service reliant on the mainline facilities to be constructed on the Legacy System facilities. Gulf South also requests a predetermination that rolled-in rate treatment would be appropriate for the project costs associated with its Legacy System facilities.

II. Notice, Interventions, and Comments

8. Notice of Gulf South's application was published in the *Federal Register* on October 21, 2019.⁹ The notice established November 5, 2019, as the deadline for filing comments and interventions. Cooperative Energy, Atmos Energy Corporation, Trans

⁷ The 200,000 Dth/d of firm transportation service is the proposed daily design, but Gulf South also notes that at maximum design flow, the project facilities will create 16,200 Dth/d of unsubscribed transportation service from south-to-north on Gulf South's mainline Index 299 from Baxterville Junction to the Petal Storage Complex. Gulf South states that such unsubscribed transportation service will be sold in accordance with Gulf South's FERC Gas Tariff.

⁸ On October 3, 2019, the Commission issued an order accepting Gulf South's application to establish new Rate Schedules FLS and ILS. *Gulf South Pipeline Co., LP*, 169 FERC ¶ 61,007 (2019).

⁹ 84 Fed. Reg. 56,188 (October 21, 2019).

Louisiana Gas Pipeline, Inc., and United Municipal Distributors Group filed timely, unopposed motions to intervene.¹⁰ No protests or comments were filed.

9. On November 20, 2019, Spire Mississippi, Inc. filed a late motion to intervene, which was denied by Secretary's notice on December 6, 2019.

III. Discussion

10. Gulf South's proposal to construct and operate facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹¹

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹² 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.

12. 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, and landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts

¹⁰ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. *See* 18 C.F.R. § 385.214(c) (2019).

¹¹ 15 U.S.C. §§ 717f(c), (e).

¹² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

13. Gulf South's proposal satisfies the threshold requirement that it can financially support the project without relying on subsidization from its existing customers. As discussed below, we will approve Gulf South's proposal to use its existing system rates as the initial recourse rates for incremental transportation on the Legacy System because those rates exceed illustrative incremental rates calculated to recover the costs of the facilities being constructed to provide that service. Thus, the new service on the Legacy System will not be subsidized by existing shippers. Further, with respect to service on the Lamar County Lateral, the Commission has determined, in general, that when a pipeline proposes an incremental rate for service that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing customers. Gulf South has proposed to charge incremental rates under new Rate Schedules FLS and ILS that are designed to fully recover the costs of the lateral. Only shippers using the lateral will pay for the costs of the facilities. Therefore, we find that Gulf South's existing customers will not subsidize the Lamar County Expansion Project's costs and that the threshold no-subsidy requirement is met.

14. We find that the proposed project will have no adverse effect on service to Gulf South's existing customers because the proposed expansion facilities are designed to provide incremental service to meet the needs of the project shipper, while maintaining service to Gulf South's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers as the project is designed to meet the natural gas supply needs of Cooperative. Further, no other pipelines or their captive customers filed adverse comments regarding Gulf South's proposal. Thus, we conclude that Gulf South's proposed project will not adversely affect its existing customers or other pipelines and their captive customers.

15. We also find that Gulf South has routed and designed the proposed project to have minimal adverse impacts on landowners and communities. While the construction activities will temporarily affect 139.03 acres of land, Gulf South will permanently maintain only approximately 40.81 acres of land for operation of the project facilities. The proposed 3.4-mile-long lateral and new compressor station will be located on the properties of three landowners: Cooperative, a railroad company, and a private landowner. Gulf South has executed an easement agreement with Cooperative and is working with the other two landowners to execute easement and purchase agreements.

16. The proposed project will enable Gulf South to provide 200,000 Dth/d of firm transportation service for Cooperative, which will use the expanded service to primarily meet the gas requirements of the new Morrow Power Station that Cooperative is constructing in Lamar County, Mississippi. Accordingly, we find that Gulf South has demonstrated a need for the project, and that the project will not have adverse economic effects on existing shippers, other pipelines and their captive customers, and that the project's benefits outweigh any adverse economic effects on 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.¹³

B. Refunctionalization of Hattiesburg Pipeline

17. Commission staff also examined Gulf South's request to refunctionalize the Hattiesburg pipeline from storage to transmission. In order to refunctionalize the pipeline for rate purposes, Gulf South must demonstrate that the pipeline is no longer necessary for its certificated function.¹⁴ Gulf South states that the Hattiesburg pipeline has not been used to support its storage operations for over five years and that refunctionalizing it to transmission will increase transportation access from Gulf South's system in north central Mississippi to Index 299, which could be utilized by Cooperative.¹⁵ Additionally, there will be no ground disturbing associated with the refunctionalization. Therefore, we approve Gulf South's request to refunctionalize the Hattiesburg pipeline from storage to transmission.¹⁶

¹³ 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).

¹⁴ See *Equitrans, L.P.*, 109 FERC ¶ 61,209, at P 76 (2004); *Equitrans, L.P.*, 80 FERC ¶ 61,144, at 61,562 (1997).

¹⁵ See *supra* at P 5.

¹⁶ There will be no rate consequences for refunctionalizing the Hattiesburg pipeline until a future NGA section 4 general rate case.

C. Rates**1. Legacy System****a. Initial Recourse Rates**

18. Gulf South proposes to charge its existing system recourse rates under Rate Schedule FTS and Rate Schedule ITS as the initial rates for transportation service on the Legacy System portion of the project. Gulf South calculated an illustrative stand-alone Rate Schedule FTS reservation charge of \$0.0844 per Dth/d for firm transportation service on the Legacy System portion of the project based on the project's design capacity of 200,000 Dth/d,¹⁷ annual design throughput of 73,000,000 Dth, and a first-year cost of service of \$6,163,853. Gulf South's proposed cost of service reflects a 2.18% depreciation rate and a 10.41% overall rate of return.¹⁸ Gulf South also calculated an illustrative Rate Schedule FTS usage charge of \$0.0008 per Dth.

19. Gulf South's illustrative Rate Schedule FTS reservation charge of \$0.0844 per Dth/d and usage charge of \$0.0008 Dth are lower than its system Rate Schedule FTS reservation charge of \$0.3380 per Dth/d and usage charge of \$0.0125 per Dth. We have reviewed Gulf South's proposed cost of service, allocation, and rate design used to develop the illustrative incremental rates and find that they reasonably reflect current Commission policy. Because the illustrative recourse rate is below the currently effective system Rate Schedule FTS recourse rate, we approve Gulf South's proposal to utilize its existing Rate Schedule FTS system recourse reservation and usage charges as initial recourse rates for transportation service on the Legacy System portion of the project. We also approve the use of Gulf South's system Rate Schedule ITS rate for interruptible transportation on the Legacy System portion of the project.

b. Fuel

20. Gulf South proposes to use its existing system-wide fuel rate for service on the Legacy System and requests a predetermination that it would be appropriate to roll the fuel gas costs and lost and unaccounted for gas (LAUF) costs associated with providing transportation on the Legacy System portion of the project into its Legacy System's fuel recovery percentage. In support of its proposal, Gulf South provided a fuel comparison

¹⁷ See *supra* note 7.

¹⁸ Application, Exhibit N - Legacy Facilities. According to Gulf South, it utilized its last stated capitalization (including capital structure and returns on equity and debt) from the settlement in Docket No. RP97-373-012. *Koch Gateway Pipeline Co.*, 84 FERC ¶ 61,143 (1998). Gulf South uses a depreciation rate of 2.18% established in its most recent settlement. *Gulf South Pipeline Co., LP*, 153 FERC ¶ 61,326, at P 6 (2015).

study¹⁹ utilizing data from its most recent fuel tracker filing, in Docket No. RP19-224-000, that shows its projected fuel retention percentage would decrease from 1.43% to 1.41% after the project is placed in service.²⁰ We find Gulf South's proposal to use its system-wide fuel rate is appropriate for service on the Legacy System portion of the project and grant the requested predetermination that rolling the fuel costs for the Legacy System portion of the project into the Legacy System's fuel recovery mechanism will be appropriate, absent a significant change in circumstances.

c. Predetermination of Rolled-in Rate Treatment

21. As noted above, Gulf South also requests a predetermination that it may roll the project's Legacy System costs into its system-wide rates in a future NGA section 4 general rate proceeding. To receive a predetermination favoring rolled-in rate treatment, a pipeline must demonstrate that rolling the costs associated with the construction and operation of new facilities into its system rates 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 costs of the project. For purposes of making a determination in a certificate proceeding as to whether it would be appropriate to roll the costs of a project into the pipeline's system rates in a future NGA section 4 proceeding, we compare the cost of the project to the revenues generated using actual contract volumes and either the maximum recourse rate or, if a rate lower than the recourse rate is to be charged, the actual rate.²¹

22. In support of its request, Gulf South calculated its revenues using a discounted rate, which is lower than the maximum recourse rate. According to Exhibit N, Gulf South estimates that it will receive \$11,953,750 in revenues in the first-year of the project's Legacy System transportation service, which exceeds Gulf South's estimated first-year cost of service of \$6,364,143.²² Therefore, we grant Gulf South's request for a predetermination favoring rolled-in rate treatment in a future NGA section 4 general rate case, absent a significant change in circumstances.

¹⁹ Application at 15.

²⁰ Gulf South submitted new fuel retention percentages of 1.45% on November 1, 2019 in Docket No. RP20-188-000. The Commission approved the new rates on November 21, 2019. *Gulf South Pipeline Co., LP*, Docket No. RP20-188-000 (November 21, 2019) (delegated order).

²¹ See, e.g., *Natural Gas Pipeline Co. of America, LLC*, 154 FERC ¶ 61,220, at P 25 (2016).

²² Application, Exhibit N- Legacy Facilities at 2 & 7.

d. Reporting Incremental Costs

23. We require Gulf South to keep separate books and accounting of costs and revenues attributable to all Legacy System capacity created by the project in the same manner as required by section 154.309 of the Commission's regulations.²³ The books should be maintained with applicable cross-references and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.²⁴

2. Lamar County Lateral

a. Initial Recourse Rates

24. Gulf South proposes to establish initial incremental recourse rates under Rate Schedules FLS and ILS (Interruptible Lateral Service) for transportation on the Lamar County Lateral. Gulf South states that the proposed recourse rates are based solely on the lateral facilities' cost of service. Gulf South further states that the Lamar County Lateral will provide deliveries solely to the Morrow Power Station, that the new delivery meter to be sited at the Morrow Power Station will be the only delivery point located on the lateral, and that Cooperative will be the sole firm shipper utilizing the lateral.

25. Gulf South proposes an initial incremental reservation charge of \$0.0404 per Dth/d for firm transportation service on the Lamar County Lateral portion of the project based on the design capacity of 200,000 Dth/d, an annual design throughput of 73,000,000 Dth, and a first-year cost of service of \$2,951,829.²⁵ Gulf South's proposed cost of service reflects a 2.86% depreciation rate²⁶ and a 10.41% overall rate of return.²⁷ Gulf South

²³ 18 C.F.R. § 154.309 (2019).

²⁴ *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

²⁵ Gulf South proposed a total first-year demand cost of service of \$3,027,517. Gulf South also allocated \$75,688 to interruptible transportation resulting in a net cost of service of \$2,951,829. The rate of return is based upon Docket No. RP97-373-012. *Koch Gateway Pipeline Co.*, 84 FERC ¶ 61,143.

²⁶ On January 22, 2020, in response to a staff data request, Gulf South states that the proposed depreciation rate of 2.86% is based on the life of existing and modified facilities.

²⁷ Application, Exhibit N- Lamar County Customer Lateral at 4.

also proposes a Rate Schedule FLS usage charge of \$0.0000 per Dth²⁸ and an interruptible usage charge of \$0.0404 per Dth under Rate Schedule ILS for transportation service on the Lamar County Lateral.

26. We have reviewed Gulf South's proposed cost of service and initial incremental rates for the Lamar County Lateral and find they reasonably reflect current Commission policy. Therefore, we approve Gulf South's proposed Rate Schedule FLS and ILS initial incremental recourse rates.

b. Fuel

27. Gulf South's application does not address the collection of fuel or LAUF on the Lamar County Lateral. The Commission's policy is that pipelines are required to recover LAUF from shippers on a lateral, just as shippers on the existing system are assessed for LAUF on those facilities.²⁹ Gulf South is not required to use the system rate to recover LAUF on the lateral, but is directed to explain how it will determine the retention for LAUF on the Lamar County Lateral when it makes its first fuel tracker filing after the in-service date of the project.³⁰

c. Reporting Incremental Costs

28. We require Gulf South to keep separate books and accounting of costs and revenues attributable to the proposed lateral services and all Lamar County Lateral capacity created by the project as required by section 154.309 of the Commission's regulations.³¹ The books should be maintained with applicable cross-references and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³²

²⁸ Application, Exhibit P, *pro forma* Tariff Section 4.17.1.

²⁹ See *Texas Gas Transmission, LLC*, 154 FERC ¶ 61,032, at P 26 (2016); *Eastern Shore Natural Gas Co.*, 145 FERC ¶ 62,153, at 64,309 (2013); *Transcontinental Gas Pipe Line Co., LLC*, 130 FERC ¶ 61,019, at P 25 (2010); *Columbia Gas Transmission Corp.*, 100 FERC ¶ 61,240, at P 6 (2002) (*Columbia*).

³⁰ See *Columbia*, 100 FERC ¶ 61,240 at P 6.

³¹ 18 C.F.R. § 154.309.

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

d. Pro-Forma Tariff Records

29. Gulf South included in Exhibit P *pro forma* tariff records proposing initial rates under Rate Schedules FLS and ILS for transportation service on the proposed Lamar County Lateral. We approve the *pro forma* tariff records included in Exhibit P and direct Gulf South to file corresponding actual tariff records no earlier than 60 days and no later than 30 days prior to the in-service date of the facilities.³³

D. Environmental Analysis

30. On November 4, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Lamar County Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register*³⁴ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received one comment in response to the NOI, from the Choctaw Nation of Oklahoma, acknowledging that the proposed project is within its area of historic interest and requesting a copy of the Environmental Assessment (EA), cultural resources survey, and geographic information system (GIS) shapefiles.³⁵

31. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an EA for Gulf South'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. The EA was placed into the public record on February 18, 2020. In response to the comment from the Choctaw Nation, the EA notes that Gulf South responded on December 19, 2019, with the requested cultural resource survey reports and

³³ Gulf South is also required to file any service agreement containing nonconforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

³⁴ 84 Fed. Reg. 60,388 (November 8, 2019).

³⁵ Duplicate filings were received providing the same comment on December 11, 2019, December 19, 2019, and January 15, 2020.

associated GIS data.³⁶ Commission staff also provided the Choctaw Nation with a link to the EA.

32. On April 17, 2020, the Commission received one comment on the EA, from the Institute for Policy Integrity at New York University School of Law (Policy Integrity). Policy Integrity argues that the Commission fails to fulfill its legal obligations under NEPA by not disclosing the impacts and actual environmental effects of the project.³⁷ 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,”³⁸ but “[r]ather, the actual effects are the incremental climate impacts caused by those emissions, including property lost or damaged by sea-level rise, coastal storms, flooding, and other extreme weather events, and human health impacts including mortality from heat-related illnesses and changing disease vectors like malaria and dengue fever.”³⁹ Further, Policy Integrity argues that NEPA and the NGA require 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.⁴⁰

33. The EA estimates the maximum potential greenhouse gas (GHG) emissions from operation of the project to be 22,071 metric tons per year of carbon dioxide equivalent (CO₂e),⁴¹ and that the maximum potential downstream GHG emissions associated with the end use of the transported gas is 3.87 million metric tons per year.⁴² To provide context to the EA’s GHG estimate, 5.743 billion metric tons of CO₂e were emitted at a

³⁶ EA at 40.

³⁷ Policy Integrity April 17, 2020 Comment at 2.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 1.

⁴¹ EA at 60 (Table 24). This information includes the operational emissions associated with the Black Creek Compressor Station.

⁴² *Id.* at 76. The EA notes that this number is calculated from the proposed end-user customer for this project, Cooperative’s new 550-megawatt combined cycle gas turbine generating facility, and the metric tons per year of CO₂e from this end-user represents the upper bound of GHG emissions from the project because it assumes the total maximum capacity is transported 365 days per year.

national level in 2017 (inclusive of CO₂e sources and sinks).⁴³ The operational and downstream emissions of the project could potentially increase CO₂e emissions based on the 2017 levels by 0.07% at the national level.⁴⁴ Currently, there are no national targets to use as a benchmark for comparison.⁴⁵

34. GHG emissions, such as those emitted from the operation of the project, will contribute incrementally to climate change, and we have previously disclosed various effects of climate change on the Southeast region of the United States.⁴⁶ However, as the Commission has previously concluded, it cannot determine a project's incremental physical impacts (e.g., sea level rise) on the environment caused by GHG emissions.⁴⁷ We have also previously concluded that the Commission cannot determine whether an individual project's contribution to climate change would be significant.⁴⁸ That situation has not changed.

⁴³ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2017* at ES6-8 (Table ES-2) (2019), <https://www.epa.gov/sites/production/files/2019-04/documents/us-ghg-inventory-2019-main-text.pdf> (accessed November 2019).

⁴⁴ This calculation does not include the total estimated construction-related emissions of 1,476 metric tons per year of CO₂e, as such emissions are temporary and would occur only during construction of the project. See EA at 59 (Table 23).

⁴⁵ 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.

⁴⁶ See e.g., *Eagle LNG Partners Jacksonville, LLC*, Final Environmental Impact Statement for Jacksonville Project, Docket No. CP17-41-000, at 4-195 (April 12, 2019) (detailing the environmental impacts attributed to climate change in the Southeast region from U.S. Global Change Research Program's 2017 and 2018 Climate Science Special Report: Fourth National Climate Assessment).

⁴⁷ *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at PP 67-70 (2018) (LaFleur, Comm'r, *dissenting in part*; Glick, Comm'r, *dissenting in part*).

⁴⁸ *Id.* See generally *Transcontinental Gas Pipe Line Co., LLC (Transco)*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at PP 63-74) (explaining that the Commission has no standard for determining whether GHG emissions significantly affect the environment, elaborating on why the Social Cost of Carbon is not

35. The Commission has also 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:

- (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

a useful tool for determining whether GHG emissions are significant, and explaining that the Commission has no authority or reasoned basis to establish its own framework).

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); *350 Montana v. Bernhardt*, No. CV 19-12-M-DWM, 2020 WL 1139674, *6 (D. Mont. March 9, 2020) (upholding the agency's decision to not use the Social Cost of Carbon because it is too uncertain and indeterminate to be useful); *Citizens for a Healthy Cmty. v. U.S. Bureau of Land Mgmt.*, 377 F. Supp. 3d 1223, 1239-41 (D. Colo. 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. See generally *Transco*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm’r, concurring at n.142) (“The Social Cost of Carbon produces wide-ranging dollar values based upon a chosen discount rate, and the assumptions made. The Interagency Working Group on Social Cost of Greenhouse Gases estimated in 2016 that the Social Cost of one ton of carbon dioxide for the year 2020 ranged from \$12 to \$123.”).

- (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.⁵²

36. Policy Integrity also argues that the Commission violates NEPA by failing to contextualize the proposed project's emissions. Specifically, Policy Integrity claims that the EA's finding that the project would have "no significant cumulative impacts' on emission of greenhouse gases and other air pollutants" wrongly assumes that new transmission of fossil fuels will perfectly substitute for other supply with no effects on total demand or resulting emissions.⁵³ Policy Integrity also argues that the Commission should use "substitution analysis to determine what effects a project would have on supply and demand, and therefore on cumulative greenhouse gas emissions."⁵⁴ Policy Integrity then states that the Commission should apply the substitution analysis equally to the Commission's consideration of any economic benefits.⁵⁵

37. Contrary to Policy Integrity's assertion, the EA finds that "there would be no significant cumulative impacts on *air quality* when considering the combined effects of the Morrow Repower Project and operation of the proposed Project."⁵⁶ To clarify, based on the EA's conclusion that the project would have minimal impacts on air quality and that the Morrow Power Station must meet the air quality standards required by applicable state and federal regulations, the EA found that the combined effects of the projects are not significant. The EA did not make a determination as to whether there would be a cumulative effect on climate change. Nor is the Commission currently able to make that

⁵² See generally *Transco*, 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at P 66) ("When the Social Cost of Carbon estimates that one metric ton of CO₂ costs \$12 (the 2020 cost for a discount rate of 5%), agency decision-makers and the public have no objective basis or benchmark to determine whether the cost is significant. Bare numbers standing alone simply cannot ascribe significance.") (emphasis in original) (footnote omitted).

⁵³ Policy Integrity at 4 (citing to EA at 77).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ EA at 77 (emphasis added).

finding. As explained above,⁵⁷ the Commission has concluded that it cannot determine whether a particular level of GHG emissions is significant.

38. Policy Integrity also incorrectly asserts that the EA assumes that natural gas is a perfect fuel substitute. As the EA notes, the use of natural gas by the project shipper will “reduce emissions currently being generated at the coal facility by replacing the capacity with natural gas fired units resulting in lower air impacts to the surrounding area.”⁵⁸ This finding is based on Commission staff evaluating emission differentials. Specifically, with respect to greenhouse gases emissions, as disclosed in Gulf South’s application, the existing coal-fired units to be replaced emit 205.2 lb CO₂/MMBtu (pounds per million British Thermal Units) heat input, while the natural gas-fired replacement units have a rate of 117 lb CO₂/MMBtu heat input, resulting in a 43% reduction in CO₂ emissions.⁵⁹

39. We disagree with Policy Integrity that NEPA requires the Commission to perform a substitution analysis to evaluate the potential effects of the project on supply and demand of various energy resources (e.g., natural gas and coal) to identify the environmental costs to then be considered with any economic benefits.⁶⁰ At bottom, Policy Integrity seeks a costs and benefit analysis of GHG emissions. Neither NEPA nor the Council on Environmental Quality’s (CEQ) regulations implementing NEPA, however, require agencies to conduct a monetary cost-benefit analysis for NEPA review and explains, moreover, that agencies “should not” display a monetary cost-benefit analysis when there are important qualitative considerations.⁶¹ “NEPA does not demand that every federal decision be verified by reduction to mathematical absolutes for insertion into a precise formula.”⁶² Because we agree with this conclusion and because siting infrastructure necessarily involves making qualitative judgments between different

⁵⁷ See *supra* P 34.

⁵⁸ *Id.*

⁵⁹ Application, Resource Report No. 9 at 37.

⁶⁰ Policy Integrity at 4.

⁶¹ 40 C.F.R. § 1502.23 (2019) (“For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.”); see also, *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 40 (2018) (citing 40 C.F.R. § 1502.23).

⁶² *Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir. 1974).

resources as to which there is no agreed-upon quantitative value, the Commission does not conduct a monetary cost-benefit analysis in its NEPA review.

Updated Environmental Condition

40. The EA concluded that the project may affect and is likely to adversely affect the gopher tortoise, a federally-listed threatened species, while it may affect but is not likely to adversely affect the federally threatened black pinesnake.⁶³ In accordance with section 7 of the Endangered Species Act (ESA), Commission staff submitted a Biological Assessment (BA) to the U.S. Fish and Wildlife Service (FWS), requesting concurrence with its determination of effect for the black pinesnake and formal consultation for the gopher tortoise.⁶⁴

41. On April 6, 2020, the FWS provided its Biological Opinion (BO) for the project, including reasonable and prudent measures as well as terms and conditions. The FWS concurred with Commission staff's determination of effect for the black pinesnake⁶⁵ and stated that the project, as proposed, is not likely to jeopardize the continued existence of the gopher tortoise.⁶⁶ Therefore, consultation with the FWS under section 7 of the ESA is complete. Thus, environmental recommendation 13 from the EA is no longer required.

42. The FWS's BO is a binding federal authorization, and where BOs contain reasonable and prudent alternatives or incidental take conditions, we require certificate holders to implement those conditions. Accordingly, we reaffirm that Gulf South is required to adhere to the incidental take statement, which includes implementing the reasonable and prudent measures and adopting all terms and conditions as represented in the FWS's BO.

43. With imposition of the conditions required herein, which include all measures required by FWS in its BO, we find construction and operation of the project would not have a significant impact on federally listed species.

44. Based on the analysis in the EA, as supplemented herein, we conclude that if constructed and operated in accordance with Gulf South's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our

⁶³ EA at 32 (Table 13).

⁶⁴ Commission staff requested that FWS consider the EA as the BA for the project. See EA at 32.

⁶⁵ FWS April 6, 2020 BO at 2.

⁶⁶ *Id.* at 31.

approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

E. Conclusion

45. 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 Gulf South's Lamar County Expansion Project, subject to the conditions in this order.

46. 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.

47. 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.⁶⁷

48. 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.

⁶⁷ 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 Gulf South to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) Gulf South is authorized to refunctionalize its Hattiesburg 20-inch-diameter pipeline from storage to transmission as described in the body of this order.

(C) The certificate authorized in Ordering Paragraph (A) is conditioned on Gulf South's:

- (1) 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) compliance with all applicable Commission regulations under the NGA, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the appendix to this order; and
- (4) filing a written statement affirming that it has executed firm contracts for the capacity levels and terms of service represented in its signed precedent agreement, prior to commencing construction.

(D) Gulf South's system recourse rates as initial recourse rates for transportation on the Legacy System portion of the project are approved.

(E) Gulf South's proposed incremental recourse rates under Rate Schedules FLS and ILS for the Lamar County Lateral portion of the project are approved.

(F) Gulf South is granted a predetermination of rolled-in rate treatment for the costs of the Legacy System portion of the project in a future NGA general section 4 rate case, absent a significant change in circumstances.

(G) Gulf South's proposal to use its system-wide fuel rate for transportation service on the Legacy System portion of the project is approved.

(H) When Gulf South makes its first fuel tracker filing after the in-service date of the Lamar County Lateral, it must explain how it will estimate and recover costs associated with any LAUF gas over the Lamar County Lateral project facilities.

(I) Gulf South shall keep separate books and accounts of costs associated with the project, as described above.

(J) Gulf South shall file actual tariff records setting forth the initial rates for service no later than 30 days prior to the date the facilities go into service.

(K) Gulf South 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 Gulf South. Gulf South shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

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

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Environmental Conditions

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

1. Gulf South 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. Gulf South 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**, Gulf South 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 location 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**, Gulf South 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.

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

5. Gulf South 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 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, Gulf South shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP, or the Director's designee. Gulf South must file revisions to the plan as schedules change. The plan shall identify:

- a. how Gulf South 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 Gulf South 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 Gulf South 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 Gulf South's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Gulf South will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Gulf South shall employ at least one EI per construction spread. 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, Gulf South shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on Gulf South'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(s) 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 Gulf South from other federal, state, or local permitting agencies concerning instances of noncompliance, and Gulf South's response.
9. Gulf South 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, Gulf South must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Gulf South 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 right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Gulf South 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 Gulf South 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**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, its completed, final Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plan.
13. **Prior to construction of horizontal directional drill (HDD) #1 (MP 1.40 to 1.73)**, Gulf South shall file with the Secretary, for review and written approval by the Director of OEP, or the Director's designee, an HDD noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at noise sensitive areas (NSA) with predicted noise levels above 55 A-weighted decibels (dBA). During drilling operations, Gulf South shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than a day-night sound level (L_{dn}) of 55 dBA at the NSAs.
14. Gulf South shall file noise surveys with the Secretary **no later than 60 days** after placing the Black Creek Compressor Station in service. If a full load condition noise survey is not possible, Gulf South shall file an interim survey at the maximum possible horsepower load and file the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the station under interim or full power load conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Gulf South shall:
- a. file a report with the Secretary on what changes are needed, for review and written approval by the Director of OEP, or the Director's designee;
 - 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

Gulf South Pipeline Company, LLC

Docket No. CP19-517-000

(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 Gulf South Pipeline Company, LLC to construct and operate approximately three miles of 20-inch-diameter pipeline lateral, a compressor station, a delivery meter station, and other auxiliary facilities, located in Lamar and Forrest Counties, Mississippi (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 Project's direct GHG emissions from construction and operation and indirect downstream GHG emissions from end-use combustion.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 required by the public convenience and necessity.⁶ Claiming that a

¹ 15 U.S.C. § 717f(c) (2018).

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

³ *Gulf South Pipeline Co.*, 171 FERC ¶ 61,228, at P 34 (2020) (Certificate Order).

⁴ *Id.* P 33; Lamar County Expansion Project Environmental Assessment at 60-61 Table 24, 76-77 (EA).

⁵ Certificate Order, 171 FERC ¶ 61,228 at P 44; *see also* EA at 85.

⁶ Certificate Order, 171 FERC ¶ 61,228 at P 45.

project has no significant environmental impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.⁷

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.⁸ 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.

4. For all these reasons, and those articulated previously,⁹ I respectfully dissent in part.

⁷ Commissioner McNamee argues that the Commission can consider a project's direct GHG emissions under NEPA and in its public convenience and necessity determination without actually determining whether the GHG emissions are significant. Certificate Order, 171 FERC ¶ 61,228 (McNamee, Comm'r, concurring at P 4). This defies both logic and reason. If you refuse to consider how the project's greenhouse gas emissions will impact the environment you aren't actually examining those emissions for purposes of NEPA and the NGA. The argument is particularly problematic in this proceeding given the conclusion that the Project will not have any significant impact on the environment. Certificate Order, 171 FERC ¶ 61,228 at P 44. How the Commission can rationally conclude that a project has no significant impacts, refuse to assess the significance of what might be the project's most significant impact, and then claim to have adequately considered that impact is beyond me.

⁸ 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)).

⁹ 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); *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6

Richard Glick
Commissioner

& 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).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gulf South Pipeline Company, LLC

Docket No. CP19-517-000

(Issued June 18, 2020)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Gulf South Pipeline Company, LLC (Gulf South) a certificate to construct and operate its proposed Lamar County Expansion Project (Project) located in Lamar and Forrest Counties, Mississippi. The Project will include the construction of approximately three miles of 20-inch-diameter pipeline lateral and a compressor station, and will provide up to 200,000 dekatherms per day of firm transportation service to Cooperative Energy's Morrow Power Station, Moselle Power Plant, and Benndale Power Plant.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 Gulf South's existing customers or competitor pipelines and their captive customers, and that Gulf South has 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) emitted by the construction and operation of the Project and by the operation of Cooperative Energy's power plants,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 Cooperative Energy's existing power

¹ *Gulf South Pipeline Co., LLC*, 171 FERC ¶ 61,228 (2020).

² *Id.* PP 12-15.

³ *Id.* P 44.

⁴ *Id.* PP 33-34.

⁵ 867 F.3d 1357 (D.C. Cir. 2017).

plants.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

4. 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 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.⁸

5. For logistical reasons and administrative efficiency, I hereby incorporate my entire analysis in *Transco* by reference and am not reprinting the full text of my analysis here.⁹

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

Bernard L. McNamee
Commissioner

⁶ *Gulf South Pipeline Co.*, 171 FERC ¶ 61,228 at P 33.

⁷ *Id.* P 32.

⁸ *Transco* 171 FERC ¶ 61,032 (2020) (McNamee, Comm'r, concurring at PP 63-74)

⁹ *Id.* PP 16-74.